Companies Act 1985

1985 CHAPTER 6

PART I

FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

CHAPTER I

COMPANY FORMATION

Memorandum of association

1 Mode of forming incorporated company.

(1) Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) A company so formed may be either—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them ("a company limited by shares");

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up ("a company limited by guarantee"); or

(c) a company not having any limit on the liability of its members ("an unlimited company").

(3) A "public company" is a company limited by shares or limited by guarantee and having a share capital, being a company—

(a) the memorandum of which states that it is to be a public company, and

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(b) in relation to which the provisions of this Act or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 22nd December 1980;

and a "private company" is a company that is not a public company.

[F1(3A) Notwithstanding subsection (1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company being a private company limited by shares or by guarantee.**]**

(4) With effect from 22nd December 1980, a company cannot be formed as, or become, a company limited by guarantee with a share capital.

Textual Amendments

F1 S. 1(3A) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.1**.

2 Requirements with respect to memorandum.

(1) The memorandum of every company must state—

(a) the name of the company;

(b) whether the registered office of the company is to be situated in England and Wales, or in Scotland;

(c) the objects of the company.

(2) Alternatively to subsection (1)(b), the memorandum may contain a statement that the company's registered office is to be situated in Wales; and a company whose registered office is situated in Wales may by special resolution alter its memorandum so as to provide that its registered office is to be so situated.

(3) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(4) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company if it should be wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(5) In the case of a company having a share capital—

(a) the memorandum must also (unless it is an unlimited company) state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount;

(b) no subscriber of the memorandum may take less than one share; and

(c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.

(6) **[**F2Subject to subsection (6A), the memorandum**]** must be signed by each subscriber in the presence of at least one witness, who must attest the signature; **[**F3and that attestation is sufficient in Scotland as well as in England and Wales**]**.

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[F4(6A) Where the memorandum is delivered to the registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the registrar, the requirements in subsection (6) for signature in the presence of at least one witness and for attestation of the signature do not apply.**]**

(7) A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent, for which express provision is made by this Act.

Textual Amendments

F2 Words in s. 2(6) substituted (22.12.2000) by S.I. 2000/3373, **art. 2(1)(2)**

F3 Words in s. 2(6) repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

F4 S. 2(6A) inserted (22.12.2000) by S.I. 2000/3373, **art. 2(1)(3)**

Modifications etc. (not altering text)

C1 S. 2(5)(b)(c)(6)(6A) excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 1(2)** (with Sch. 4 para.11)

C2 S. 2(7) excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by Commonhold and Leasehold Reform Act 2002 (c. 15), **ss. 74(7)(a)**, 181(1); S.I. 2002/1912, **art. 2(c)**; S.I. 2002/3012, **art. 2(c)**; S.I. 2003/1986, **art. 2**; S.I. 2004/669, **art. 2**
S. 2(7) excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 4(1)(a)** (with s. 63); S.I. 2004/1832, **art. 2**

3 Forms of memorandum.

(1) Subject to the provisions of sections 1 and 2, the form of the memorandum of association of—

(a) a public company, being a company limited by shares,

(b) a public company, being a company limited by guarantee and having a share capital,

(c) a private company limited by shares,

(d) a private company limited by guarantee and not having a share capital,

(e) a private company limited by guarantee and having a share capital, and

(f) an unlimited company having a share capital,

shall be as specified respectively for such companies by regulations made by the Secretary of State, or as near to that form as circumstances admit.

(2) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C3 S. 3 excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by Commonhold and Leasehold Reform Act 2002 (c. 15), **ss. 74(7)(a)**, 181(1); S.I. 2002/1912, **art. 2(c)**; S.I. 2002/3012, **art. 2(c)**; S.I. 2003/1986, **art. 2**; S.I. 2004/669, **art. 2**
S. 3 excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 4(1)(a)** (with s. 63); S.I. 2004/1832, **art. 2**

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[F5 3A Statement of company's objects: general commercial company.

Where the company's memorandum states that the object of the company is to carry on business as a general commercial company—

(a) the object of the company is to carry on any trade or business whatsoever, and

(b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.**]**

Textual Amendments

F5 S. 3A inserted (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 110**, 213(2)

[4 F6 Resolution to alter objects.

(1) A company may by special resolution alter its memorandum with respect to the statement of the company's objects.

(2) If an application is made under the following section, an alteration does not have effect except in so far as it is confirmed by the court.**]**

Textual Amendments

F6 S. 4 substituted (4. 2. 1991) by Companies Act 1989 (c. 40), **ss. 110(2)**, 213(2)

5 Procedure for objecting to alteration.

(1) Where a company's memorandum has been altered by special resolution under section 4, application may be made to the court for the alteration to be cancelled.

(2) Such an application may be made—

(a) by the holders of not less in the aggregate than 15 per cent. in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent. of the company's members; or

(b) by the holders of not less than 15 per cent. of the company's debentures entitling the holders to object to an alteration of its objects;

but an application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may—

(a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and

(b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

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(5) The court's order may (if the court thinks fit) provide for the purchase by the company of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(6) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.

(7) An alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

(8) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which were issued or first issued before 1st December 1947 or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company.

In the absence of provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members apply.

6 Provisions supplementing ss. 4, 5.

(1) Where a company passes a resolution altering its objects, then—

(a) if with respect to the resolution no application is made under section 5, the company shall within 15 days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and

(b) if such an application is made, the company shall—

(i) forthwith give notice (in the prescribed form) of that fact to the registrar, and

(ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

(2) The court may by order at any time extend the time for the delivery of documents to the registrar under subsection (1)(b) for such period as the court may think proper.

(3) If a company makes default in giving notice or delivering any document to the registrar of companies as required by subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by section 4, except in proceedings taken for the purpose (whether under section 5 or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.

(5) Where such proceedings are taken otherwise than under section 5, subsections (1) to (3) above apply in relation to the proceedings as if they had been taken under that

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section, and as if an order declaring the alteration invalid were an order cancelling it, and as if an order dismissing the proceedings were an order confirming the alteration.

Modifications etc. (not altering text)

C4 S. 6(3) applied (4.2.1991) by Charities Act 1960 (c. 58, SIF 19), **s. 30A(3)** (as substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 111(1)**, 213(2))

C5 S. 6(3) extended (E.W.) (1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 12(6)**, 17(2)
S. 6(3) applied (E.W.) (1.1.1993) by Companies Act 1960 (c. 58), **s. 30A(4)** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s.40**; S.I. 1992/1900, art. 4, **Sch.3**).
S. 6(3) extended (E.W.) (1.8.1993) by 1993 c. 10, **ss. 64(4)**, 99(1)

Articles of association

7 Articles prescribing regulations for companies.

(1) There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) In the case of an unlimited company having a share capital, the articles must state the amount of share capital with which the company proposes to be registered.

(3) Articles must—

(a) be printed,

(b) be divided into paragraphs numbered consecutively, and

(c) **[**F7subject to subsection (3A),**]**be signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature **[**F8(which attestation is sufficient in Scotland as well as in England and Wales)**]**.

[F9(3A) Where the articles are delivered to the registrar otherwise than in legible form and are authenticated by each subscriber to the memorandum in such manner as is directed by the registrar, the requirements in subsection (3)(c) for signature in the presence of at least one witness and for attestation of the signature do not apply.**]**

Textual Amendments

F7 Words in s. 7(3)(c) inserted (22.12.2000) by S.I. 2000/3373, **art. 3(1)(2)**

F8 Words in s. 7(3)(c) repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

F9 S. 7(3A) inserted (22.12.2000) by S.I. 2000/3373, **art. 3(1)(3)**

Modifications etc. (not altering text)

C6 S. 7 restricted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 1(3)** (with para. 11)

C7 S. 7(1) applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 32(2)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

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8 Tables A, C, D and E.

(1) Table A is as prescribed by regulations made by the Secretary of State; and a company may for its articles adopt the whole or any part of that Table.

(2) In the case of a company limited by shares, if articles are not registered or, if articles are registered, in so far as they do not exclude or modify Table A, that Table (so far as applicable, and as in force at the date of the company's registration) constitutes the company's articles, in the same manner and to the same extent as if articles in the form of that Table had been duly registered.

(3) If in consequence of regulations under this section Table A is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.

(4) The form of the articles of association of—

(a) a company limited by guarantee and not having a share capital,

(b) a company limited by guarantee and having a share capital, and

(c) an unlimited company having a share capital,

shall be respectively in accordance with Table C, D or E prescribed by regulations made by the Secretary of State, or as near to that form as circumstances admit.

(5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C8 S. 8 excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by Commonhold and Leasehold Reform Act 2002 (c. 15), **ss. 74(7)(b)**, 181(1); S.I. 2002/1912, **art. 2(c)**; S.I. 2002/3012, **art. 2(c)**; S.I. 2003/1986, **art. 2**; S.I. 2004/669, **art. 2**
S. 8 excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 4(1)(b)** (with s. 63); S.I. 2004/1832, **art. 2**

[F10 8A Table G.

(1) The Secretary of State may by regulations prescribe aTable G containing articles of association appropriate for a partnership company, that is, a company limited by shares whose shares are intended to be held to a substantial extent by or on behalf of its employees.

(2) A company limited by shares may for its articles adopt the whole or any part of that Table.

(3) If in consequence of regulations under this section Table G is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.

(4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

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Textual Amendments

F10 S. 8A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 128**, 213(2), 215(2)

9 Alteration of articles by special resolution.

(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter its articles.

(2) Alterations so made in the articles are (subject to this Act) as valid as if originally contained in them, and are subject in like manner to alteration by special resolution.

Registration and its consequences

10 Documents to be sent to registrar.

(1) The company's memorandum and articles (if any) shall be delivered—

(a) to the registrar of companies for England and Wales, if the memorandum states that the registered office of the company is to be situated in England and Wales, or that it is to be situated in Wales; and

(b) to the registrar of companies for Scotland, if the memorandum states that the registered office of the company is to be situated in Scotland.

(2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—

(a) the person who is, or the persons who are, to be the first director or directors of the company; and

(b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company;

and the requisite particulars in each case are those set out in Schedule 1.

[F11(2A) Where any statement delivered under subsection (2) includes an address specified in reliance on paragraph 5 of Schedule 1 there shall be delivered with the statement, a statement in the prescribed form containing particulars of the usual residential address of the director or secretary whose address is so specified.**]**

(3) The statement **[**F12under subsection (2)**]** shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.

(4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.

(5) An appointment by any articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.

(6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

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Textual Amendments

F11 S. 10(2A) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 1(2)**

F12 Words in s. 10(3) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 1(3)**

Modifications etc. (not altering text)

C9 S. 10 excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 1(4)** (with Sch. 4 para. 11)

C10 S. 10 modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 36(1)(2)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

11 Minimum authorised capital (public companies).

When a memorandum delivered to the registrar of companies under section 10 states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum (defined in section 118).

12 Duty of registrar.

(1) The registrar of companies shall not register a company's memorandum delivered under section 10 unless he is satisfied that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with.

(2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that section.

(3) **[**F13Subject to subsection (3A), a statutory declaration**]** in the prescribed form by—

(a) a solicitor engaged in the formation of a company, or

(b) a person named as a director or secretary of the company in the statement delivered under section 10(2),

that those requirements have been complied with shall be delivered to the registrar of companies, and the registrar may accept such a declaration as sufficient evidence of compliance.

[F14(3A) In place of the statutory declaration referred to in subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a person mentioned in paragraph (a) or (b) of subsection (3) that the requirements mentioned in subsection (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.

F14(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

Textual Amendments

F13 Words in s. 12(3) substituted (22.12.2000) by S.I. 2000/3373, **art. 3(1)(2)**

F14 S. 12(3A)(3B) inserted (22.12.2000) by S.I. 2000/3373, **art. 3(1)(3)**

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Modifications etc. (not altering text)

C11 S. 12 modified (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), s. 34, **Sch. 3 para. 17** (with s. 63); S.I. 2004/1832, **art. 2**

C12 S. 12 applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 36(7)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

C13 S. 12(2) modified (27.7.1999) by 1999 c. 20, **s. 4(1)** (with s. 15)

13 Effect of registration.

(1) On the registration of a company's memorandum, the registrar of companies shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.

(2) The certificate may be signed by the registrar, or authenticated by his official seal.

(3) From the date of incorporation mentioned in the certificate, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.

(4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets in the event of its being wound up as is provided by this Act **[**[F15]and the Insolvency Act**]**.

This is subject, in the case of a public company, to section 117 (additional certificate as to amount of allotted share capital).

(5) The persons named in the statement under section 10 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.

(6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.

(7) A certificate of incorporation given in respect of an association is conclusive evidence—

(a) that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Act, and

(b) if the certificate contains a statement that the company is a public company, that the company is such a company.

Textual Amendments

F15 Words added by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C14 S. 13 excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 6** (with para. 11)

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C15 S. 13 modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 36(8)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

14 Effect of memorandum and articles.

(1) Subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company, and in England and Wales is of the nature of a speciality debt.

Modifications etc. (not altering text)
C16 S. 14 modified (12.2.1992) by S.I. 1992/225, **regs. 1**, 119(1).

15 Memorandum and articles of company limited by guarantee.

(1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles, or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, is void.

(2) For purposes of provisions of this Act relating to the memorandum of a company limited by guarantee, and for those of section 1(4) and this section, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

Modifications etc. (not altering text)
C17 S. 15 excluded by Companies Consolidation (Consequential Provisions) Act 1985 (c.9, SIF 27), **s. 10**

16 Effect of alteration on company's members.

(1) A member of a company is not bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration—

(a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or

(b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

(2) Subsection (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

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17 Conditions in memorandum which could have been in articles.

(1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.

(2) This section—

(a) is subject to section 16, and also to Part XVII (court order protecting minority), and

(b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions above referred to, and does not authorise any variation or abrogation of the special rights of any class of members.

(3) Section 5 (except subsections (2)(b) and (8)) and section 6(1) to (3) apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and applications under sections 4 to 6.

Modifications etc. (not altering text)

C18 S. 17 extended (1.10.2009) by Companies Act 2006 (c. 46), **ss. 63(5)**, 1300; S.I. 2008/2860, **art. 3(e)** (with arts. 5, 7, 8, Sch. 2)

18 Amendments of memorandum or articles to be registered.

(1) Where an alteration is made in a company's memorandum or articles by any statutory provision, whether contained in an Act of Parliament or in an instrument made under an Act, a printed copy of the Act or instrument shall, not later than 15 days after that provision comes into force, be forwarded to the registrar of companies and recorded by him.

(2) Where a company is required (by this section or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other than a special resolution under section 4), the company shall send with it a printed copy of the memorandum or articles as altered.

(3) If a company fails to comply with this section, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)

C19 S. 18 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C20 S. 18(3) extended (12.2.1992) by S.I. 1992/225, **regs. 1**, 119(3).

19 Copies of memorandum and articles to be given to members.

(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles (if any), and a copy of any Act of Parliament which alters the memorandum, subject to payment—

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(a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may prescribe, and

(b) in the case of a copy of an Act, of such sum not exceeding its published price as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of it who is in default is liable for each offence to a fine.

20 Issued copy of memorandum to embody alterations.

(1) Where an alteration is made in a company's memorandum, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is liable to a fine, and so too is every officer of the company who is in default.

21 . . . . . .

F16 . . . . . .

Textual Amendments

F16 S. 21 repealed (1.2.1994) by 1993 c. 38, ss. 30(2), 35(1), **Sch. 2**; S.I. 1994/115, **art. 2(2)**

A company's membership

22 Definition of "member".

(1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration shall be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

Modifications etc. (not altering text)

C21 S. 22(1) applied (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 15(1)** (with s. 63); S.I. 2004/1832, **art. 2**

C22 S. 22(1) excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para.7** (with para. 11)

C23 S. 22(2) excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), s. 34, 181(1), **Sch. 3 para. 15(2)** (with s. 63); S.I. 2004/1832, **art. 2**

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[F17 23 Membership of holding company.

(1) Except as mentioned in this section, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary is void.

(2) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

(a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business which includes the lending of money;

(b) any such interest as is mentioned in Part I of Schedule 2.

F18 [(3) The prohibition does not apply where shares in the holding company are held by the subsidiary in the ordinary course of its business as an intermediary.

For this purpose a person is an intermediary if that person—

(a) carries on a bona fide business of dealing in securities;

(b) is a member of an EEA exchange (and satisfies any requirements for recognition as a dealer in securities laid down by that exchange) or is otherwise approved or supervised as a dealer in securities under the laws of an EEA State; and

(c) does not carry on an excluded business.

(3A) The excluded businesses are the following—

(a) any business which consists wholly or mainly in the making or managing of investments;

(b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;

(c) any business which consists in insurance business;

(d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;

(e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.

(3B) For the purposes of subsections (3) and (3A)—

(a) the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988 M1;

(b) 'collective investment scheme' has the meaning given in [F19 section 236 of the Financial Services and Markets Act 2000];

(c) 'EEA exchange' means a market which appears on the list drawn up by an EEA State pursuant to Article 16 of Council Directive 93/22/EEC on investment services in the securities field M2;

F20 [(d) "insurance business" means business which consists of the effecting or carrying out of contracts of insurance;

F20 (e) "securities" includes—

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(i) options,

(ii) futures, and

(iii) contracts for differences,

and rights or interests in those investments;**]**

(f) 'trustee' and 'the operator' shall, in relation to a collective investment scheme, be construed in accordance with **[**F21section 237(2) of the Financial Services and Markets Act 2000**]**.

F22(3BA) **[** Subsection (3B) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.**]**

(3C) Where—

(a) a subsidiary which is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in subsection (1); and

(b) a person acting in good faith has agreed, for value and without notice of that contravention, to acquire shares in the holding company from the subsidiary or from someone who has purportedly acquired the shares after their disposal by the subsidiary,

any transfer to that person of the shares mentioned in paragraph (a) shall have the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.**]**

(4) Where a body corporate became a holder of shares in a company—

(a) before 1st July 1948, or

(b) on or after that date and before **[**F23**]**20th October 1997, in circumstances in which this section as it then had effect did not apply,

but at any time **[**F24on or after **[**F23**]**20th October 1997**]]**falls within the prohibition in subsection (1) above in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(5) Where a body corporate becomes a holder of shares in a company **[**F24on or after **[**F23**]** 20th October 1997**]]**in circumstances in which the prohibition in subsection (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(6) Where a body corporate is permitted to continue as a member of a company by virtue of subsection (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in subsection (1) would apply, apart from subsection (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(7) The provisions of this section apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

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(8) In relation to a company other than a company limited by shares, the references in this section to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.**]**

Textual Amendments

F17 S. 23 substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 129(1)**, 213(2)
F18 S. 23(3)-(3C) substituted (20.10.1997) for s. 23(3) by S.I. 1997/2306, **reg. 2**
F19 Words in s. 23(3B)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 4(1)(2)
F20 S. 23(3B)(d)(e) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 4(3)
F21 Words in s. 23(3B)(f) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 4(4)
F22 S. 23(3BA) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 4(5)
F23 Words in s. 23(4)(5) substituted (20.10.1997) by S.I. 1997/2306, **reg. 3**
F24 Substituted by S.I. 1990/1392, **art. 8(b)** as amended by S.I. 1990/1707, **art. 8(2)**

Modifications etc. (not altering text)

C24 S. 23 modified (subject to the transitional and savings provisions as mentioned in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c.40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 32(2)**
C25 S. 23 restricted (subject to the transitional and savings provisions as mentioned in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c.40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 32(3)**
C26 S. 23 excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 15(2)** (with s. 63); S.I. 2004/1832, **art. 2**

Marginal Citations

M1 1988 c. 1; section 839 was amended by section 74 of, and paragraph 20 of Part II of Schedule 17 to, the Finance Act 1995 (c. 4), and modified by S.I. 1988/745.
M2 O.J. L141, 11.6.93, p. 27.

24 Minimum membership for carrying on business.

If a company **[**[F25]other than a private company limited by shares or by guarantee,**]** carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months—

(a) is a member of the company, and

(b) knows that it is carrying on business with only one member,

is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.

Textual Amendments

F25 Words in s. 24 inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.2**.

Modifications etc. (not altering text)

C27 S. 24 modified (12.2.1992) by S.I. 1992/225, **reg. 61(7)**.
S. 24 amended (15.7.1992) by S.I. 1992/1699, **reg.3**.
S. 24 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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CHAPTER II

COMPANY NAMES

25 Name as stated in memorandum.

(1) The name of a public company must end with the words "public limited company" or, if the memorandum states that the company's registered office is to be situated in Wales, those words or their equivalent in Welsh ("cwmni cyfyngedig cyhoeddus"); and those words or that equivalent may not be preceded by the word "limited" or its equivalent in Welsh ("cyfyngedig").

(2) In the case of a company limited by shares or by guarantee (not being a public company), the name must have "limited" as its last word, except that—

(a) this is subject to section 30 (exempting, in certain circumstances, a company from the requirement to have "limited" as part of the name), and

(b) if the company is to be registered with a memorandum stating that its registered office is to be situated in Wales, the name may have "cyfyngedig" as its last word.

Modifications etc. (not altering text)

C28 S. 25 excluded (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 33(5)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

26 Prohibition on registration of certain names.

(1) A company shall not be registered under this Act by a name—

(a) which includes, otherwise than at the end of the name, any of the following words or expressions, that is to say, "limited", "unlimited" or "public limited company" or their Welsh equivalents ("cyfyngedig", "anghyfyngedig" and "cwmni cyfyngedig cyhoeddus" respectively);

(b) which includes, otherwise than at the end of the name, an abbreviation of any of those words or expressions;

[[F26](bb) which includes, at any place in the name, the expressions "investment company with variable capital" or "open-ended investment company" or their Welsh equivalents ("cwmni buddsoddi â chyfalaf newidiol" and "cwmni buddsoddiant penagored" respectively);**]**

[[F27](bbb) which includes, at any place in the name, the expression "limited liability partnership" or its Welsh equivalent ("partneriaeth atebolrwydd cyfyngedig");**]**

(c) which is the same as a name appearing in the registrar's index of company names;

(d) the use of which by the company would in the opinion of the Secretary of State constitute a criminal offence; or

(e) which in the opinion of the Secretary of State is offensive.

(2) Except with the approval of the Secretary of State, a company shall not be registered under this Act by a name which—

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(a) in the opinion of the Secretary of State would be likely to give the impression that the company is connected in any way with Her Majesty's Government or with any local authority; or

(b) includes any word or expression for the time being specified in regulations under section 29.

"Local authority" means any local authority within the meaning of the [M3]Local Government Act 1972 or the [M4]Local Government (Scotland) Act 1973, the Common Council of the City of London or the Council of the Isles of Scilly.

(3) In determining for purposes of subsection (1)(c) whether one name is the same as another, there are to be disregarded—

(a) the definite article, where it is the first word of the name;

(b) the following words and expressions where they appear at the end of the name, that is to say—

"company" or its Welsh equivalent ("cwmni"),

"and company" or its Welsh equivalent ("a'r cwmni"),

"company limited" or its Welsh equivalent ("cwmni cyfyngedig"),

"and company limited" or its Welsh equivalent ("a'r cwmni cyfyngedig"),

"limited" or its Welsh equivalent ("cyfyngedig"),

"unlimited" or its Welsh equivalent ("anghyfyngedig"), [F28]. . .

"public limited company" or its Welsh equivalent ("cwmni cyfyngedig cyhoeddus"); [F29]. . .

[[F30]"investment company with variable capital" or its Welsh equivalent ("cwmni buddsoddi â chyfalaf newidiol");

[[F31]and

"open-ended investment company" or its Welsh equivalent ("cwmni buddsoddiant penagored");**]**

(c) abbreviations of any of those words or expressions where they appear at the end of the name; and

(d) type and case of letters, accents, spaces between letters and punctuation marks;

and "and" and "&" are to be taken as the same.**]**

Textual Amendments

F26 S. 26(1)(bb) substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 3(2)**; S.I. 2001/3538, **art. 2(1)**

F27 S. 26(1)(bbb) inserted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 9**

F28 Word in s. 26(3)(b) omitted (6.1.1997) by virtue of S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 4(b)**

F29 Words in s. 26(3)(b) omitted (1.12.2001) by virtue of S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 3(3)**; S.I. 2001/3538, **art. 2(1)**

F30 Words in s. 26(3)(b) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 4(b)**

F31 Words in s. 26(3)(b) inserted (1.12.2001) by virtue of S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 3(3)**; S.I. 2001/3538, **art. 2(1)**

Modifications etc. (not altering text)

C29 S. 26(1)(*c*) extended (with modifications) by S.I. 1989/638, regs. 10(2), 18, 21, **Sch. 4 para. 1**

C30 S. 26(1)(*d*)(*e*) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 1**

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C31 S. 26(2) restricted (10.5.2001) by 1999 c. 19, **s. 2**; S.I. 2001/258, **art. 2**
C32 S. 26(2)(3) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 1**
C33 S. 26(2)(a) excluded (19.7.1995) by 1995 c. 24, **s. 6**
C34 S. 26(3) applied (with modifications) (E.W.) (1.9.1992) by Charities Act 1992 (c. 41), **s. 4(7)(9)**; S.I. 1992/1900, art. 2(1), **Sch. 1**.
S. 26(3) applied (E.W.) (1.8.1993) by 1993 c. 10, **ss. 6(7)**, 99(1)

Marginal Citations
M3 1972 c. 70.
M4 1973 c. 65.

27 Alternatives of statutory designations.

(1) A company which by any provision of this Act is either required or entitled to include in its name, as its last part, any of the words specified in subsection (4) below may, instead of those words, include as the last part of the name the abbreviations there specified as alternatives in relation to those words.

(2) A reference in this Act to the name of a company or to the inclusion of any of those words in a company's name includes a reference to the name including (in place of any of the words so specified) the appropriate alternative, or to the inclusion of the appropriate alternative, as the case may be.

(3) A provision of this Act requiring a company not to include any of those words in its name also requires it not to include the abbreviated alternative specified in subsection (4).

(4) For the purposes of this section—
(a) the alternative of "limited" is "ltd.";
(b) the alternative of "public limited company" is "p.l.c.";
(c) the alternative of "cyfyngedig" is "cyf."; and
(d) the alternative of "cwmni cyfyngedig cyhoeddus" is "c.c.c.".

28 Change of name.

(1) A company may by special resolution change its name (but subject to section 31 in the case of a company which has received a direction under subsection (2) of that section from the Secretary of State).

(2) Where a company has been registered by a name which—
(a) is the same as or, in the opinion of the Secretary of State, too like a name appearing at the time of the registration in the registrar's index of company names, or
(b) is the same as or, in the opinion of the Secretary of State, too like a name which should have appeared in that index at that time,

the Secretary of State may within 12 months of that time, in writing, direct the company to change its name within such period as he may specify.

Section 26(3) applies in determining under this subsection whether a name is the same as or too like another.

(3) If it appears to the Secretary of State that misleading information has been given for the purpose of a company's registration with a particular name, or that undertakings or

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assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.

(4) Where a direction has been given under subsection (2) or (3), the Secretary of State may by a further direction in writing extend the period within which the company is to change its name, at any time before the end of that period.

(5) A company which fails to comply with a direction under this section, and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

(6) Where a company changes its name under this section, the registrar of companies shall (subject to section 26) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(7) A change of name by a company under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Modifications etc. (not altering text)

C35 S. 28(2) extended (with modifications) by S.I. 1989/638, regs. 11(1), 18, 21, **Sch. 4 para. 2**

C36 S. 28(3)–(5), (7) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 2**

C37 S. 28(6) applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 38(6)**, **55(6)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

C38 S. 28(6) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 38(8)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

29 Regulations about names.

(1) The Secretary of State may by regulations—

(a) specify words or expressions for the registration of which as or as part of a company's corporate name his approval is required under section 26(2)(b), and

(b) in relation to any such word or expression, specify a Government department or other body as the relevant body for purposes of the following subsection.

(2) Where a company proposes to have as, or as part of, its corporate name any such word or expression and a Government department or other body is specified under subsection (1)(b) in relation to that word or expression, a request shall be made (in writing) to the relevant body to indicate whether (and if so why) it has any objections to the proposal; and the person to make the request is—

(a) in the case of a company seeking to be registered under this Part, the person making the statutory declaration **[**[F32]under section 12(3) or statement under section 12(3A) (as the case may be)**]**,

(b) in the case of a company seeking to be registered under section 680, the persons making the statutory declaration **[**[F33]under section 686(2) or statement under section 686(2A) (as the case may be)**]**, and

(c) in any other case, a director or secretary of the company concerned.

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(3) The person who has made that request to the relevant body shall submit to the registrar of companies a statement that it has been made and a copy of any response received from that body, together with—

(a) the requisite statutory declaration **[**F34or statement**]**, or

(b) a copy of the special resolution changing the company's name,

according as the case is one or other of those mentioned in subsection (2).

(4) Sections 709 and 710 (public rights of inspection of documents kept by registrar of companies) do not apply to documents sent under subsection (3) of this section.

(5) Regulations under this section may contain such transitional provisions and savings as the Secretary of State thinks appropriate and may make different provision for different cases or classes of case.

(6) The regulations shall be made by statutory instrument, to be laid before Parliament after it is made; and the regulations shall cease to have effect at the end of 28 days beginning with the day on which the regulations were made (but without prejudice to anything previously done by virtue of them or to the making of new regulations), unless during that period they are approved by resolution of each House. In reckoning that period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

Textual Amendments

F32 Words in s. 29(2)(a) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(1)(a)**

F33 Words in s. 29(2)(b) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(1)(b)**

F34 Words in s. 29(3)(a) inserted (22.12.2000) by S.I. 2000/3373, **art. 31(1)(c)**

Modifications etc. (not altering text)

C39 S. 29(1)(*a*) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 3**

30 Exemption from requirement of "limited" as part of the name.

(1) Certain companies are exempt from requirements of this Act relating to the use of "limited" as part of the company name.

(2) A private company limited by guarantee is exempt from those requirements, and so too is a company which on 25th February 1982 was a private company limited by shares with a name which, by virtue of a licence under section 19 of the M5Companies Act 1948, did not include "limited"; but in either case the company must, to have the exemption, comply with the requirements of the following subsection.

(3) Those requirements are that—

(a) the objects of the company are (or, in the case of a company about to be registered, are to be) the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects; and

(b) the company's memorandum or articles—

(i) require its profits (if any) or other income to be applied in promoting its objects,

(ii) prohibit the payment of dividends to its members, and

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(iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto (whether or not the body is a member of the company).

(4) **[**F35Subject to subsection (5A), a statutory declaration**]** that a company complies with the requirements of subsection (3) may be delivered to the registrar of companies, who may accept the declaration as sufficient evidence of the matters stated in it F36. . ..

(5) The statutory declaration must be in the prescribed form and be made—

(a) in the case of a company to be formed, by a solicitor engaged in its formation or by a person named as director or secretary in the statement delivered under section 10(2);

(b) in the case of a company to be registered in pursuance of section 680, by two or more directors or other principal officers of the company; and

(c) in the case of a company proposing to change its name so that it ceases to have the word "limited" as part of its name, by a director or secretary of the company.

[F37(5A) In place of the statutory declaration referred to in subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a person falling within the applicable paragraph of subsection (5) stating that the company complies with the requirements of subsection (3); and the registrar may accept such a statement as sufficient evidence of the matters stated in it.

F37(5B) The registrar may refuse to register a company by a name which does not include the word "limited" unless a statutory declaration under subsection (4) or statement under subsection (5A) has been delivered to him.

F37(5C) Any person who makes a false statement under subsection (5A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

(6) References in this section to the word "limited" include (in an appropriate case) its Welsh equivalent ("cyfyngedig"), and the appropriate alternative ("ltd." or "cyf.", as the case may be).

(7) A company which is exempt from requirements relating to the use of "limited" and does not include that word as part of its name, is also exempt from the requirements of this Act relating to the publication of its name and the sending of lists of members to the registrar of companies.

Textual Amendments

F35 Words in s. 30(4) substituted (22.12.2000) by S.I. 2000/3373, **art. 5(1)(2)(a)**

F36 Words in s. 30(4) omitted (22.12.2000) by virtue of S.I. 2000/3373, **art. 5(1)(2)(b)**

F37 S. 30(5A)-(5C) inserted (22.12.2000) by S.I. 2000/3373, **art. 5(1)(3)**

Modifications etc. (not altering text)

C40 S. 30(4) amended by Financial Services Act 1986 (c. 60, SIF 69), s. 116, **Sch. 9 para. 2(2)**

C41 S. 30(7) restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), **s. 30BB** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s. 42**; S.I. 1992/1900, art. 4, **Sch. 3**).
S. 30(7) excluded (E.W.) (1.8.1993) by 1993 c. 10, **ss. 67**, 99(1)

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Marginal Citations
M5 1948 c. 38.

31 Provisions applying to company exempt under s. 30.

(1) A company which is exempt under section 30 and whose name does not include "limited" shall not alter its memorandum or articles of association so that it ceases to comply with the requirements of subsection (3) of that section.

(2) If it appears to the Secretary of State that such a company—

(a) has carried on any business other than the promotion of any of the objects mentioned in that subsection, or

(b) has applied any of its profits or other income otherwise than in promoting such objects, or

(c) has paid a dividend to any of its members,

he may, in writing, direct the company to change its name by resolution of the directors within such period as may be specified in the direction, so that its name ends with "limited".

A resolution passed by the directors in compliance with a direction under this subsection is subject to section 380 of this Act (copy to be forwarded to the registrar of companies within 15 days).

(3) A company which has received a direction under subsection (2) shall not thereafter be registered by a name which does not include "limited", without the approval of the Secretary of State.

(4) References in this section to the word "limited" include (in an appropriate case) its Welsh equivalent ("cyfyngedig"), and the appropriate alternative ("ltd." or "cyf.", as the case may be).

(5) A company which contravenes subsection (1), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

(6) A company which fails to comply with a direction by the Secretary of State under subsection (2), and any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C42 S. 31 amended by Financial Services Act 1986 (c. 60, SIF 69), s. 116, **Sch. 9 para. 2(3)**
C43 S. 31(2) modified by Financial Services Act 1986 (c. 60, SIF 69), s. 116, **Sch. 9 para. 2(3)**

32 Power to require company to abandon misleading name.

(1) If in the Secretary of State's opinion the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may direct it to change its name.

(2) The direction must, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of 6 weeks from the date of the direction or such longer period as the Secretary of State may think fit to allow.

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(3) The company may, within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify a period within which it must be complied with.

(4) If a company makes default in complying with a direction under this section, it is liable to a fine and, for continued contravention, to a daily default fine.

(5) Where a company changes its name under this section, the registrar shall (subject to section 26) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(6) A change of name by a company under this section does not affect any of the rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Modifications etc. (not altering text)
C44 S. 32 restricted (19.7.1995) by 1995 c. 24, **s. 6**

33 Prohibition on trading under misleading name.

(1) A person who is not a public company is guilty of an offence if he carries on any trade, profession or business under a name which includes, as its last part, the words "public limited company" or their equivalent in Welsh ("cwmni cyfyngedig cyhoeddus").

(2) A public company is guilty of an offence if, in circumstances in which the fact that it is a public company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a private company.

(3) A person guilty of an offence under subsection (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

34 Penalty for improper use of "limited" or "cyfyngedig".

If any person trades or carries on business under a name or title of which "limited" of "cyfyngedig", or any contraction or imitation of either of those words, is the last word, that person, unless duly incorporated with limited liability, is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C45 S. 34 modified (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para.8** (with para. 11)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/07/2005

34A Penalty for improper use of "community interest company" etc.

(1) A company which is not a community interest company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of the expressions specified in subsection (3).

(2) A person other than a company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of those expressions (or any contraction of them) as its last part.

(3) The expressions are—

(a) "community interest company" or its Welsh equivalent ("cwmni buddiant cymunedol"), and

(b) "community interest public limited company" or its Welsh equivalent ("cwmni buddiant cymunedol cyhoeddus cyfyngedig").

(4) Subsections (1) and (2) do not apply—

(a) to a person who was carrying on a trade, profession or business under the name in question at any time during the period beginning with 1st September 2003 and ending with 4th December 2003, or

(b) if the name in question was on 4th December 2003 a registered trade mark or Community trade mark (within the meaning of the Trade Marks Act 1994 (c. 26)), to a person who was on that date a proprietor or licensee of that trade mark.

(5) A person guilty of an offence under subsection (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

CHAPTER III

A COMPANY'S CAPACITY; FORMALITIES OF CARRYING ON BUSINESS

[F38 35 A company's capacity not limited by its memorandum.

(1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.

(2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for subsection (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

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A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

(4) The operation of this section is restricted by **[**F39section 65(1) of the Charities Act 1993**]** and section 112(3) of the M6Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

Textual Amendments

F38 Ss. 35, 35A, 35B substituted (4. 2. 1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c. 40), **ss. 108(1)**, 213(2)

F39 Words in s. 35(4) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 20(2)**

Modifications etc. (not altering text)

C46 S. 35 excluded by Charities Act 1960 (c. 58, SIF 19), **s. 30B(1)** as substituted (4. 2. 1991) (with transitional and savings provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c. 40, SIF 27), **ss. 111(1)**, 213
S. 35 excluded by S.I. 1990/2569, **art. 7(1)**
S. 35 excluded (S) (4. 2. 1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 112(3)**, 213(2)

C47 S. 35 applied with modifications by S.I. 1985/680, regs. 4-6, **Sch.** as amended (4. 2. 1991) by S.I. 1990/2571, **reg. 2(a)(b)**
S. 35 excluded (E.W.) (1.8.1993) by 1993 c. 10, **ss. 65(1)**, 99(1)

C48 S. 35(3) modified by Charities Act 1960 (c. 58, SIF 19), **s. 30(B)(4)** as substituted (4. 2. 1991) (subject to the transitional and savings provisions in S.I. 1990/2569, **art. 7**), by Companies Act 1989 (c. 40, SIF 27), **ss. 111(1)**, 213(2)
S. 35(3) restricted (E.W.) (1.8.1993) by 1993 c. 10, **ss. 65(4)**, 99(1)

Marginal Citations

M6 1989 c. 40

[F40**35A Power of directors to bind the company.**

(1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.

(2) For this purpose—

(a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party;

(b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and

(c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—

(a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or

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(b) from any agreement between the members of the company or of any class of shareholders.

(4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(5) Nor does that subsection affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.

(6) The operation of this section is restricted by **[**[F41]section 65(1) of the Charities Act 1993**]** and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.**]**

Textual Amendments

F40 Ss. 35, 35A, 35B substituted (4.2.1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c. 40, SIF 27), **ss. 108(1)**, 213(2)

F41 Words in s. 35A(6) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 20(2)**

Modifications etc. (not altering text)

C49 S. 35A excluded by Charities Act 1960 (c. 58, SIF 19), **s. 30B(1)** as substituted (4.2.1991) (subject to the transitional and savings provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c.40, SIF 27), **ss. 111(1)**, 213(2)

C50 S. 35A excluded (S.) (4.2.1992) by Companies Act 1989 (c. 40, SIF 27), **ss. 112(3)**, 213(2)

C51 S. 35A excluded by S.I. 1990/2569, **art. 7(2)**

C52 S. 35A applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** as amended (4.2.1991) by S.I. 1990/2571, **reg. 2(a)(b)**
S. 35A excluded (E.W.) (1.8.1993) by 1993 c. 10, **ss. 65(1)**, 99(1)

[[F42]**35B No duty to enquire as to capacity of company or authority of directors.**

A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.**]**

Textual Amendments

F42 Ss. 35, 35A, 35B substituted (4.2.1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c. 40, SIF 27), **ss. 108(1)**, 213(2)

Modifications etc. (not altering text)

C53 S. 35B applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** as amended (4.2.1991) by S.I. 1990/2571, **reg. 2(a)(b)**
S. 35B applied (with modifications) by S.S.I. 2001/128, reg. 3, **Sch. 1**

[[F43]**36 Company contracts: England and Wales.**

Under the law of England and Wales a contract may be made—

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(a) by a company, by writing under its common seal, or

(b) on behalf of a company, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.**]**

Textual Amendments

F43 S. 36 substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 130(1)**, 213(2)

Modifications etc. (not altering text)

C54 S. 36: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), **ss. 130(6)**, 213(2)

C55 Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, **regs. 2-6**
S. 36 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F44 36A Execution of documents: England and Wales.

(1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.

(2) A document is executed by a company by the affixing of its common seal.

(3) A company need not have a common seal, however, and the following subsections apply whether it does or not.

(4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

(5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.**]**

Textual Amendments

F44 S. 36A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 130(2)**, 213(2)

Modifications etc. (not altering text)

C56 S. 36A: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), **ss. 130(6)**, 213(2)

C57 S. 36A applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** as amended by S.I. 1990/1394, **reg. 2**

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C58 S. 36A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
C59 Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, **regs. 2-6**
C60 S. 36A(6) modified (13.10.2003) by Land Registration Act 2002 (c. 9), **ss. 91(9)**, 136(2) (with s. 129); S.I. 2003/1725, **art. 2(1)**

VALID FROM 15/09/2005

36AA Execution of deeds: England and Wales

(1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989, if and only if—

(a) it is duly executed by the company, and

(b) it is delivered as a deed.

(2) A document shall be presumed to be delivered for the purposes of subsection (1)(b) upon its being executed, unless a contrary intention is proved.

[F45 36B Execution of documents by companies.

(1) Notwithstanding the provisions of any enactment, a company need not have a company seal.

(2) For the purposes of any enactment—

(a) providing for a document to be executed by a company by affixing its common seal; or

(b) referring (in whatever terms) to a document so executed,

a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 shall have effect as if so executed.

(3) In this section "enactment" includes an enactment contained in a statutory instrument.]

Textual Amendments
F45 S. 36B substituted (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 51** (with ss. 9(3)(5)(7), 13, 14(3))

Modifications etc. (not altering text)
C61 S. 36B applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**
C62 S. 36B(2) applied (6.4.2006) by The Energy Administration (Scotland) Rules 2006 (S.I. 2006/772), **rule 67(2)** (with rule 67(3))

[F46 36C Pre-incorporation contracts, deeds and obligations.

(1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

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(2) Subsection (1) applies—

(a) to the making of a deed under the law of England and Wales, and

(b) to the undertaking of an obligation under the law of Scotland,

as it applies to the making of a contract.**]**

Textual Amendments

F46 S. 36C inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 130(4)**, 213(2)

Modifications etc. (not altering text)

C63 S. 36C: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), **ss. 130(6)**, 213(2)

C64 S. 36C applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** (as amended by S.I. 1990/1394, **reg. 2**)

C65 Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, **regs. 2-6**
S. 36C applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

37 Bills of exchange and promissory notes.

A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.

Modifications etc. (not altering text)

C66 S. 37 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

38 Execution of deeds abroad.

(1) A company may . . . [F47], by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.

[[F48](2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company's common seal.**]**

[[F49](3) This section does not extend to Scotland.**]**

Textual Amendments

F47 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 1(2)** and repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), **Sch. 8 para. 33(2)**,Sch. 9

F48 S. 38(2) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 1(3)**

F49 S. 38(3) added (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 52** (with ss. 9(3)(5)(7), 13, 14(3))

Modifications etc. (not altering text)

C67 S. 38 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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39 Power of company to have official seal for use abroad.

(1) A company **[**F50which has a common seal**]** whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district or place elsewhere than in the United Kingdom, an official seal, which shall be a facsimile of **[**F51its common seal**]**, with the addition on its face of the name of every territory, district or place where it is to be used.

[F52(2) The official seal when duly affixed to a document has the same effect as the company's common seal.**]**

[F53(2A) Subsection (2) does not extend to Scotland.**]**

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal **[**F54or as respects Scotland by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995**]** . . . F55, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) As between the company and a person dealing with such an agent, the agent's authority continues during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing the official seal shall certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

Textual Amendments

F50 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 2(2)**

F51 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 2(2)**

F52 S. 39(2) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 2(3)**

F53 S. 39(2A) inserted (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 53(a)** (with ss. 9(3)(5)(7), 13, 14(3))

F54 Words in s. 39(3) inserted (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 53(b)** (with ss. 9(3)(5)(7), 13, 14(3))(with ss. 9(3)(5)(7), 13, 14(3))

F55 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 2(4)** and repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), Sch. 8 para. 33(3), **Sch. 9**

Modifications etc. (not altering text)

C68 S. 39 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F56**40 Official seal for share certificates, etc.**

(1) A company **[**F57which has a common seal**]** may have, for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of **[**F58its common seal**]** with the addition on its face of the word "Securities". **[**F59The official seal when duly affixed to a document has the same effect as the company's common seal.**]]**

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[F60(2) Nothing in this section shall affect the right of a company registered in Scotland to subscribe such securities and documents in accordance with the Requirements of Writing (Scotland) Act 1995.**]**

Textual Amendments

F56 S. 40 renumbered as s. 40(1) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 54** (with ss. 9(3)(5)(7), 13, 14(3))

F57 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 3(2)**

F58 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 3(2)**

F59 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 3(3)**

F60 S. 40(2) added (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 54** (with ss. 9(3)(5)(7), 13, 14(3))

Modifications etc. (not altering text)

C69 S. 40 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

41 Authentication of documents.

A document or proceeding requiring authentication by a company **[**F61is sufficiently authenticated for the purposes of the law of England and Wales by the signature of a director, secretary or other authorised officer of the company.**]**

Textual Amendments

F61 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 4**

Modifications etc. (not altering text)

C70 S. 41 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

42 Events affecting a company's status.

(1) A company is not entitled to rely against other persons on the happening of any of the following events—

(a) the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntary winding up of the company, or

(b) any alteration of the company's memorandum or articles, or

(c) any change among the company's directors, or

(d) (as regards service of any document on the company) any change in the situation of the company's registered office,

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the 15th day after the date of official notification (or, where the 15th day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

(2) In subsection (1)—

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(a) "official notification" and "officially notified" have the meanings given by section 711(2) (registrar of companies to give public notice of the issue or receipt by him of certain documents), and

(b) "non-business day" means a Saturday or Sunday, Christmas Day, Good Friday and any other day which is a bank holiday in the part of Great Britain where the company is registered.

Modifications etc. (not altering text)

C71 S. 42 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C72 S. 42 applied (with modifications) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

PART II

RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS

Private company becoming public

43 Re-registration of private company as public.

(1) Subject to this and the following five sections, a private company (other than a company not having a share capital) may be re-registered as a public company if—

(a) a special resolution that it should be so re-registered is passed; and

(b) an application for re-registration is delivered to the registrar of companies, together with the necessary documents.

A company cannot be re-registered under this section if it has previously been re-registered as unlimited.

(2) The special resolution must—

(a) alter the company's memorandum so that it states that the company is to be a public company; and

(b) make such other alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a public company (the alterations to include compliance with section 25(1) as regards the company's name); and

(c) make such alterations in the company's articles as are requisite in the circumstances.

(3) The application must be in the prescribed form and be signed by a director or secretary of the company; and the documents to be delivered with it are the following—

(a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;

(b) a copy of a written statement by the company's auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's next assets (within the meaning given to that expression by section 264(2)) was not less than the aggregate of its called-up share capital and undistributable reserves;

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(c) a copy of the relevant balance sheet, together with a copy of an unqualified report (defined in section 46) by the company's auditors in relation to that balance sheet;

(d) if section 44 applies, a copy of the valuation report under subsection (2)(b) of that section; and

(e) **[**F62Subject to subsection (3A),**]**a statutory declaration in the prescribed form by a director or secretary of the company—

(i) that the special resolution required by this section has been passed and that the conditions of the following two sections (so far as applicable) have been satisfied, and

(ii) that, between the balance sheet date and the application for re-registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

[F63(3A) In place of the statutory declaration referred to in paragraph (e) of subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.

F63(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

(4) "Relevant balance sheet" means a balance sheet prepared as at a date not more than 7 months before the company's application under this section.

(5) A resolution that a company be re-registered as a public company may change the company name by deleting the word "company" or the words "and company", or its or their equivalent in Welsh ("cwmni", "a'r cwmni"), including any abbreviation of them.

Textual Amendments

F62 Words in s. 43(3)(e) inserted (22.12.2000) by S.I. 2000/3373, **art. 6(1)(2)**

F63 S. 43(3A)(3B) inserted (22.12.2000) by S.I. 2000/3373, **art. 6(3)**

44 Consideration for shares recently allotted to be valued.

(1) The following applies if shares have been allotted by the company between the date as at which the relevant balance sheet was prepared and the passing of the special resolution under section 43, and those shares were allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.

(2) Subject to the following provisions, the registrar of companies shall not entertain an application by the company under section 43 unless beforehand—

(a) the consideration for the allotment has been valued in accordance with section 108, and

(b) a report with respect to the value of the consideration has been made to the company (in accordance with that section) during the 6 months immediately preceding the allotment of the shares.

(3) Where an amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, has been applied in paying up (to any extent) any of the

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shares allotted or any premium on those shares, the amount applied does not count as consideration for the allotment, and accordingly subsection (2) does not apply to it.

(4) Subsection (2) does not apply if the allotment is in connection with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to the company applying under section 43 of shares, or of shares of any particular class, in that other company).

(5) But subsection (4) does not exclude the application of subsection (2), unless under the arrangement it is open to all the holders of the shares of the other company in question (or, where the arrangement applies only to shares of a particular class, all the holders of the other company's shares of that class) to take part in the arrangement.

In determining whether that is the case, shares held by or by a nominee of the company allotting shares in connection with the arrangement, or by or by a nominee of a company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company, are to be disregarded.

(6) Subsection (2) does not apply to preclude an application under section 43, if the allotment of the company's shares is in connection with its proposed merger with another company; that is, where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.

(7) In this section—

(a) "arrangement" means any agreement, scheme or arrangement, including an arrangement sanctioned in accordance with section 425 (company compromise with creditors and members) or **[**F64section 110 of the Insolvency Act**]** (liquidator in winding up accepting shares as consideration for sale of company's property), and

(b) "another company" includes any body corporate and any body to which letters patent have been issued under the M7Chartered Companies Act 1837.

Textual Amendments

F64 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Marginal Citations

M7 1837 c. 73.

45 Additional requirements relating to share capital.

(1) For a private company to be re-registered under section 43 as a public company, the following conditions with respect to its share capital must be satisfied at the time the special resolution under that section is passed.

(2) Subject to subsections (5) to (7) below—

(a) the nominal value of the company's allotted share capital must be not less than the authorised minimum, and

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(b) each of the company's allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it.

(3) Subject to subsection (5), if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged.

(4) Subject to subsection (5), if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, and the consideration for the allotment consists of or includes an undertaking to the company (other than one to which subsection (3) applies), then either—

(a) the undertaking must have been performed or otherwise discharged, or

(b) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within 5 years from the time the resolution under section 43 is passed.

(5) For the purpose of determining whether subsections (2)(b), (3) and (4) are complied with, certain shares in the company may be disregarded; and these are—

(a) subject to the next subsection, any share which was allotted before 22nd June 1982, and

(b) any share which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this subsection, be precluded under subsection (2)(b) (but not otherwise) from being re-registered as a public company.

(6) A share is not to be disregarded under subsection (5)(a) if the aggregate in nominal value of that share and other shares proposed to be so disregarded is more than one-tenth of the nominal value of the company's allotted share capital; but for this purpose the allotted share capital is treated as not including any shares disregarded under subsection (5)(b).

(7) Any shares disregarded under subsection (5) are treated as not forming part of the allotted share capital for the purposes of subsection (2)(a).

46 Meaning of "unqualified report" in s. 43(3).

(1) The following subsections explain the reference in section 43(3)(c) to an unqualified report of the company's auditors on the relevant balance sheet.

[F65(2) If the balance sheet was prepared for a financial year of the company, the reference is to an auditors' report stating without material qualification the auditors' opinion that the balance sheet has been properly prepared in accordance with this Act.

(3) If the balance sheet was not prepared for a financial year of the company, the reference is to an auditors' report stating without material qualification the auditors' opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been so prepared.

For the purposes of an auditors' report under this subsection the provisions of this Act shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

(4) A qualification shall be regarded as material unless the auditors state in their report that the matter giving rise to the qualification is not material for the purpose of determining

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(by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves.

In this subsection "net assets" and "undistributable reserves" have the meaning given by section 264(2) and (3).**]**

Textual Amendments

F65 S. 46(2)-(4) substituted for s. 46(2)-(6) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 1** (subject to transitional and saving provisions in S.I. 1990/355, arts. 6-9, **Sch. 3 para. 1**)

47 Certificate of re-registration under s. 43.

(1) If the registrar of companies is satisfied, on an application under section 43, that a company may be re-registered under that section as a public company, he shall—

(a) retain the application and other documents delivered to him under the section; and

(b) issue the company with a certificate of incorporation stating that the company is a public company.

(2) The registrar may accept a declaration under section 43 (3)(e) **[**[F66]or a statement under section 43(3A)**]**as sufficient evidence that the special resolution required by that section has been passed and the other conditions of re-registration satisfied.

(3) The registrar shall not issue the certificate if it appears to him that the court has made an order confirming a reduction of the company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(4) Upon the issue to a company of a certificate of incorporation under this section—

(a) the company by virtue of the issue of that certificate becomes a public company; and

(b) any alterations in the memorandum and articles set out in the resolution take effect accordingly.

(5) The certificate is conclusive evidence—

(a) that the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and

(b) that the company is a public company.

Textual Amendments

F66 Words in s. 47(2) inserted (22.12.2000) by S.I. 2000/3373, **art. 7**

Modifications etc. (not altering text)

C73 S. 47(1)(3)-(5) extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 2(6)**

C74 S. 47(1)(b) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 52(2)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

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48 Modification for unlimited company re-registering.

(1) In their application to unlimited companies, sections 43 to 47 are modified as follows.

(2) The special resolution required by section 43(1) must, in addition to the matters mentioned in subsection (2) of that section—

(a) state that the liability of the members is to be limited by shares, and what the company's share capital is to be; and

(b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares.

(3) The certificate of incorporation issued under section 47(1) shall, in addition to containing the statement required by paragraph (b) of that subsection, state that the company has been incorporated as a company limited by shares; and—

(a) the company by virtue of the issue of the certificate becomes a public company so limited; and

(b) the certificate is conclusive evidence of the fact that it is such a company.

Limited company becoming unlimited

49 Re-registration of limited company as unlimited.

(1) Subject as follows, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.

(2) A company is excluded from re-registering under this section if it is limited by virtue of re-registration under section 44 of the [M8]Companies Act 1967 or section 51 of this Act.

(3) A public company cannot be re-registered under this section; nor can a company which has previously been re-registered as unlimited.

(4) An application under this section must be in the prescribed form and be signed by a director or the secretary of the company, and be lodged with the registrar of companies, together with the documents specified in subsection (8) below.

(5) The application must set out such alterations in the company's memorandum as—

(a) if it is to have a share capital, are requisite to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or

(b) if it is not to have a share capital, are requisite in the circumstances.

(6) If articles have been registered, the application must set out such alterations in them as—

(a) if the company is to have a share capital, are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital; or

(b) if the company is not to have a share capital, are requisite in the circumstances.

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(7) If articles have not been registered, the application must have annexed to it, and request the registration of, printed articles; and these must, if the company is to have a share capital, comply with the requirements mentioned in subsection (6)(a) and, if not, be articles appropriate to the circumstances.

(8) The documents to be lodged with the registrar are—

(a) the prescribed form of assent to the company's being registered as unlimited, subscribed by or on behalf of all the members of the company;

(b) **[**F67Subject to subsection (8A),**]**a statutory declaration made by the directors of the company—

(i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and

(ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so;

(c) a printed copy of the memorandum incorporating the alterations in it set out in the application; and

(d) if articles have been registered, a printed copy of them incorporating the alterations set out in the application.

[F68(8A) In place of the lodging of a statutory declaration under paragraph (b) of subsection (8), there may be delivered to the registrar of companies using electronic communications a statement made by the directors of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.

F68(8B) Any person who makes a false statement under subsection (8A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

(9) For purposes of this section—

(a) subscription to a form of assent by the legal personal representative of a deceased member of a company is deemed subscription by him; and

(b) a trustee in bankruptcy of a member of a company is, to the exclusion of the latter, deemed a member of the company.

Textual Amendments

F67 Words in s. 49(8)(b) inserted (22.12.2000) by S.I. 2000/3373, **art. 8(1)(2)**

F68 S. 49(8A)(8B) inserted (22.12.2000) by S.I. 2000/3373, **art. 8(1)(3)**

Modifications etc. (not altering text)

C75 S. 49 modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 52(1)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

Marginal Citations

M8 1967 c. 81.

50 Certificate of re-registration under s. 49.

(1) The registrar of companies shall retain the application and other documents lodged with him under section 49 and shall—

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(a) if articles are annexed to the application, register them; and

(b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate—

(a) the status of the company, by virtue of the issue, is changed from limited to unlimited; and

(b) the alterations in the memorandum set out in the application and (if articles have been previously registered) any alterations to the articles so set out take effect as if duly made by resolution of the company; and

(c) the provisions of this Act apply accordingly to the memorandum and articles as altered.

(3) The certificate is conclusive evidence that the requirements of section 49 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of that section and was duly so re-registered.

Unlimited company becoming limited

51 Re-registration of unlimited company as limited.

(1) Subject as follows, a company which is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered is passed, and the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company cannot under this section be re-registered as a public company; and a company is excluded from re-registering under it if it is unlimited by virtue of re-registration under section 43 of the [M9]Companies Act 1967 or section 49 of this Act.

(3) The special resolution must state whether the company is to be limited by shares or by guarantee and—

(a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances;

(b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum and articles of a company so limited.

(4) The special resolution is subject to section 380 of this Act (copy to be forwarded to registrar within 15 days); and an application for the company to be re-registered as limited, framed in the prescribed form and signed by a director or by the secretary of the company, must be lodged with the registrar of companies, together with the necessary documents, not earlier than the day on which the copy of the resolution forwarded under section 380 is received by him.

(5) The documents to be lodged with the registrar are—

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(a) a printed copy of the memorandum as altered in pursuance of the resolution; and

(b) a printed copy of the articles as so altered.

(6) This section does not apply in relation to the re-registration of an unlimited company as a public company under section 43.

Marginal Citations

M9 1967 c. 81.

52 Certification of re-registration under s. 51.

(1) The register shall retain the application and other documents lodged with him under section 51, and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of that section.

(2) On the issue of the certificate—

(a) the status of the company is, by virtue of the issue, changed from unlimited to limited; and

(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified take effect.

(3) The certificate is conclusive evidence that the requirements of section 51 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered in pursuance of that section and was duly so re-registered.

Public company becoming private

53 Re-registration of public company as private.

(1) A public company may be re-registered as a private company if—

(a) a special resolution complying with subsection (2) below that it should be so re-registered is passed and has not been cancelled by the court under the following section;

(b) an application for the purpose in the prescribed form and signed by a director or the secretary of the company is delivered to the registrar of companies, together with a printed copy of the memorandum and articles of the company as altered by the resolution; and

(c) the period during which an application for the cancellation of the resolution under the following section may be made has expired without any such application having been made; or

(d) where such an application has been made, the application has been withdrawn or an order has been made under section 54(5) confirming the resolution and a copy of that order has been delivered to the registrar.

(2) The special resolution must alter the company's memorandum so that it no longer states that the company is to be a public company and must make such other alterations in the company's memorandum and articles as are requisite in the circumstances.

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(3) A company cannot under this section be re-registered otherwise than as a company limited by shares or by guarantee.

54 Litigated objection to resolution under s. 53.

(1) Where a special resolution by a public company to be re-registered under section 53 as a private company has been passed, an application may be made to the court for the cancellation of that resolution.

(2) The application may be made—

(a) by the holders of not less in the aggregate than 5 per cent. in nominal value of the company's issued share capital or any class thereof;

(b) if the company is not limited by shares, by not less than 5 per cent. of its members; or

(c) by not less than 50 of the company's members;

but not by a person who has consented to or voted in favour of the resolution.

(3) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) If such an application is made, the company shall forthwith give notice in the prescribed form of that fact to the registrar of companies.

(5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and—

(a) may make that order on such terms and conditions as it thinks fit, and may (if it thinks fit) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and

(b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(6) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(7) The company shall, within 15 days from the making of the court's order, or within such longer period as the court may at any time by order direct, deliver to the registrar of companies an office copy of the order.

(8) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without the leave of the court to make any such alteration in breach of the requirement.

(9) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

(10) A company which fails to comply with subsection (4) or subsection (7), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

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Modifications etc. (not altering text)
C76 S. 54 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c.9, SIF 27), **s. 4(1)**

55 Certificate of re-registration under s. 53.

(1) If the registrar of companies is satisfied that a company may be re-registered under section 53, he shall—

(a) retain the application and other documents delivered to him under that section; and

(b) issue the company with a certificate of incorporation appropriate to a private company.

(2) On the issue of the certificate—

(a) the company by virtue of the issue becomes a private company; and

(b) the alterations in the memorandum and articles set out in the resolution under section 53 take effect accordingly.

(3) The certificate is conclusive evidence—

(a) that the requirements of section 53 in respect of re-registration and of matters precedent and incidental to it have been complied with; and

(b) that the company is a private company.

Modifications etc. (not altering text)
C77 S. 55(1)(b) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 52(2)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

[F69F70 PART III

CAPITAL ISSUES

Textual Amendments
F69 Pt. III (ss. 56-79) repealed by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I** (the repeal coming into force as mentioned in S.I. 1986/2246, art. 5, **Sch. 4**, S.I. 1988/740, arts. 2-7, Sch. (as amended by S.I 1988/1960, arts. 2-4 and by S.I. 1988/2285, **arts. 2-6**) and S.I. 1995/1538, **art. 2** and otherwise prosp.)
F70 Ss. 56-79 repealed (prosp.) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16** and the repeal being partly in force, as to which see individual sections.

Modifications etc. (not altering text)
C78 Pt. III (ss. 56-79): functions transferred from the Secretary of State to the Treasury (7.6.1992) by S.I. 1992/1315, **arts. 2(3)(4)**, 6.

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CHAPTER I

ISSUES BY COMPANIES REGISTERED, OR TO BE REGISTERED, IN GREAT BRITAIN

Modifications etc. (not altering text)
C79 Pt. III Ch. I (ss.56–71) applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

The prospectus

56 Matters to be stated, and reports to be set out, in prospectus.

(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must comply—

(a) with Part I of Schedule 3 to this Act, as respects the matters to be stated in the prospectus, and

(b) with Part II of that Schedule, as respects the reports to be set out.

(2) It is unlawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section.

(3) Subsection (2) does not apply if it is shown that the form of application was issued either—

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or

(b) in relation to shares or debentures which were not offered to the public.

(4) If a person acts in contravention of subsection (2), he is liable to a fine.

(5) This section does not apply—

(a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

but subject to this, it applies to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

Modifications etc. (not altering text)
C80 S. 56(1) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**.

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57 Attempted evasion of s. 56 to be void.

A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of section 56, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

58 Document offering shares etc. for sale deemed a prospectus.

(1) If a company allots or agrees to allot its shares or debentures with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made is deemed for all purposes a prospectus issued by the company.

(2) All enactments and rules of law as to the contents of prospectuses, and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures.

This is without prejudice to the liability (if any) of the persons by whom the offer is made, in respect of mis-statements in the document or otherwise in respect of it.

(3) For purposes of this Act it is evidence (unless the contrary is proved) that an allotment of, or an agreement to allot, shares or debentures was made with a view to their being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures (or of any of them) for sale to the public was made within 6 months after the allotment or agreement to allot, or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(4) Section 56 as applied by this section has effect as if it required a prospectus to state, in addition to the matters required by that section—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and

(b) the place and time at which the contract under which those shares or debentures have been or are to be allotted may be inspected.

Modifications etc. (not altering text)
C81 S. 58(2)(4) modified by S.I. 1991/823, reg. 2(1), **Sch.1**.

F71 59 . . . . . .

Textual Amendments
F71 S. 59 repealed (1.12.2001) by S.I. 2001/3649, **art. 5**

F72 60 . . . . . .

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Textual Amendments

F72 S. 60 repealed (1.12.2001) by S.I. 2001/3649, **art. 5**

61 Prospectus containing statement by expert.

(1) A prospectus inviting persons to subscribe for a company's shares or debentures and including a statement purporting to be made by an expert shall not be issued unless—

(a) he (the expert) has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to its issue with the statement included in the form and context in which it is in fact included; and

(b) a statement that he has given and not withdrawn that consent appears in the prospectus.

(2) If a prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine.

Modifications etc. (not altering text)

C82 S. 61(1)(b) modified by S.I. 1991/823, reg. 2(1), **Sch.1**.

62 Meaning of "expert".

The expression "expert", in both Chapters of this Part, includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

63 Prospectus to be dated.

A prospectus issued by or on behalf of a company, or in relation to an intended company, shall be dated; and that date shall, unless the contrary is proved, be taken as its date of publication.

Modifications etc. (not altering text)

C83 S. 63 modified by S.I. 1991/823, reg. 2(1), **Sch.1**

Registration of prospectus

64 Registration requirement applicable in all cases.

(1) No prospectus shall be issued by or on behalf of a company, or in relation to an intended company, unless on or before the date of its publication there has been delivered to the registrar of companies for registration a copy of the prospectus—

(a) signed by every person who is named in it as a director or proposed director of the company, or by his agent authorised in writing, and

(b) having endorsed on or attached to it any consent to its issue required by section 61 from any person as an expert.

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(2) Where the prospectus is such a document as is referred to in section 58, the signatures required by subsection (1) above include those of every person making the offer, or his agent authorised in writing.

Where the offer is made by a company or a firm, it is sufficient for the purposes of this subsection if the document is signed on its behalf by two directors or (as the case may be) not less than half of the partners; and a director or partner may sign by his agent authorised in writing.

(3) Every prospectus shall on its face—

(a) state that a copy has been delivered for registration as required by this section, and

(b) specify, or refer to statements in the prospectus specifying, any documents required by this or the following section to be endorsed on or attached to the copy delivered.

(4) The registrar shall not register a prospectus unless it is dated and the copy of it signed as required by this section and unless it has endorsed on or attached to it the documents (if any) specified in subsection (3)(b).

(5) If a prospectus is issued without a copy of it being delivered to the registrar as required by this section, or without the copy so delivered having the required documents endorsed on or attached to it, the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C84 S. 64(3) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

65 Additional requirements in case of prospectus issued generally.

(1) In the case of a prospectus issued generally (that is to persons who are not existing members or debenture holders of the company), the following provisions apply in addition to those of section 64.

(2) The copy of the prospectus delivered to the registrar of companies must also have endorsed on or attached to it a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it.

(3) In the case of a contract wholly or partly in a foreign language—

(a) the copy required by subsection (2) to be endorsed on or attached to the prospectus must be a copy of a translation of the contract into English or (as the case may be) a copy embodying a translation into English of the parts in a foreign language, and

(b) the translation must be certified in the prescribed manner to be a correct translation.

(4) If the persons making any report required by Part II of Schedule 3 have made in the report, or have (without giving reasons) indicated in it, any such adjustments as are mentioned in paragraph 21 of the Schedule (profits, losses, assets, liabilities), the copy of the prospectus delivered to the registrar must have endorsed on or attached to it a

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written statement signed by those persons setting out the adjustments and giving the reasons for them.

Liabilities and offences in connection with prospectus

66 Directors, etc. exempt from liability in certain cases.

(1) In the event of non-compliance with or contravention of section 56, a director or other person responsible for the prospectus does not incur any liability by reason of that non-compliance or contravention if—

(a) as regards any matter not disclosed, he proves that he was not cognisant of it, or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or was otherwise such as ought (in the court's opinion, having regard to all the circumstances of the case) reasonably to be excused.

(2) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 13 of Schedule 3 (disclosure of directors' interests), no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(3) Nothing in section 56 or 57 or this section limits or diminishes any liability which a person may incur under the general law or this Act apart from those provisions.

67 Compensation for subscribers misled by statement in prospectus.

(1) Where a prospectus invites persons to subscribe for a company's shares or debentures, compensation is payable to all those who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage which they may have sustained by reason of any untrue statement included in it.

(2) The persons liable to pay the compensation are—

(a) every person who is a director of the company at the time of the issue of the prospectus,

(b) every person who authorised himself to be named, and is named, in the prospectus as a director or as having agreed to become a director (either immediately or after an interval of time),

(c) every person being a promoter of the company, and

(d) every person who has authorised the issue of the prospectus.

(3) The above has effect subject to the two sections next following; and here and in those sections "promoter" means a promoter who was party to the preparation of the prospectus, or of the portion of it containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

68 Exemption from s. 67 for those acting with propriety.

(1) A person is not liable under section 67 if he proves—

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(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent, or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or

(c) that after issue of the prospectus and before allotment under it he, on becoming aware of any untrue statement in it, withdrew his consent to its issue and gave reasonable public notice of the withdrawal and of the reason for it.

(2) A person is not liable under that section if he proves that—

(a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true; and

(b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 61 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment under it; and

(c) as regards every untrue statement purporting to be made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Subsections (1) and (2) of this section do not apply in the case of a person liable, by reason of his having given a consent required of him by section 61, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(4) Where under section 61 the consent of a person is required to the issue of a prospectus and he has given that consent, he is not by reason of his having given it liable under section 67 as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(5) A person who, apart from this subsection, would under section 67 be liable, by reason of his having given a consent required of him by section 61, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—

(a) that, having given his consent under the section to the issue of the prospectus, he withdrew it in writing before the delivery of a copy of the prospectus for registration; or

(b) that, after delivery of a copy of the prospectus for registration and before allotment under it, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for it; or

(c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true.

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69 Indemnity for innocent director or expert.

(1) This section applies where—

(a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director of it, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to its issue, or

(b) the consent of a person is required under section 61 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus.

(2) The directors of the company (except any without whose knowledge or consent the prospectus was issued) and any other person who authorised its issue are liable to indemnify the person named, or whose consent was required under section 61 (as the case may be), against all damages, costs and expenses to which he may be liable by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert (as the case may be), or in defending himself against any action or legal proceedings brought against him in respect of it.

(3) A person is not deemed for purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 61 to the inclusion of a statement purporting to be made by him as an expert.

70 Criminal liability for untrue statements.

(1) If a prospectus is issued with an untrue statement included in it, any person who authorised the issue of the prospectus is guilty of an offence and liable to imprisonment or a fine, or both, unless he proves either—

(a) that the statement was immaterial, or

(b) that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person is not deemed for purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 61 to the inclusion in it of a statement purporting to be made by him as an expert.

Supplementary

71 Interpretation for ss. 56 to 70.

For purposes of sections 56 to 70—

(a) a statement included in a prospectus is deemed to be untrue if it is misleading in the form and context in which it is included, and

(b) a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

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CHAPTER II

ISSUES BY COMPANIES INCORPORATED, OR TO BE INCORPORATED, OUTSIDE GREAT BRITAIN

72 Prospectus of oversea company.

(1) It is unlawful for a person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain) unless the prospectus complies with the requirements of the next two subsections.

(2) The prospectus must be dated and contain particulars with respect to the following matters—

(a) the instrument constituting or defining the constitution of the company;

(b) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(c) an address in Great Britain where that instrument, and those enactments or provisions, or copies of them (and, if they are in a foreign language, a translation of them certified in the prescribed manner), can be inspected;

(d) the date on which, and the country in which, the company was incorporated; and

(e) whether the company has established a place of business in Great Britain and, if so, the address of its principal office in Great Britain.

(3) Subject to the following provisions, the prospectus must comply—

(a) with Part I of Schedule 3, as respects the matters to be stated in the prospectus, and

(b) with Part II of that Schedule, as respects the reports to be set out.

(4) Paragraphs (a) to (c) of subsection (2) do not apply in the case of a prospectus issued more than 2 years after the company is entitled to commence business.

(5) It is unlawful for a person to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Chapter and the issue of which in Great Britain does not contravene section 74 or 75 below.

This subsection does not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(6) This section—

(a) does not apply to the issue to a company's existing members or debenture holders of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, does not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

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but subject to this, it applies to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

Modifications etc. (not altering text)
C85 S. 72(2)-(4) modified by S.I. 1991/823, reg. 2(1), **Sch.1**

73 Attempted evasion of s. 72 to be void.

A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed—

(a) by subsection (2) of section 72, as regards the particulars to be contained in the prospectus, or

(b) by subsection (3) of that section, as regards compliance with Schedule 3,

or purporting to affect an applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

74 Prospectus containing statement by expert.

(1) This section applies in the case of a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether it has or has not established, or when formed will or will not establish, a place of business in Great Britain), if the prospectus includes a statement purporting to be made by an expert.

(2) It is unlawful for any person to issue, circulate or distribute in Great Britain such a prospectus if—

(a) the expert has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or

(b) there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as above mentioned.

(3) For purposes of this section, a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

Modifications etc. (not altering text)
C86 S. 74(2)(b) modified by S.I. 1991/823, reg. 2(1), **Sch.1**

75 Restrictions on allotment to be secured in prospectus.

(1) It is unlawful for a person to issue, circulate or distribute in Great Britain a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), unless the prospectus complies with the following condition.

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(2) The prospectus must have the effect, where an application is made in pursuance of it, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 82, 86 and 87 (restrictions on allotment), so far as applicable.

Modifications etc. (not altering text)
C87 S. 75 modified by S.I. 1991/823, reg. 2(1), **Sch.1**

76 Stock exchange certificate exempting from compliance with Sch. 3.

(1) The following applies where—

(a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), and

(b) application is made to a prescribed stock exchange for permission for those shares or debentures to be listed on that stock exchange.

"Issued generally" means issued to persons who are not existing members or debenture holders of the company.

(2) There may on the applicant's request be given by or on behalf of that stock exchange a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with Schedule 3 would be unduly burdensome.

(3) If a certificate is given under subsection (2), and if the proposals above mentioned are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—

(a) a prospectus giving the particulars and information in the form in which they are so required to be published is deemed to comply with Schedule 3, and

(b) except as respects the requirement for the prospectus to be dated, section 72 does not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

77 Registration of oversea prospectus before issue.

(1) It is unlawful for a person to issue, circulate or distribute in Great Britain a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), unless before the issue, circulation or distribution the requirements of this section have been complied with.

(2) A copy of the prospectus, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, must have been delivered for registration to the registrar of companies.

(3) The prospectus must state on the face of it that a copy has been so delivered to the registrar of companies; and the following must be endorsed on or attached to that copy of the prospectus—

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(a) any consent to the issue of the prospectus which is required by section 74;

(b) a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it; and

(c) where the persons making any report required by Part II of Schedule 3 have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 21 of the Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.

(4) If in the case of a prospectus deemed by virtue of a certificate under section 76 to comply with Schedule 3, a contract or a copy of it, or a memorandum of a contract, is required to be available for inspection in connection with application under that section to the stock exchange, a copy or (as the case may be) a memorandum of the contract must be endorsed on or attached to the copy of the prospectus delivered to the registrar for registration.

(5) References in subsections (3)(b) and (4) to the copy of a contract are, in the case of a contract wholly or partly in a foreign language, to a copy of a translation of the contract into English, or a copy embodying a translation into English of the parts in a foreign language (as the case may be); and—

(a) the translation must in either case be certified in the prescribed manner to be a correct translation, and

(b) the reference in subsection (4) to a copy of a contract required to be available for inspection includes a copy of a translation of it or a copy embodying a translation of parts of it.

Modifications etc. (not altering text)
C88 S. 77(3) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

78 Consequences (criminal and civil) of non-compliance with ss. 72-77.

(1) A person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of sections 72 to 77 is liable to a fine.

(2) Sections 67, 68 and 69 extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), substituting for any reference to section 61 a reference to section 74.

(3) In the event of non-compliance with or contravention of any of the requirements of section 72(2) as regards the particulars to be contained in the prospectus, or section 72(3) as regards compliance with Schedule 3, a director or other person responsible for the prospectus incurs no liability by reason of the non-compliance or contravention if—

(a) as regards any matter not disclosed, he proves that he was not cognisant of it, or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or

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(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the court's opinion, having regard to all the circumstances of the case, reasonably to be excused.

(4) In the event of failure to include in a prospectus to which this Chapter applies a statement with respect to the matters contained in paragraph 13 of Schedule 3, no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(5) Nothing in section 72 or 73 or this section, limits or diminishes any liability which a person may incur under the general law or this Act, apart from those provisions.

79 Supplementary.

(1) Where a document by which the shares or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company had been a company incorporated under this Act, have been deemed by virtue of section 58 to be a prospectus issued by the company, that document is deemed, for the purposes of this Chapter, a prospectus so issued.

(2) An offer of shares or debentures for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not deemed an offer to the public for those purposes.

(3) In this Chapter "shares" and "debentures" have the same meaning as when those expressions are used, elsewhere in this Act, in relation to a company incorporated under this Act.**]**

Modifications etc. (not altering text)
C89 S. 79(2) extended by Financial Services Act 1986 (c. 60, SIF 69), **s. 195**(*a*)

PART IV

ALLOTMENT OF SHARES AND DEBENTURES

General provisions as to allotment

80 Authority of company required for certain allotments.

(1) The directors of a company shall not exercise any power of the company to allot relevant securities, unless they are, in accordance with this section **[**F73or section 80A**]**, authorised to do so by—

(a) the company in general meeting; or

(b) the company's articles.

(2) In this section "relevant securities" means—

(a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers to it or shares allotted in pursuance of an employees' share scheme, and

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(b) any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted);

and a reference to the allotment of relevant securities includes the grant of such a right but (subject to subsection (6) below), not the allotment of shares pursuant to such a right.

(3) Authority under this section may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(4) The authority must state the maximum amount of relevant securities that may be allotted under it and the date on which it will expire, which must be not more than 5 years from whichever is relevant of the following dates—

(a) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation; and

(b) in any other case, the date on which the resolution is passed by virtue of which the authority is given;

but such an authority (including an authority contained in the articles) may be previously revoked or varied by the company in general meeting.

(5) The authority may be renewed or further renewed by the company in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and must specify the date on which the renewed authority will expire.

(6) In relation to authority under this section for the grant of such rights as are mentioned in subsection (2)(b), the reference in subsection (4) (as also the corresponding reference in subsection (5)) to the maximum amount of relevant securities that may be allotted under the authority is to the maximum amount of shares which may be allotted pursuant to the rights.

(7) The directors may allot relevant securities, notwithstanding that authority under this section has expired, if they are allotted in pursuance of an offer or agreement made by the company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.

(8) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the company's articles, be an ordinary resolution; but it is in any case subject to section 380 of this Act (copy to be forwarded to registrar within 15 days).

(9) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this section is liable to a fine.

(10) Nothing in this section affects the validity of any allotment.

(11) This section does not apply to any allotment of relevant securities by a company, other than a public company registered as such on its original incorporation, if it is made in pursuance of an offer or agreement made before the earlier of the following two dates—

(a) the date of the holding of the first general meeting of the company after its registration or re-registration as a public company, and

(b) 22nd June 1982;

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but any resolution to give, vary or revoke an authority for the purposes of section 14 of the [M10]Companies Act 1980 or this section has effect for those purposes if passed at any time after the end of April 1980.

Textual Amendments

F73 Words inserted (subject to the transitional and savings provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(1)**, 213(2)

Marginal Citations

M10 1980 c. 22.

[F74 80A Election by private company as to duration of authority.

(1) A private company may elect (by elective resolution in accordance with section 379A) that the provisions of this section shall apply, instead of the provisions of section 80(4) and (5), in relation to the giving or renewal, after the election, of an authority under that section.

(2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—

(a) for an indefinite period, or

(b) for a fixed period, in which case it must state the date on which it will expire.

(3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.

(4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.

(5) A resolution renewing an authority—

(a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and

(b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.

(6) The references in this section to the maximum amount of relevant securities that may be allotted shall be construed in accordance with section 80(6).

(7) If an election under this section ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—

(a) if given five years or more before the election ceases to have effect, shall expire forthwith, and

(b) otherwise, shall have effect as if it had been given for a fixed period of five years.]

Textual Amendments

F74 S. 80A inserted (subject to the transitional and savings provisions as mentioned in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(1)**, 213(2)

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[F75 81 Restriction on public offers by private company.

(1) A private limited company (other than a company limited by guarantee and not having a share capital) commits an offence if it—

(a) offers to the public (whether for cash or otherwise) any shares in or debentures of the company; or

(b) allots or agrees to allot (whether for cash or otherwise) any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public (within the meaning given to that expression by sections 58 to 60).

(2) A company guilty of an offence under this section, and any officer of it who is in default, is liable to a fine.

(3) Nothing in this section affects the validity of any allotment or sale of shares or debentures, or of any agreement to allot or sell shares or debentures.**]**

Textual Amendments

F75 S. 81 repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**

Modifications etc. (not altering text)

C90 S. 81 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 7**

[F76 82 Application for, and allotment of, shares and debentures.

(1) No allotment shall be made of a company's shares or debentures in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

(2) The beginning of that third day, or that later time, is "the time of the opening of the subscription lists".

(3) In subsection (1), the reference to the day on which the prospectus is first issued generally is to the day when it is first so issued as a newspaper advertisement; and if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the reference is to the day on which it is first so issued in any manner.

(4) In reckoning for this purpose the third day after another day—

(a) any intervening day which is a Saturday or Sunday, or is a bank holiday in any part of Great Britain, is to be disregarded; and

(b) if the third day (as so reckoned) is itself a Saturday or Sunday, or a bank holiday, there is to be substituted the first day after that which is none of them.

(5) The validity of an allotment is not affected by any contravention of subsections (1) to (4); but in the event of contravention, the company and every officer of it who is in default is liable to a fine.

(6) As applying to a prospectus offering shares or debentures for sale, the above provisions are modified as follows—

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(a) for references to allotment, substitute references to sale; and

(b) for the reference to the company and every officer of it who is in default, substitute a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(7) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally is not revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that day of the appropriate public notice; and that notice is one given by some person responsible under sections 67 to 69 for the prospectus and having the effect under those sections of excluding or limiting the responsibility of the giver.**]**

Textual Amendments

F76 Ss. 82, 83 repealed (29.4.1988 for specified purposes and 10.5.1999 for further specified purposes and otherwise*prosp.*) by Financial Services Act 1986 (c.60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(a)**

Modifications etc. (not altering text)

C91 S. 82 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

[F77 83 No allotment unless minimum subscription received.

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless—

(a) there has been subscribed the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 2 of Schedule 3 (preliminary expenses, purchase of property, working capital, etc.); and

(b) the sum payable on application for the amount so stated has been paid to and received by the company.

(2) For purposes of subsection (1)(b), a sum is deemed paid to the company, and received by it, if a cheque for that sum has been received in good faith by the company and the directors have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus is to be reckoned exclusively of any amount payable otherwise than in cash and is known as "the minimum subscription".

(4) If the above conditions have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(5) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

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(7) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.**]**

Textual Amendments

F77 Ss. 82, 83 repealed (29.4.1988 for specified purposes and 10.5.1999 for further specified purposes and otherwise*prosp.*) by Financial Services Act 1986 (c.60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(a)**

84 Allotment where issue not fully subscribed.

(1) No allotment shall be made of any share capital of a public company offered for subscription unless—

(a) that capital is subscribed for in full; or

(b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied;

and, where conditions are so specified, no allotment of the capital shall be made by virtue of paragraph (b) unless those conditions are satisfied.

[[F78]This is without prejudice to section 83.**]**

(2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(3) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in repayment was not due to any misconduct or negligence on his part.

(4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription (the word "subscribed" in subsection (1) being construed accordingly).

(5) In subsections (2) and (3) as they apply to the case of shares offered as wholly or partly payable otherwise than in cash, references to the repayment of money received from applicants for shares include—

(a) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or

(b) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received,

and references to interest apply accordingly.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

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Textual Amendments

F78 Words repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**

85 Effect of irregular allotment.

(1) An allotment made by a company to an applicant in contravention of section **[**F79 83 or**]** 84 is voidable at the instance of the applicant within one month after the date of the allotment, and not later, and is so voidable notwithstanding that the company is in the course of being wound up.

(2) If a director of a company knowingly contravenes, or permits or authorises the contravention of, any provision of either of those sections with respect to allotment, he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred by the contravention.

(3) But proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

Textual Amendments

F79 Words repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**

F80 86 . . . . . .

Textual Amendments

F80 Ss. 86, 87 repealed (29.4.1988 for specified purposes and otherwise 10.5.1999) by Financial Services Act 1986 (c.60, SIF 69), s. 211(1), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(b)**

F81 87 . . . . . .

Textual Amendments

F81 Ss. 86, 87 repealed (29.4.1988 for specified purposes and otherwise 10.5.1999) by Financial Services Act 1986 (c.60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(b)**

88 Return as to allotments, etc.

(1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.

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(2) When such a company makes an allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—

(a) a return of the allotments (in the prescribed form) stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees, and the amount (if any) paid or due and payable on each share, whether on account of the nominal value of the share or by way of premium; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash—

(i) a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made (such contracts being duly stamped), and

(ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(3) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

(4) Those particulars are deemed an instrument within the meaning of the [M11]Stamp Act 1891; and the registrar may, as a condition of filing the particulars, require that the duty payable on them be adjudicated under section 12 of that Act.

(5) If default is made in complying with this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine, but subject as follows.

(6) In the case of default in delivering to the registrar within one month after the allotment any document required by this section to be delivered, the company, or any officer liable for the default, may apply to the court for relief; and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court thinks proper.

Modifications etc. (not altering text)
C92 S. 88 excluded (27.7.1999) by 1999 c. 20, **s. 6(3)** (with s. 15)

Marginal Citations
M11 54 & 55 Vict c.39.

Pre-emption rights

89 Offers to shareholders to be on pre-emptive basis.

(1) Subject to the provisions of this section and the seven sections next following, a company proposing to allot equity securities (defined in section 94)—

(a) shall not allot any of them on any terms to a person unless it has made an offer to each person who holds relevant shares or relevant employee shares to allot

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to him on the same or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of relevant shares and relevant employee shares, and

(b) shall not allot any of those securities to a person unless the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.

(2) Subsection (3) below applies to any provision of a company's memorandum or articles which requires the company, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in subsection (1) to each person who holds relevant shares or relevant employee shares of that class.

(3) If in accordance with a provision to which this subsection applies—

(a) a company makes an offer to allot securities to such a holder, and

(b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer,

subsection (1) does not apply to the allotment of those securities, and the company may allot them accordingly; but this is without prejudice to the application of subsection (1) in any other case.

(4) Subsection (1) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash; and securities which a company has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening subsection (1)(b).

(5) Subsection (1) does not apply to the allotment of securities which would, apart from a renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

90 Communication of pre-emption offers to shareholders.

(1) This section has effect as to the manner in which offers required by section 89(1), or by a provision to which section 89(3) applies, are to be made to holders of a company's shares.

(2) Subject to the following subsections, an offer shall be in writing and shall be made to a holder of shares either personally or by sending it by post (that is to say, prepaying and posting a letter containing the offer) to him or to his registered address or, if he has no registered address in the United Kingdom, to the address in the United Kingdom supplied by him to the company for the giving of notice to him.

If sent by post, the offer is deemed to be made at the time at which the letter would be delivered in the ordinary course of post.

(3) Where shares are held by two or more persons jointly, the offer may be made to the joint holder first named in the register of members in respect of the shares.

(4) In the case of a holder's death or bankruptcy, the offer may be made—

(a) by sending it by post in a prepaid letter addressed to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of representatives of the deceased, or trustee of the bankrupt,

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or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming, or

(b) (until such an addrerss has been so supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(5) If the holder—

(a) has no registered address in the United Kingdom and has not given to the company an address in the United Kingdom for the service of notices on him, or

(b) is the holder of a share warrant,

the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Gazette.

(6) The offer must state a period of not less than 21 days during which it may be accepted; and the offer shall not be withdrawn before the end of that period.

(7) This section does not invalidate a provision to which section 89(3) applies by reason that that provision requires or authorises an offer under it to be made in contravention of any of subsections (1) to (6) above; but, to the extent that the provision requires or authorises such an offer to be so made, it is of no effect.

91 Exclusion of ss. 89, 90 by private company.

(1) Section 89(1), section 90(1) to (5) or section 90(6) may, as applying to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company.

(2) A requirement or authority contained in the memorandum or articles of a private company, if it is inconsistent with any of those subsections, has effect as a provision excluding that subsection; but a provision to which section 89(3) applies is not to be treated as inconsistent with section 89(1).

92 Consequences of contravening ss. 89, 90.

(1) If there is a contravention of section 89(1), or of section 90(1) to (5) or section 90(6), or of a provision to which section 89(3) applies, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the subsection or provision contravened for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

(2) However, no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years from the delivery to the registrar of companies of the return of allotments in question or, where equity securities other than shares are granted, from the date of the grant.

93 Saving for other restrictions as to offers.

(1) Sections 89 to 92 are without prejudice to any enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.

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(2) Where a company cannot by virtue of such an enactment offer or allot equity securities to a holder of relevant shares or relevant employee shares, those sections have effect as if the shares held by that holder were not relevant shares or relevant employee shares.

94 Definitions for ss. 89-96.

(1) The following subsections apply for the interpretation of sections 89 to 96.

(2) "Equity security", in relation to a company, means a relevant share in the company (other than a share shown in the memorandum to have been taken by a subscriber to the memorandum or a bonus share), or a right to subscribe for, or to convert securities into, relevant shares in the company.

(3) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class includes the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or (as the case may be) relevant shares of a particular class; but such a reference does not include the allotment of any relevant shares pursuant to such a right.

(4) "Relevant employee shares", in relation to a company, means shares of the company which would be relevant shares in it but for the fact that they are held by a person who acquired them in pursuance of an employees' share scheme.

(5) "Relevant shares", in relation to a company, means shares in the company other than—

(a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and

(b) shares which are held by a person who acquired them in pursuance of an employees' share scheme or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme.

(6) A reference to a class of shares is to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.

(7) In relation to an offer to allot securities required by section 89(1) or by any provision to which section 89(3) applies, a reference in sections 89 to 94 (however expressed) to the holder of shares of any description is to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 days immediately before the date of the offer, the holder of shares of that description.

95 Disapplication of pre-emption rights.

(1) Where the directors of a company are generally authorised for purposes of section 80, they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authority as if—

(a) section 89(1) did not apply to the allotment, or

(b) that subsection applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this subsection, sections 89 to 94 have effect accordingly.

(2) Where the directors of a company are authorised for purposes of section 80 (whether generally or otherwise), the company may by special resolution resolve either—

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(a) that section 89(1) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or

(b) that that subsection shall apply to the allotment with such modifications as may be specified in the resolution;

and where such a resolution is passed, sections 89 to 94 have effect accordingly.

(3) The power conferred by subsection (1) or a special resolution under subsection (2) ceases to have effect when the authority to which it relates is revoked or would (if not renewed) expire; but if the authority is renewed, the power or (as the case may be) the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.

(4) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company, if the power or resolution enabled the company to make an offer or agreement which would or might require equity securities to be allotted after it expired.

(5) A special resolution under subsection (2), or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice a written statement by the directors setting out—

(a) their reasons for making the recommendation,

(b) the amount to be paid to the company in respect of the equity securities to be allotted, and

(c) the directors' justification of that amount.

(6) A person who knowingly or recklessly authorises or permits the inclusion in a statement circulated under subsection (5) of any matter which is misleading, false or deceptive in a material particular is liable to imprisonment or a fine, or both.

96 Saving for company's pre-emption procedure operative before 1982.

(1) Where a company which is re-registered or registered as a public company is or, but for the provisions of the [M12]Companies Act 1980 and the enactments replacing it, would be subject at the time of re-registration or (as the case may be) registration to a pre-1982 pre-emption requirement, sections 89 to 95 do not apply to an allotment of the equity securities which are subject to that requirement.

(2) A "pre-1982 pre-emption requirement" is a requirement imposed (whether by the company's memorandum or articles, or otherwise) before the relevant date in 1982 by virtue of which the company must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than because involving a contravention of section 90(1) to (5) or 90(6)) is inconsistent with sections 89 to 94; and "the relevant date in 1982" is—

(a) except in a case falling within the following paragraph, 22nd June in that year, and

(b) in the case of a company which was re-registered or registered as a public company on an application made before that date, the date on which the application was made.

(3) A requirement which—

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(a) is imposed on a private company (having been so imposed before the relevant date in 1982) otherwise than by the company's memorandum or articles, and

(b) if contained in the company's memorandum or articles, would have effect under section 91 to the exclusion of any provisions of sections 89 to 94,

has effect, so long as the company remains a private company, as if it were contained in the memorandum or articles.

(4) If on the relevant date in 1982 a company, other than a public company registered as such on its original incorporation, was subject to such a requirement as is mentioned in section 89(2) imposed otherwise than by the memorandum or articles, the requirement is to be treated for purposes of sections 89 to 94 as if it were contained in the memorandum or articles.

Marginal Citations

M12 1980 c. 22.

Commissions and discounts

97 Power of company to pay commissions.

(1) It is lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the following conditions are satisfied.

(2) The payment of the commission must be authorised by the company's articles; and—

(a) the commission paid or agreed to be paid must not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;

[[F82]and

(b) the amount or rate per cent. of commission paid or agreed to be paid, and the number of shares which persons have agreed for a commission to subscribe absolutely, must be disclosed in the manner required by the following subsection.

(3) Those matters must, in the case of shares offered to the public for subscription, be disclosed in the prospectus; and in the case of shares not so offered—

(a) they must be disclosed in a statement in the prescribed form signed by every director of the company or by his agent authorised in writing, and delivered (before payment of the commission) to the registrar of companies for registration; and

(b) where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, they must also be disclosed in that circular or notice.

(4) If default is made in complying with subsection (3)(a) as regards delivery to the registrar of the statement in prescribed form, the company and every officer of it who is in default is liable to a fine**]**.

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Textual Amendments

F82 Word “and" and s. 97(2)(*b*),(3)(4) repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17**

Modifications etc. (not altering text)

C93 S. 97(3) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

C94 S. 97(3) applied (19.6.1995) by S.I. 1995/1537, reg. 20, **Sch. 4 Pt. III para. 12**

98 Apart from s. 97, commissions and discounts barred.

(1) Except as permitted by section 97, no company shall apply any of its shares or capital money, either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company.

(2) This applies whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in section 97 or this section affects the power of a company to pay such brokerage as has previously been lawful.

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under section 97 and this section.

Amount to be paid for shares; the means of payment

99 General rules as to payment for shares on allotment.

(1) Subject to the following provisions of this Part, shares allotted by a company, and any premium on them, may be paid up in money or money’s worth (including goodwill and know-how).

(2) A public company shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.

(3) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable—

(a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and

(b) to pay interest at the appropriate rate on the amount payable under paragraph (a) above.

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(4) This section does not prevent a company from allotting bonus shares to its members or from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).

(5) The reference in subsection (3) to the holder of shares includes any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of them executed in his favour.

Modifications etc. (not altering text)

C95 Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C96 Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

100 Prohibition on allotment of shares at a discount.

(1) A company's shares shall not be allotted at a discount.

(2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

101 Shares to be allotted as at least one-quarter paid-up.

(1) A public company shall not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

(2) Subsection (1) does not apply to shares allotted in pursuance of an employees' share scheme.

(3) If a company allots a share in contravention of subsection (1), the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received.

(4) But the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it), with interest at the appropriate rate.

(5) Subsections (3) and (4) do not apply to the allotment of bonus shares, unless the allottee knew or ought to have known the shares were allotted in contravention of subsection (1).

Modifications etc. (not altering text)

C97 Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C98 Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

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102 Restriction on payment by long-term undertaking.

(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than 5 years after the date of the allotment.

(2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

(3) Where a contract for the allotment of shares does not contravene subsection (1), any variation of the contract which has the effect that the contract would have contravened the subsection, if the terms of the contract as varied had been its original terms, is void.

(4) Subsection (3) applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.

(5) The following subsection applies where a public company allots shares for a consideration which consists of or includes (in accordance with subsection (1)) an undertaking which is to be performed within 5 years of the allotment, but the undertaking is not performed within the period allowed by the contract for the allotment of the shares.

(6) The allottee is then liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

(7) A reference in this section to a contract for the allotment of shares includes an ancillary contract relating to payment in respect of them.

Modifications etc. (not altering text)

C99 Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C100 Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

103 Non-cash consideration to be valued before allotment.

(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—

(a) the consideration for the allotment has been independently valued under section 108; and

(b) a report with respect to its value has been made to the company by a person appointed by the company (in accordance with that section) during the 6 months immediately preceding the allotment of the shares; and

(c) a copy of the report has been sent to the proposed allottee.

(2) Where an amount standing to the credit of any of a company's reserve accounts, or of its profit and loss account, is applied in paying up (to any extent) any shares allotted to members of the company or any premiums on shares so allotted, the amount applied

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does not count as consideration for the allotment, and accordingly subsection (1) does not apply in that case.

(3) Subsection (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or the cancellation) of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company).

(4) But subsection (3) does not exclude the application of subsection (1) unless under the arrangement it is open to all the holders of the shares in the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of shares in that other company, being holders of shares of that class) to take part in the arrangement.

In determining whether that is the case, shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement, or by or by a nominee of a company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company, shall be disregarded.

(5) Subsection (1) also does not apply to the allotment of shares by a company in connection with its proposed merger with another company; that is, where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.

(6) If a company allots shares in contravention of subsection (1) and either—

(a) the allottee has not received the valuer's report required by that subsection to be sent to him; or

(b) there has been some other contravention of this section or section 108 which the allottee knew or ought to have known amounted to a contravention,

the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

(7) In this section—

(a) "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with section 425 (company compromise with creditors and members) or **[**[F83]section 110 of the Insolvency Act**]** (liquidator in winding up accepting shares as consideration for sale of company property)), and

(b) any reference to a company, except where it is or is to be construed as a reference to a public company, includes any body corporate and any body to which letters patent have been issued under the [M13]Chartered Companies Act 1837.

Textual Amendments

F83 Words substituted (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

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Modifications etc. (not altering text)

C101 Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C102 Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

Marginal Citations

M13 1837 c. 73.

104 Transfer to public company of non-cash asset in initial period.

(1) A public company formed as such shall not, unless the conditions of this section have been complied with, enter into an agreement with a person for the transfer by him during the initial period of one or more non-cash assets to the company or another, if—

(a) that person is a subscriber to the company's memorandum, and

(b) the consideration for the transfer to be given by the company is equal in value at the time of the agreement to one-tenth or more of the company's nominal share capital issued at that time.

(2) The "initial period" for this purpose is 2 years beginning with the date of the company being issued with a certificate under section 117 (or the previous corresponding provision) that it was entitled to do business.

(3) This section applies also to a company re-registered as a public company (except one re-registered under section 8 of the [M14]Companies Act 1980 or section 2 of the Consequential Provisions Act), or registered under section 685 (joint stock company) or the previous corresponding provision; but in that case—

(a) there is substituted a reference in subsection (1)(a) to a person who is a member of the company on the date of registration or re-registration, and

(b) the initial period is then 2 years beginning with that date.

In this subsection the reference to a company re-registered as a public company includes a private company so re-registered which was a public company before it was a private company.

(4) The conditions of this section are as follows—

(a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued under section 109;

(b) a report with respect to the consideration to be so received and given must have been made to the company in accordance with that section during the 6 months immediately preceding the date of the agreement;

(c) the terms of the agreement must have been approved by an ordinary resolution of the company; and

(d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report must have been circulated to the members of the company entitled to receive the notice and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.

(5) In subsection (4)(a)—

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(a) the reference to the consideration to be received by the company is to the asset to be transferred to it or the advantage to the company of the asset's transfer to another person; and

(b) the specified condition is without prejudice to any requirement to value any consideration for purposes of section 103.

(6) In the case of the following agreements, this section does not apply—

(a) where it is part of the company's ordinary business to acquire, or arrange for other persons to acquire, assets of a particular description, an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or to such a person, as the case may be;

(b) an agreement entered into by the company under the supervision of the court, or of an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

Marginal Citations

M14 1980 c. 22.

105 Agreements contravening s. 104.

(1) The following subsection applies if a public company enters into an agreement contravening section 104, the agreement being made with the person referred to in subsection (1)(a) or (as the case may be) subsection (3) of that section, and either—

(a) that person has not received the valuer's report required for compliance with the conditions of the section, or

(b) there has been some other contravention of the section or of section 108(1), (2) or (5) or section 109, which he knew or ought to have known amounted to a contravention.

(2) The company is then entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement; and the agreement, so far as not carried out, is void.

(3) However, if the agreement is or includes an agreement for the allotment of shares in the company, then—

(a) whether or not the agreement also contravenes section 103, subsection (2) above does not apply to it in so far as it is for the allotment of shares; and

(b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

106 Shares issued to subscribers of memorandum.

Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, shall be paid up in cash.

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Modifications etc. (not altering text)
C103 S. 106 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

107 Meaning of "the appropriate rate".

In sections 99 to 105 "the appropriate rate", in relation to interest, means 5 per cent. per annum or such other rate as may be specified by order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Valuation provisions

108 Valuation and report (s. 103).

(1) The valuation and report required by section 103 (or, where applicable, section 44) shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

(2) However, where it appears to the independent person (from here on referred to as "the valuer") to be reasonable for the valuation of the consideration, or part of it, to be made (or for him to accept such a valuation) by another person who—

(a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and

(b) is not an officer or servant of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company or a partner or employee of such an officer or servant,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this section and provide the note required by subsection (6) below.

(3) The reference in subsection (2)(b) to an officer or servant does not include an auditor.

(4) The valuer's report shall state—

(a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;

(b) the amount of any premium payable on the shares;

(c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;

(d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—

(i) by the consideration;

(ii) in cash.

(5) Where the consideration or part of it is valued by a person other than the valuer himself, the latter's report shall state that fact and shall also—

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(a) state the former's name and what knowledge and experience he has to carry out the valuation, and

(b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.

(6) The valuer's report shall contain or be accompanied by a note by him—

(a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;

(b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;

(c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and

(d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

(7) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 103 (and, where applicable, section 44) and the foregoing provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and—

(a) the valuer shall carry out, or arrange for, such other valuations as will enable him to determine that proportion; and

(b) his report shall state what valuations have been made under this subsection and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

Modifications etc. (not altering text)

C104 S. 108 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

C105 S. 108 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

109 Valuation and report (s. 104).

(1) Subsections (1) to (3) and (5) of section 108 apply also as respects the valuation and report for the purposes of section 104.

(2) The valuer's report for those purposes shall—

(a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);

(b) state the method and date of valuation;

(c) contain or be accompanied by a note as to the matters mentioned in section 108(6)(a) to (c); and

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(d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

(3) A reference in section 104 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer; but—

(a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer;

(b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and

(c) his report for purposes of section 104 shall state what valuation has been made under this subsection and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

110 Entitlement of valuer to full disclosure.

(1) A person carrying out a valuation or making a report under section 103 or 104, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under section 108(6) or (as the case may be) section 109(2)(c).

(2) A person who knowingly or recklessly makes a statement which—

(a) is misleading, false or deceptive in a material particular, and

(b) is a statement to which this subsection applies,

is guilty of an offence and liable to imprisonment or a fine, or both.

(3) Subsection (2) applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under section 108 or 109, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under subsection (1) of this section.

Modifications etc. (not altering text)

C106 Ss. 110, 111 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

111 Matters to be communicated to registrar.

(1) A company to which a report is made under section 108 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar of companies for registration at the same time that it files the return of the allotments of those shares under section 88.

(2) A company which has passed a resolution under section 104 with respect to the transfer of an asset shall, within 15 days of so doing, deliver to the registrar of companies a copy of the resolution together with the valuer's report required by that section.

(3) If default is made in complying with subsection (1), every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine; but this is subject to the same exception as is made by section 88(6) (relief on application to the court) in the case of default in complying with that section.

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(4) If a company fails to comply with subsection (2), it and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)

C107 Ss. 110, 111 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

Other matters arising out of allotment &c.

[F84 111A Right to damages, &c. not affected.

A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company's register in respect of shares.**]**

Textual Amendments

F84 S. 111A inserted by Companies Act 1989 (c. 40, SIF 27), **s. 131(1)** (with s. 213(2) and with savings in S.I. 1990/355, **art. 11**)

112 Liability of subsequent holders of shares allotted.

(1) If a person becomes a holder of shares in respect of which—

(a) there has been a contravention of section 99, 100, 101 or 103; and

(b) by virtue of that contravention, another is liable to pay any amount under the section contravened,

that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by subsection (3) below.

(2) If a company enters into an agreement in contravention of section 104 and—

(a) the agreement is or includes an agreement for the allotment of shares in the company; and

(b) a person becomes a holder of shares allotted under the agreement; and

(c) by virtue of the agreement and allotment under it, another person is liable to pay any amount under section 105,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by the following subsection; and this applies whether or not the agreement also contravenes section 103.

(3) A person otherwise liable under subsection (1) or (2) is exempted from that liability if either—

(a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned; or

(b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (as the case may be) subsection (2).

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(4) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his favour.

(5) As subsections (1) and (3) apply in relation to the contraventions there mentioned, they also apply—

(a) to a contravention of section 102; and

(b) to a failure to carry out a term of a contract as mentioned in subsections (5) and (6) of that section.

Modifications etc. (not altering text)

C108 S. 112 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c.9, SIF 27), **s. 9(1)**, restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

113 Relief in respect of certain liabilities under ss. 99 ff.

(1) Where a person is liable to a company under—

(a) section 99, 102, 103 or 105;

(b) section 112(1) by reference to a contravention of section 99 or 103; or

(c) section 112(2) or (5),

in relation to payment in respect of any shares in the company, or is liable by virtue of an undertaking given to it in, or in connection with, payment for any such shares, the person so liable may make an application to the court to be exempted in whole or in part from the liability.

(2) If the liability mentioned in subsection (1) arises in relation to payment in respect of any shares, the court may, on an application under that subsection, exempt the applicant from the liability only—

(a) if and to the extent that it appears to the court just and equitable to do so having regard to the matters mentioned in the following subsection,

(b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay the company under any of the relevant sections.

(3) The matters to be taken into account by the court under subsection (2)(a) are—

(a) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the relevant sections, or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;

(b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and

(c) whether the applicant or any other person has performed in whole or in part, or is likely so to perform, any such undertaking, or has done or is likely to do any other thing in payment or part payment for the shares.

(4) Where the liability arises by virtue of an undertaking given to the company in, or in connection with, payment for shares in it, the court may, on an application under

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subsection (1), exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—

(a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any of the provisions mentioned in that subsection; and

(b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

(5) In determining whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—

(a) that a company which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and

(b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.

(6) If a person brings proceedings against another ("the contributor") for a contribution in respect of liability to a company arising under any of sections 99 to 105 or 112, and it appears to the court that the contributor is liable to make such a contribution, the court may exercise the powers of the following subsection.

(7) The court may, if and to the extent that it appears to it, having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings, that it is just and equitable to do so—

(a) exempt the contributor in whole or in part from his liability to make such a contribution; or

(b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.

(8) Where a person is liable to a company under section 105(2), the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that subsection.

Modifications etc. (not altering text)

C109 Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

114 Penalty for contravention.

If a company contravenes any of the provisions of sections 99 to 104 and 106 the company and any officer of it who is in default is liable to a fine.

Modifications etc. (not altering text)

C110 Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

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115 Undertakings to do work, etc.

(1) Subject to section 113, an undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Act, is so enforceable notwithstanding that there has been a contravention in relation to it of section 99, 102 or 103.

(2) Where such an undertaking is given in contravention of section 104 in respect of the allotment of shares, it is so enforceable notwithstanding the contravention.

Modifications etc. (not altering text)
C111 Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**

116 Application of ss. 99 ff to special cases.

Except as provided by section 9 of the Consequential Provisions Act (transitional cases dealt with by section 31 of the [M15]Companies Act 1980), sections 99, 101 to 103, 106, 108 **[**[F85], 110, 111 and 112 to 115**]** apply—

(a) to a company which has passed and not revoked a resolution to be re-registered under section 43 as a public company, and

(b) to a joint stock company which has passed, and not revoked, a resolution that the company be a public company,

as those sections apply to a public company.

Textual Amendments
F85 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 131(2)**, 213(2)

Marginal Citations
M15 1980 c. 22.

PART V

SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

CHAPTER I

GENERAL PROVISIONS ABOUT SHARE CAPITAL

117 Public company share capital requirements.

(1) A company registered as a public company on its original incorporation shall not do business or exercise any borrowing powers unless the registrar of companies has issued it with a certificate under this section or the company is re-registered as a private company.

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(2) The registrar shall issue a company with such a certificate if, on an application made to him by the company in the prescribed form, he is satisfied that the nominal value of the company's allotted share capital is not less than the authorised minimum, and there is delivered to him a statutory declaration complying with the following subsection. **[**[F86]This subsection is subject to subsection (3A).**]**

(3) The statutory declaration must be in the prescribed form and be signed by a director or secretary of the company; and it must—

(a) state that the nominal value of the company's allotted share capital is not less than the authorised minimum;

(b) specify the amount paid up, at the time of the application, on the allotted share capital of the company;

(c) specify the amount, or estimated amount, of the company's preliminary expenses and the persons by whom any of those expenses have been paid or are payable; and

(d) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit.

[[F87](3A) In place of the statutory declaration referred to in subsection (2), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company complying with the requirements of subsection (3)(a) to (d).**]**

(4) For the purposes of subsection (2), a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the nominal value of the company's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

(5) The registrar may accept a statutory declaration **[**[F88]or statement**]** delivered to him under this section as sufficient evidence of the matters stated in it.

(6) A certificate under this section in respect of a company is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

(7) If a company does business or exercises borrowing powers in contravention of this section, the company and any officer of it who is in default is liable to a fine.

[[F89](7A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

(8) Nothing in this section affects the validity of any transaction entered into by a company; but, if a company enters into a transaction in contravention of this section and fails to comply with its obligations in that connection within 21 days from being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

Textual Amendments

F86 Words in s. 117(2) inserted (22.12.2000) by S.I. 2000/3373, **art. 9(1)(2)**

F87 S. 117(3A) inserted (22.12.2000) by S.I. 2000/3373, **art. 9(1)(3)**

F88 Words in s. 117(5) inserted (22.12.2000) by S.I. 2000/3373, **art. 9(1)(4)**

F89 S. 117(7A) inserted (22.12.2000) by S.I. 2000/3373, **art. 9(1)(5)**

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Modifications etc. (not altering text)

C112 S. 117 excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 9(a)** (with para. 11)

118 The authorised minimum.

(1) In this Act, "the authorised minimum" means £50,000, or such other sum as the Secretary of State may by order made by statutory instrument specify instead.

(2) An order under this section which increases the authorised minimum may—

(a) require any public company having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum to increase that value to not less than that amount or make application to be re-registered as a private company;

(b) make, in connection with any such requirement, provision for any of the matters for which provision is made by this Act relating to a company's registration, re-registration or change of name, to payment for any share comprised in a company's capital and to offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and

(c) contain such supplemental and transitional provisions as the Secretary of State thinks appropriate, make different provision for different cases and, in particular, provide for any provision of the order to come into operation on different days for different purposes.

(3) An order shall not be made under this section unless a draft of it has been laid before Parliament and approved by resolution of each House.

119 Provision for different amounts to be paid on shares.

A company, if so authorised by its articles, may do any one or more of the following things—

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

120 Reserve liability of limited company.

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; and that portion of its share capital is then not capable of being called up except in that event and for those purposes.

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121 Alteration of share capital (limited companies).

(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum in any of the following ways.

(2) The company may—

(a) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum (but subject to the following subsection);

(e) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.

(3) In any sub-division under subsection (2)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.

(4) The powers conferred by this section must be exercised by the company in general meeting.

(5) A cancellation of shares under this section does not for purposes of this Act constitute a reduction of share capital.

122 Notice to registrar of alteration.

(1) If a company having a share capital has—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or

(c) re-converted stock into shares; or

(d) sub-divided its shares or any of them; or

(e) redeemed any redeemable shares; or

(f) cancelled any shares (otherwise than in connection with a reduction of share capital under section 135),

it shall within one month after so doing give notice in the prescribed form to the registrar of companies, specifying (as the case may be) the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

123 Notice to registrar of increased share capital.

(1) If a company having a share capital (whether or not its shares have been converted into stock) increases its share capital beyond the registered capital, it shall within 15

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days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.

(3) There shall be forwarded to the registrar together with the notice a printed copy of the resolution authorising the increase, or a copy of the resolution in some other form approved by the registrar.

(4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

124 Reserve capital of unlimited company.

An unlimited company having a share capital may by its resolution for re-registration as a public company under section 43, or as a limited company under section 51—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares (but subject to the condition that no part of the increased capital is to be capable of being called up except in the event and for the purpose of the company being wound up), and

(b) alternatively or in addition, provide that a specified portion of its uncalled share capital is not to be capable of being called up except in that event and for that purpose.

CHAPTER II

CLASS RIGHTS

125 Variation of class rights.

(1) This section is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

(2) Where the rights are attached to a class of shares otherwise than by the company's memorandum, and the company's articles do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

(a) the holders of three-quarters in nominal value of the issued shares of that class consent in writing to the variation; or

(b) an extraordinary resolution passed at a separate general meeting of the holders of that class sanctions the variation;

and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in paragraphs (a) and (b) above.

(3) Where—

(a) the rights are attached to a class of shares by the memorandum or otherwise;

(b) the memorandum or articles contain provision for the variation of those rights; and

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(c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for allotment under section 80 or with a reduction of the company's share capital under section 135;

those rights shall not be varied unless—

(i) the condition mentioned in subsection (2)(a) or (b) above is satisfied; and

(ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

(4) If the rights are attached to a class of shares in the company by the memorandum or otherwise and—

(a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or

(b) where they are so attached otherwise, the articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in subsection (3)(c), those rights may only be varied in accordance with that provision of the articles.

(5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company agree to the variation.

(6) The provisions of section 369 (length of notice for calling company meetings), section 370 (general provisions as to meetings and votes), and sections 376 and 377 (circulation of members' resolutions) and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this section or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely—

(a) the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his proxy;

(b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

(8) In this section and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the variation of those rights are to be read as including references to their abrogation.

126 Saving for court's powers under other provisions.

Nothing in subsections (2) to (5) of section 125 derogates from the powers of the court under the following sections of this Act, namely—

sections 4 to 6 (company resolution to alter objects),

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section 54 (litigated objection to public company becoming private by re-registration),

section 425 (court control of company compromising with members and creditors),

section 427 (company reconstruction or amalgamation),

sections 459 to 461 (protection of minorities).

127 Shareholders' right to object to variation.

(1) This section applies if, in the case of a company whose share capital is divided into different classes of shares—

(a) provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to—

(i) the consent of any specified proportion of the holders of the issued shares of that class, or

(ii) the sanction of a resolution passed at a separate meeting of the holders of those shares,

and in pursuance of that provision the rights attached to any such class of shares are at any time varied; or

(b) the rights attached to any class of shares in the company are varied under section 125(2).

(2) The holders of not less in the aggregate than 15 per cent. of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation), may apply to the court to have the variation cancelled; and if such an application is made, the variation has no effect unless and until it is confirmed by the court.

(3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm it.

The decision of the court on any such application is final.

(5) The company shall within 15 days after the making of an order by the court on such an application forward a copy of the order to the registrar of companies; and, if default is made in complying with this provision, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) "Variation", in this section, includes abrogation; and "varied" is to be construed accordingly.

128 Registration of particulars of special rights.

(1) If a company allots shares with rights which are not stated in its memorandum or articles, or in any resolution or agreement which is required by section 380 to be

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sent to the registrar of companies, the Company shall deliver to the registrar of companies within one month from allotting the shares, a statement in the prescribed form containing particulars of those rights.

(2) This does not apply if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the 12 months immediately following the former's allotment.

(3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company's memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation is made deliver to the registrar of companies a statement in the prescribed form containing particulars of the variation.

(4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its shares, it shall within one month from doing so deliver to the registrar of companies a notice in the prescribed form giving particulars of the name or designation so assigned.

(5) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

129 Registration of newly created class rights.

(1) If a company not having a share capital creates a class of members with rights which are not stated in its memorandum or articles or in a resolution or agreement to which section 380 applies, the company shall deliver to the registrar of companies within one month from the date on which the new class is created a statement in the prescribed form containing particulars of the rights attached to that class.

(2) If the rights of any class of members of the company are varied otherwise than by an amendment of the memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.

(3) If a company (otherwise than by such an amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its members, it shall within one month from doing so deliver to the registrar a notice in the prescribed form giving particulars of the name or designation so assigned.

(4) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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CHAPTER III

SHARE PREMIUMS

130 Application of share premiums.

(1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called "the share premium account".

(2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or is writing off—

(a) the company's preliminary expenses; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,

or in providing for the premium payable on redemption of debentures of the company.

(3) Subject to this, the provisions of this Act relating to the reduction of a company's share capital apply as if the share premium account were part of its paid up share capital.

(4) Sections 131 and 132 below give relief from the requirements of this section, and in those sections references to the issuing company are to the company issuing shares as above mentioned.

Modifications etc. (not altering text)

C113 S. 130 applied (1.5.1995) by 1988 c. 1, **Sch. 28A**, para. 5(2)(a)(as inserted by 1995 c. 4, s. 135, Sch. 26 para. 3 (with Sch. 8 para. 55(2), **57(1)**))

131 Merger relief.

(1) With the exception made by **[**[F90]section 132(8)**]** (group reconstruction) this section applies where the issuing company has secured at least a 90 per cent. equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—

(a) by the issue or transfer to the issuing company of equity shares in the other company, or

(b) by the cancellation of any such shares not held by the issuing company.

(2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 130 does not apply to the premiums on those shares.

(3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.

(4) Subject to the next subsection, the issuing company is to be regarded for purposes of this section as having secured at least a 90 per cent. equity holding in another

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company in pursuance of such an arrangement as is mentioned in subsection (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement, or not) of an aggregate nominal value equal to 90 per cent. or more of the nominal value of that company's equity share capital.

(5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes of shares taken separately.

(6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for purposes of this section as held by the issuing company.

(7) In relation to a company and its shares and capital, the following definitions apply for purposes of this section—

(a) "equity shares" means shares comprised in the company's equity share capital; and

(b) "non-equity shares" means shares (of any class) not so comprised;

and "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned under section 425 (company compromise with members and creditors) or **[**[F91]section 110 of the Insolvency Act**]** (liquidator accepting shares etc. as consideration for sale of company property)).

(8) The relief allowed by this section does not apply if the issue of shares took place before 4th February 1981.

Textual Amendments

F90 S. 131(1): "section 132(8)" substituted (retrospectively) for "section 132(4)" by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 1**

F91 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

132 Relief in respect of group reconstructions.

(1) This section applies where the issuing company—

(a) is a wholly-owned subsidiary of another company ("the holding company"), and

(b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash, being assets of any company ("the transferor company") which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.

(2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 130 to transfer any amount in excess of the minimum premium value to the share premium account.

(3) In subsection (2), "the minimum premium value" means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

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(4) For the purposes of subsection (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.

(5) For the purposes of subsection (4)—

(a) the base value of the assets transferred is to be taken as—

(i) the cost of those assets to the transferor company, or

(ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer,

whichever is the less; and

(b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(6) The relief allowed by this section does not apply (subject to the next subsection) if the issue of shares took place before the date of the coming into force of the [M16]Companies (Share Premium Account) Regulations 1984 (which were made on 21st December 1984).

(7) To the extent that the relief allowed by this section would have been allowed by section 38 of the [M17]Companies Act 1981 as originally enacted (the text of which section is set out in Schedule 25 to this Act), the relief applies where the issue of shares took place before the date of the coming into force of those Regulations, but not if the issue took place before 4th February 1981.

(8) Section 131 does not apply in a case falling within this section.

Marginal Citations

M16 S.I. 1984/2007.

M17 1981 c. 62.

133 Provisions supplementing ss. 131, 132.

(1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of section 131 or 132 of this Act, or section 12 of the Consequential Provisions Act, is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

(2) References in this Chapter (however expressed) to—

(a) the acquisition by a company of shares in another company; and

(b) the issue or allotment of shares to, or the transfer of shares to or by, a company,

include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the reference in section 132 to the company transferring the shares is to be construed accordingly.

(3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.

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(4) In sections 131 to 133 "company", except in references to the issuing company, includes any body corporate.

Modifications etc. (not altering text)
C114 S. 133(2)(3) applied by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 12(5)**

134 Provision for extending or restricting relief from s. 130.

(1) The Secretary of State may by regulations in a statutory instrument make such provision as appears to him to be appropriate—

(a) for relieving companies from the requirements of section 130 in relation to premiums other than cash premiums, or

(b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.

(2) Regulations under this section may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.

(3) No such regulations shall be made unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.

Modifications etc. (not altering text)
C115 S. 134 modified by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 12(6)**

CHAPTER IV

REDUCTION OF SHARE CAPITAL

135 Special resolution for reduction of share capital.

(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to subsection (1), the company may—

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants;

and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

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(3) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

136 Application to court for order of confirmation.

(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

(2) If the proposed reduction of share capital involves either—

(a) diminution of liability in respect of unpaid share capital; or

(b) the payment to a shareholder of any paid-up share capital,

and in any other case if the court so directs, the next three subsections have effect, but subject throughout to subsection (6).

(3) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction of capital.

(4) The court shall settle a list of creditors entitled to object, and for that purpose—

(a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and

(b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

(5) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount—

(a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

(6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (3) to (5) of this section shall not apply as regards any class or any classes of creditors.

137 Court order confirming reduction.

(1) The court, if satisfied with respect to every creditor of the company who under section 136 is entitled to object to the reduction of capital that either—

(a) his consent to the reduction has been obtained; or

(b) his debt or claim has been discharged or has determined, or has been secured,

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may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court so orders, it may also—

(a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words "and reduced"; and

(b) make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced", those words are, until the expiration of the period specified in the order, deemed to be part of the company's name.

138 Registration of order and minute of reduction.

(1) The registrar of companies, on production to him of an order of the court confirming the reduction of a company's share capital, and the delivery to him of a copy of the order and of a minute (approved by the court) showing, with respect to the company's share capital as altered by the order—

(a) the amount of the share capital;

(b) the number of shares into which it is to be divided, and the amount of each share; and

(c) the amount (if any) at the date of the registration deemed to be paid up on each share,

shall register the order and minute (but subject to section 139).

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered takes effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify the registration of the order and minute; and the certificate—

(a) may be either signed by the registrar, or authenticated by his official seal;

(b) is conclusive evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minute.

(5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum, and is valid and alterable as if it had been originally contained therein.

(6) The substitution of such a minute for part of the company's memorandum is deemed an alteration of the memorandum for purposes of section 20.

139 Public company reducing capital below authorised minimum.

(1) This section applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.

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(2) The registrar of companies shall not register the order under section 138 unless the court otherwise directs, or the company is first re-registered as a private company.

(3) The court may authorise the company to be so re-registered without its having passed the special resolution required by section 53; and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

(4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles as altered by the court's order.

(5) On receipt of such an application, the registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—

(a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the court's order take effect; and

(b) the certificate is conclusive evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental thereto have been complied with, and that the company is a private company.

140 Liability of members on reduced shares.

(1) Where a company's share capital is reduced, a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.

(2) But the following two subsections apply if—

(a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and

(b) after the reduction of capital, the company is unable (within the meaning of **[**[F92]section 123 of the Insolvency Act**]**) to pay the amount of his debt or claim.

(3) Every person who was a member of the company at the date of the registration of the order for reduction and minute is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.

(4) If the company is wound up, the court, on the application of the creditor in question and proof of ignorance referred to in subsection (2)(a), may (if it thinks fit) settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(5) Nothing in this section affects the rights of the contributories among themselves.

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Textual Amendments

F92 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

141 Penalty for concealing name of creditor, etc.

If an officer of the company—

(a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; or

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as is mentioned above,

he is guilty of an offence and liable to a fine.

CHAPTER V

MAINTENANCE OF CAPITAL

Modifications etc. (not altering text)

C116 Pt. V, Ch. V (ss. 142–150) extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 6(3)**

142 Duty of directors on serious loss of capital.

(1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company for a date not later than 56 days from that day for the purpose of considering whether any, and if so what, steps should be taken to deal with the situation.

(2) If there is a failure to convene an extraordinary general meeting as required by subsection (1), each of the directors of the company who—

(a) knowingly and wilfully authorises or permits the failure, or

(b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorises or permits the failure to continue,

is liable to a fine.

(3) Nothing in this section authorises the consideration, at a meeting convened in pursuance of subsection (1), of any matter which could not have been considered at that meeting apart from this section.

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143 General rule against company acquiring own shares.

(1) Subject to the following provisions, a company limited by shares or limited by guarantee and having a share capital shall not acquire its own shares, whether by purchase, subscription or otherwise.

(2) If a company purports to act in contravention of this section, the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and the purported acquisition is void.

(3) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration; and subsection (1) does not apply in relation to—

(a) the redemption or purchase of shares in accordance with Chapter VII of this Part,

(b) the acquisition of shares in a reduction of capital duly made,

(c) the purchase of shares in pursuance of an order of the court under section 5 (alteration of objects), section 54 (litigated objection to resolution for company to be re-registered as private) or Part XVII (relief to members unfairly prejudiced), or

(d) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares.

144 Aquisition of shares by company's nominee.

(1) Subject to section 145, where shares are issued to a nominee of a company mentioned in section 143(1), or are acquired by a nominee of such a company from a third person as partly paid up, then, for all purposes—

(a) the shares are to be treated as held by the nominee on his own account; and

(b) the company is to be regarded as having no beneficial interest in them.

(2) Subject to that section, if a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in such a company which were issued to him, or which he otherwise acquired, as the company's nominee and he fails to pay that amount within 21 days from being called on to do so, then—

(a) if the shares were issued to him as subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum, or

(b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition,

are jointly and severally liable with him to pay that amount.

(3) If in proceedings for the recovery of any such amount from any such subscriber or director under this section it appears to the court—

(a) that he is or may be liable to pay that amount, but

(b) that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused from liability,

the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the

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court for relief; and the court has the same power to relieve him as it would have had in proceedings for the recovery of that amount.

Modifications etc. (not altering text)
C117 S. 144(1) excluded by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 35** (subject to the transitional and savings provisions mentioned in S.I. 1990/1392, **art. 6**)

145 Exceptions from s. 144.

(1) Section 144(1) does not apply to shares acquired otherwise than by subscription by a nominee of a public company, where a person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.

(2) Section 144(1) and (2) do not apply—

(a) to shares acquired by a nominee of a company when the company has no beneficial interest in those shares, or

(b) to shares issued in consequence of an application made before 22nd December 1980, or transferred in pursuance of an agreement to acquire them made before that date.

(3) Schedule 2 to this Act has effect for the interpretation of references in this section to a company having, or not having, a beneficial interest in shares.

146 Treatment of shares held by or for public company.

(1) Except as provided by section 148, the following applies to a public company—

(a) where shares in the company are forfeited, or surrendered to the company in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares;

[[F93](aa) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986;**]**

(b) where shares in the company are acquired by it (otherwise than by any of the methods mentioned in section 143(3)(a) to (d)) and the company has a beneficial interest in the shares;

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

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

Schedule 2 to this Act has effect for the interpretation of references in this subsection to the company having a beneficial interest in shares.

(2) Unless the shares or any interest of the company in them are previously disposed of, the company must, not later than the end of the relevant period from their forfeiture or surrender or, in a case within subsection (1)(b), (c) or (d), their acquisition—

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

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

(3) For this purpose "the relevant period" is—

(a) 3 years in the case of shares forfeited or surrendered to the company in lieu of forfeiture, or acquired as mentioned in subsection (1)(b) or (c);

(b) one year in the case of shares acquired as mentioned in subsection (1)(d).

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

Textual Amendments

F93 S. 146(1)(aa) inserted (21.3.1997) by 1986 c. 53, **s. 102C(5)** (as inserted (21.3.1997) by 1997 c. 41, **s. 1(1)** (with s. 2(2))

Modifications etc. (not altering text)

C118 Ss. 146–149 amended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 6(2)**

147 Matters arising out of compliance with s. 146(2).

(1) The directors may take such steps as are requisite to enable the company to carry out its obligations under section 146(2) without complying with sections 135 and 136 (resolution to reduce share capital; application to court for approval).

(2) The steps taken may include the passing of a resolution to alter the company's memorandum so that it no longer states that the company is to be a public company; and the resolution may make such other alterations in the memorandum as are requisite in the circumstances.

Such a resolution is subject to section 380 (copy to be forwarded to registrar within 15 days).

(3) The application for re-registration required by section 146(2)(b) must be in the prescribed form and be signed by a director or secretary of the company, and must be delivered to the registrar of companies together with a printed copy of the memorandum and articles of the company as altered by the resolution.

(4) If the registrar is satisfied that the company may be re-registered under section 146, he shall retain the application and other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—

(a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the resolution take effect accordingly, and

(b) the certificate is conclusive evidence that the requirements of sections 146 to 148 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company is a private company.

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Modifications etc. (not altering text)
C119 Ss. 146–149 amended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 6(2)**

148 Further provisions supplementing ss. 146, 147.

(1) Where, after shares in a private company—

(a) are forfeited in pursuance of the company's articles or are surrendered to the company in lieu of forfeiture, or

(b) are acquired by the company (otherwise than by such surrender or forfeiture, and otherwise than by any of the methods mentioned in section 143(3)), the company having a beneficial interest in the shares, or

(c) are acquired by the nominee of a company in the circumstances mentioned in section 146(1)(c), or

(d) are acquired by any person in the circumstances mentioned in section 146(1)(d),

the company is re-registered as a public company, sections 146 and 147, and also section 149, apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, but with the modification required by the following subsection.

(2) That modification is to treat any reference to the relevant period from the forfeiture, surrender or acquisition as referring to the relevant period from the re-registration of the company as a public company.

(3) Schedule 2 to this Act has effect for the interpretation of the reference in subsection (1)(b) to the company having a beneficial interest in shares.

(4) Where a public company or a nominee of a public company acquires shares in the company or an interest in such shares, and those shares are (or that interest is) shown in a balance sheet of the company as an asset, an amount equal to the value of the shares or (as the case may be) the value to the company of its interest in them shall be transferred out of profits available for dividend to a reserve fund and are not then available for distribution.

Modifications etc. (not altering text)
C120 Ss. 146–149 amended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 6(2)**

149 Sanctions for non-compliance.

(1) If a public company required by section 146(2) to apply to be re-registered as a private company fails to do so before the end of the relevant period referred to in that subsection, section 81 (restriction on public offers) applies to it as if it were a private company such as is mentioned in that section; but, subject to this, the company continues to be treated for the purpose of this Act as a public company until it is so re-registered.

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(2) If a company when required to do so by section 146(2) (including that subsection as applied by section 148(1)) 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 it, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C121 Ss. 146–149 amended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 6(2)**

150 Charges of public companies on own shares.

(1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise), except a charge permitted by any of the following subsections, is void.

This is subject to section 6 of the Consequential Provisions Act (saving for charges of old public companies on their own shares).

(2) In the case of any description of company, a charge on its own shares is permitted if the shares are not fully paid and the charge is for any amount payable in respect of the shares.

(3) In the case of a company whose ordinary business—

(a) includes the lending of money, or

(b) consists of the provision of credit or the bailment (in Scotland, hiring) of goods under a hire purchase agreement, or both,

a charge of the company on its own shares is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of its business.

(4) In the case of a company which is re-registered or is registered under section 680 as a public company, a charge on its own shares is permitted if the charge was in existence immediately before the company's application for re-registration or (as the case may be) registration.

This subsection does not apply in the case of such a company as is referred to in section 6(3) of the Consequential Provisions Act (old public company remaining such after 22nd March 1982, not having applied to be re-registered as public company).

Modifications etc. (not altering text)
C122 S. 150 excluded by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 6(3)**

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CHAPTER VI

FINANCIAL ASSISTANCE BY A COMPANY FOR ACQUISITION OF ITS OWN SHARES

Provisions applying to both public and private companies

151 Financial assistance generally prohibited.

(1) Subject to the following provisions of this Chapter, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.

(2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) If a company acts in contravention of this section, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

152 Definitions for this Chapter.

(1) In this Chapter—

(a) "financial assistance" means—

(i) financial assistance by way of gift,

(ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver,

(iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or

(iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets;

(b) "distributable profits", in relation to the giving of any financial assistance—

(i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and

(ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under section 276 (distributions in kind) be available for that purpose,

and

(c) "distribution" has the meaning given by section 263(2).

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(2) In subsection (1)(a)(iv), "net assets" means the aggregate of the company's assets, less the aggregate of its liabilities ("liabilities" to include any provision for liabilities or charges within paragraph 89 of Schedule 4).

(3) In this Chapter—

(a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and

(b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

Modifications etc. (not altering text)

C123 S. 152(2) applied (E.W.) (16.1.1990 as mentioned in S.I. 1989/2445, **art. 4** and so far as not already in force 7.10.1993) by Local Government and Housing Act 1989 (c. 42, SIF 81:1), **s. 69(4)(a)**; S.I. 1989/2445, **art. 4**; S.I. 1993/2410, **art.3**

153 Transactions not prohibited by s. 151.

(1) Section 151(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if—

(a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and

(b) the assistance is given in good faith in the interests of the company.

(2) Section 151(2) does not prohibit a company from giving financial assistance if—

(a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and

(b) the assistance is given in good faith in the interests of the company.

(3) Section 151 does not prohibit—

(a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,

(b) the allotment of bonus shares,

(c) a reduction of capital confirmed by order of the court under section 137,

(d) a redemption or purchase of shares made in accordance with Chapter VII of this Part,

(e) anything done in pursuance of an order of the court under section 425 (compromises and arrangements with creditors and members),

(f) anything done under an arrangement made in pursuance of **[**[F94]section 110 of the Insolvency Act**]** (acceptance of shares by liquidator in winding up as consideration for sale of property), or

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(g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of **[**F95Part I of the Insolvency Act**]**.

(4) Section 151 does not prohibit—

(a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,

[F96(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme,**]**

[F97(bb) without prejudice to paragraph (*b*), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or **[**F98a company in the same group**]**) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—

(i) the bona fide employees or former employees of that company or of another company in the same group; or

(ii) the wives, husbands, widows, widowers, children or step-children under the age of eighteen of any such employees or former employees.**]**

(c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

[F99(5) For the purposes of subsection (4)(bb) a company is in the same group as another company if it is a holding company or subsidiary of that company, or a subsidiary of a holding company of that company.**]**

Textual Amendments

F94 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F95 Words substituted by virtue of Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt I**

F96 S. 153(4)(b) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 132**, 213(2)

F97 S. 153(4)(*bb*) inserted by Financial Services Act 1986 (c. 60, SIF 69), **s. 196(2)**

F98 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 33(2)**

F99 S. 153(5) inserted by Financial Services Act 1986 (c. 60, SIF 69), **s. 196(3)** and substituted by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 33(3)**

154 Special restriction for public companies.

(1) In the case of a public company, section 153(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.

(2) For this purpose the following definitions apply—

(a) "net assets" means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);

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(b) "liabilities" includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

Private companies

155 Relaxation of s. 151 for private companies.

(1) Section 151 does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this section, and sections 156 to 158, are complied with as respects the giving of that assistance.

(2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits.

Section 154(2) applies for the interpretation of this subsection.

(3) This section does not permit financial assistance to be given by a subsidiary, in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.

(4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section must be approved by special resolution of the company in general meeting.

(5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly-owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.

(6) **[**F100Subject to subsection (6A), the directors of the company**]** proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form complying with the section next following.

[F101(6A) In place of the statutory declaration referred to in subsection (6), there may be delivered to the registrar of companies under section 156(5) a statement made by the persons mentioned in subsection (6) above complying with the section next following.**]**

Textual Amendments

F100 Words in s. 155(6) substituted (22.12.2000) by S.I. 2000/3373, **art. 10(1)(2)**

F101 S. 155(6A) inserted (22.12.2000) by S.I. 2000/3373, **art. 10(1)(3)**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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156 Statutory declaration under s. 155.

(1) A statutory declaration made by a company's directors under section 155(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.

[F102(1A) A statement made by a company's directors under section 155(6A) shall state—

(a) the names and addresses of all the directors of the company,

(b) whether the business of the company is that of a banking company or insurance company or some other business,

(c) that the company or (as the case may be) a company (naming such company) of which it is the holding company is proposing to give financial assistance in connection with the acquisition of shares in the company or (as the case may be) its holding company (naming that holding company),

(d) whether the assistance is for the purpose of that acquisition or for reducing or discharging a liability incurred for the purpose of that acquisition,

(e) the name and address of the person to whom the assistance is to be given (and in the case of a company its registered office),

(f) the name of the person who has acquired or will acquire the shares and the number and class of the shares acquired or to be acquired,

(g) the principal terms on which the assistance will be given,

(h) the form the financial assistance will take (stating the amount of cash or value of any asset to be transferred to the person assisted), and

(i) the date on which the assistance is to be given.**]**

(2) The declaration **[**F103under section 155(6) or (as the case may be) statement under section 155(6A)**]** shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either—

(a) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up, or

(b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.

(3) In forming their opinion for purposes of subsection (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under **[**F104section 122 of the Insolvency Act**]** (winding up by the court) to the question whether the company is unable to pay its debts.

(4) The directors' statutory declaration **[**F105or statement**]** shall have annexed to it a report addressed to them by their company's auditors stating that—

(a) they have enquired into the state of affairs of the company, and

(b) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration **[**F105or statement**]** as to any of the matters mentioned in subsection (2) of this section is unreasonable in all the circumstances.

(5) The statutory declaration **[**F105or statement**]** and auditors' report shall be delivered to the registrar of companies—

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Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) together with a copy of any special resolution passed by the company under section 155 and delivered to the registrar in compliance with section 380, or

(b) where no such resolution is required to be passed, within 15 days after the making of the declaration.

(6) If a company fails to comply with subsection (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) A director of a company who makes a statutory declaration **[**F105or statement**]** under section 155 without having reasonable grounds for the opinion expressed in it is liable to imprisonment or a fine, or both.

Textual Amendments

F102 S. 156(1A) inserted (22.12.2000) by S.I. 2000/3373, **art. 11(1)(2)**

F103 Words in s. 156(2) inserted (22.12.2000) by S.I. 2000/3373, **art. 11(1)(3)**

F104 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F105 Words in s. 156(4)(5)(7) inserted (22.12.2000) by S.I. 2000/3373, **art. 11(1)(4)**

157 Special resolution under s. 155.

(1) A special resolution required by section 155 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company make the statutory declaration required by that section in connection with the giving of that assistance, or within the week immediately following that date.

(2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution—

(a) by the holders of not less in the aggregate than 10 per cent. in nominal value of the company's issued share capital or any class of it, or

(b) if the company is not limited by shares, by not less than 10 per cent. of the company's members;

but the application shall not be made by a person who has consented to or voted in favour of the resolution.

(3) Subsections (3) to (10) of section 54 (litigation to cancel resolution under section 53) apply to applications under this section as to applications under section 54.

(4) A special resolution passed by a company is not effective for purposes of section 155—

(a) unless the declaration **[**F106or statement**]** made in compliance with subsection (6) of that section by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed,

(b) if it is cancelled by the court on an application under this section.

Textual Amendments

F106 Words in s. 157(4) inserted (22.12.2000) by S.I. 2000/3373, **art. 31(2)**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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158 Time for giving financial assistance under s. 155.

(1) This section applies as to the time before and after which financial assistance may not be given by a company in pursuance of section 155.

(2) Where a special resolution is required by that section to be passed approving the giving of the assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with—

(a) the date on which the special resolution is passed, or

(b) where more than one such resolution is passed, the date on which the last of them is passed,

unless, as respects that resolution (or, if more than one, each of them), every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.

(3) If application for the cancellation of any such resolution is made under section 157, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

(4) The assistance shall not be given after the expiry of the period of 8 weeks beginning with—

(a) the date on which the directors of the company proposing to give the assistance made their statutory declaration **[**F107or statement**]** under section 155, or

(b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration **[**F107or statement**]**, the date on which the earliest of the declarations **[**F107or statements**]** is made,

unless the court, on an application under section 157, otherwise orders.

Textual Amendments

F107 Words in s. 158(4) inserted (22.12.2000) by S.I. 2000/3373, **art. 31(2)**

CHAPTER VII

REDEEMABLE SHARES; PURCHASE BY A COMPANY OF ITS OWN SHARES

Redemption and purchase generally

159 Power to issue redeemable shares.

(1) Subject to the provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid; and the terms of redemption must provide for payment on redemption.

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[F108 159A Terms and manner of redemption.

(1) Redeemable shares may not be issued unless the following conditions are satisfied as regards the terms and manner of redemption.

(2) The date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's articles or, if the articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued.

(3) Any other circumstances in which the shares are to be or may be redeemed must be specified in the company's articles.

(4) The amount payable on redemption must be specified in, or determined in accordance with, the company's articles, and in the latter case the articles must not provide for the amount to be determined by reference to any person's discretion or opinion.

(5) Any other terms and conditions of redemption shall be specified in the company's articles.

(6) Nothing in this section shall be construed as requiring a company to provide in its articles for any matter for which provision is made by this Act.**]**

Textual Amendments

F108 S. 159A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 133(2)**, 213(2), 215(2)

160 Financing etc. of redemption.

(1) Subject to the next subsection and to sections 171 (private companies redeeming or purchasing own shares out of capital) and 178(4) (terms of redemption or purchase enforceable in a winding up)—

(a) redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) any premium payable on redemption must be paid out of distributable profits of the company.

(2) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

(a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or

(b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),

whichever is the less; and in that case the amount of the company's share premium account shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

[F109(3) Subject to the following provisions of this Chapter, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.**]**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(4) Shares **[**F110redeemed under this section**][**F110redeemed under this Chapter**]** shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.

(5) Without prejudice to subsection (4), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.

Textual Amendments

F109 S. 160(3) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 133(3)(a), 212, 213(2), 215(2), **Sch. 24**

F110 Words "redeemed under this Chapter" substituted (*prosp.*) for "redeemed under this section" by Companies Act 1989 (c. 40, SIF 27), **ss. 133(3)(b)**, 213(2), 215(2)

161 F111 . . . . . .

Textual Amendments

F111 S. 161 repealed by Finance Act 1988 (c. 39, SIF 63:1), s. 148, **Sch. 14 Pt. XI**

162 Power of company to purchase own shares.

(1) Subject to the following provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

(2) Sections 159 to 161 apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 160(3).

(3) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

VALID FROM 01/12/2003

162A Treasury shares

(1) Where qualifying shares are purchased by a company out of distributable profits in accordance with section 162, the company may—

(a) hold the shares (or any of them), or

(b) deal with any of them, at any time, in accordance with section 162D.

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(2) Where shares are held under subsection (1)(a) then, for the purposes of section 352, the company must be entered in the register as the member holding those shares.

(3) In this Act, references to a company holding shares as treasury shares are references to the company holding shares which—

(a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and

(b) have been held by the company continuously since they were so purchased.

VALID FROM 01/12/2003

162B Treasury shares: maximum holdings

(1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the company at that time.

(2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the shares in that class at that time.

(3) Where subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 162D, before the end of the period of 12 months beginning with the day on which that contravention occurs.

For this purpose "the excess shares" means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

VALID FROM 01/12/2003

162C Treasury shares: voting and other rights

(1) This section applies to shares which are held by a company as treasury shares ("the treasury shares").

(2) The company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.

(3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 425).

(4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

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(5) Nothing in this section is to be taken as preventing—

(a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or

(b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).

(6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 162A(1) applied.

VALID FROM 01/12/2003

162D Treasury shares: disposal and cancellation

(1) Where shares are held as treasury shares, a company may at any time—

(a) sell the shares (or any of them) for cash,

(b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme, or

(c) cancel the shares (or any of them).

(2) For the purposes of subsection (1)(a), "cash", in relation to a sale of shares by a company, means—

(a) cash (including foreign currency) received by the company, or

(b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid, or

(c) a release of a liability of the company for a liquidated sum, or

(d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.

(3) But if the company receives a notice under section 429 (right of offeror to buy out minority shareholders) that a person desires to acquire any of the shares, the company must not, under subsection (1), sell or transfer the shares to which the notice relates except to that person.

(4) If under subsection (1) the company cancels shares held as treasury shares, the company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.

(5) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) without complying with sections 135 and 136 (resolution to reduce issued share capital; application to court for approval).

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VALID FROM 01/12/2003

162E Treasury shares: mandatory cancellation

(1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with section 162D.

(2) For the purposes of subsection (1), shares are not to be regarded as ceasing to be qualifying shares by virtue only of—

(a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or

(b) the suspension of their trading in accordance with—

(i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and

(ii) in any other case, the rules of the regulated market on which they are traded.

(3) For the purposes of this section "regulated market" means a market which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field.

VALID FROM 01/12/2003

162F Treasury shares: proceeds of sale

(1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this section.

(2) Where the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds shall be treated for the purposes of Part 8 as a realised profit of the company.

(3) Where the proceeds of sale exceed the purchase price paid by the company for the shares—

(a) that part of the proceeds of sale that is equal to the purchase price paid shall be treated for the purposes of Part 8 as a realised profit of the company, and

(b) a sum equal to the excess shall be transferred to the company's share premium account.

(4) The purchase price paid by the company for the shares shall be determined by the application of a weighted average price method.

(5) Where the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them shall, for the purposes of subsection (4), be treated as being nil.

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VALID FROM 01/12/2003

162G Treasury shares: penalty for contravention

If a company contravenes any provision of sections 162A to 162F every officer of it who is in default is liable to a fine.

163 Definitions of "off-market" and "market" purchase.

(1) A purchase by a company of its own shares is "off-market" if the shares either—

(a) are purchased otherwise than on **[**F112a recognised investment exchange**]**, or

(b) are purchased on **[**F112a recognised investment exchange**]** but are not subject to a marketing arrangement on **[**F113that investment exchange**]**.

(2) For this purpose, a company's shares are subject to a marketing arrangement on a recognised stock exchange if either—

(a) they are listed **[**F114Part 6 of the Financial Services and Markets Act 2000**]**; or

(b) the company has been afforded facilities for dealings in those shares to take place on **[**F115that investment exchange**]** without prior permission for individual transactions from the authority governing **[**F115that investment exchange**]** and without limit as to the time during which those facilities are to be available.

(3) A purchase by a company of its own shares is a "market purchase" if it is a purchase made on a recognised stock exchange, other than a purchase which is an off-market purchase by virtue of subsection (1)(b).

[F116(4) "Recognised investment exchange" means a recognised investment exchange other than an overseas investment exchange.

F116(5) Expressions used in the definition contained in subsection (4) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.**]**

Textual Amendments

F112 Words substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 17(a)**

F113 Words substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 17(b)**

F114 Words in s. 163(2)(a) substituted (1.12.2001) by S.I. 2001/3649, **art. 6(1)(2)**

F115 Words substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 17(c)**

F116 S. 163(4)(5) substituted (1.12.2001) for s. 163(4) by S.I. 2001/3649, **art. 6(1)(3)**

Modifications etc. (not altering text)

C124 S. 163(2)(b) extended (21.8.2002) by S.I. 2001/1335, art. 8A(4)(a) (as inserted by S.I. 2002/2157, **art. 3(2)**)

C125 S. 163(2)(b) modified (1.7.2005) by The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), **art. 8A(3)** (with art. 10)

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164 Authority for off-market purchase.

(1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this section or under section 165 below.

(2) The terms of the proposed contract must be authorised by a special resolution of the company before the contract is entered into; and the following subsections apply with respect to that authority and to resolutions conferring it.

(3) Subject to the next subsection, the authority may be varied, revoked or from time to time renewed by special resolution of the company.

(4) In the case of a public company, the authority conferred by the resolution must specify a date on which the authority is to expire; and in a resolution conferring or renewing authority that date must not be later than 18 months after that on which the resolution is passed.

(5) A special resolution to confer, vary, revoke or renew authority is not effective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

For this purpose—

(a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;

(b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and

(c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

(6) Such a resolution is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both—

(a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed, and

(b) at the meeting itself.

A memorandum of contract terms so made available must include the names of any members holding shares to which the contract relates; and a copy of the contract so made available must have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorised by a special resolution of the company before it is agreed to; and subsections (3) to (6) above apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (6).

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165 Authority for contingent purchase contract.

(1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—

(a) which does not amount to a contract to purchase those shares, but

(b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.

(2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into; and subsections (3) to (7) of section 164 apply to the contract and its terms.

166 Authority for market purchase.

(1) A company shall not make a market purchase of its own shares unless the purchase has first been authorised by the company in general meeting.

(2) That authority—

(a) may be general for that purpose, or limited to the purchase of shares of any 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,

(b) determine both the maximum and the minimum prices which may be paid for the shares, and

(c) specify a date on which it is to expire.

(4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to subsection (3) above; and in a resolution to confer or renew authority, the date on which the authority is to expire must not be later than 18 months after that on which the resolution is passed.

(5) A company may under this section make a purchase of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c), if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiration.

(6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for purchase by—

(a) specifying a particular sum, or

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

(7) A resolution of a company conferring, varying, revoking or renewing authority under this section is subject to section 380 (resolution to be sent to registrar of companies within 15 days).

167 Assignment or release of company's right to purchase own shares.

(1) The rights of a company under a contract approved under section 164 or 165, or under a contract for a purchase authorised under section 166, are not capable of being assigned.

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(2) An agreement by a company to release its rights under a contract approved under section 164 or 165 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into; and subsections (3) to (7) of section 164 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

168 Payments apart from purchase price to be made out of distributable profits.

(1) A payment made by a company in consideration of—

(a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under section 165, or

(b) the variation of a contract approved under section 164 or 165, or

(c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under section 164 or 165 or under a contract for a purchase authorised under section 166,

must be made out of the company's distributable profits.

(2) If the requirements of subsection (1) are not satisfied in relation to a contract—

(a) in a case within paragraph (a) of the subsection, no purchase by the company of its own shares in pursuance of that contract is lawful under this Chapter,

(b) in a case within paragraph (b), no such purchase following the variation is lawful under this Chapter, and

(c) in a case within paragraph (c), the purported release is void.

169 Disclosure by company of purchase of own shares.

(1) Within the period of 28 days beginning with the date on which any shares purchased by a company under this Chapter are delivered to it, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

(2) In the case of a public company, the return shall also state—

(a) the aggregate amount paid by the company for the shares; and

(b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the registrar; and in such a case the amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(4) Where a company enters into a contract approved under section 164 or 165, or a contract for a purchase authorised under section 166, the company shall keep at its registered office—

(a) if the contract is in writing, a copy of it; and

(b) if not, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

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(5) Every copy and memorandum so required to be kept shall [F117] . . . be open to inspection without charge—

(a) by any member of the company, and

(b) if it is a public company, by any other person.

(6) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) If default is made in complying with subsection (4), or if an inspection required under subsection (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

Textual Amendments

F117 Words in s. 169(5) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(2), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

Modifications etc. (not altering text)

C126 S. 169(5) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.

VALID FROM 01/12/2003

169A Disclosure by company of cancellation or disposal of treasury shares

(1) Subsection (2) applies in relation to any shares held by a company as treasury shares if—

(a) the company is or was required to make a return under section 169(1B) in relation to the shares, and

(b) the shares have—

(i) been cancelled in accordance with section 162D(1), or

(ii) been sold or transferred for the purposes of or pursuant to an employees' share scheme under section 162D(1).

(2) Within the period of 28 days beginning with the date on which such shares are cancelled or disposed of, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class cancelled or disposed of—

(a) the number and nominal value of those shares, and

(b) the date on which they were cancelled or disposed of.

(3) Particulars of shares cancelled or disposed of on different dates may be included in a single return to the registrar.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

170 The capital redemption reserve.

(1) Where under this Chapter shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 160(4) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve".

(2) Of the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) But subsection (2) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under section 171.

(4) The provisions of this Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

Redemption or purchase of own shares out of capital (private companies only)

171 Power of private companies to redeem or purchase own shares out of capital.

(1) Subject to the following provisions of this Chapter, a private company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles, make a payment in respect of the redemption or purchase under section 160 or (as the case may be) section 162, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References below in this Chapter to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

(3) The payment which may (if authorised in accordance with the following provisions of this Chapter) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with—

(a) any available profits of the company, and

(b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,

is equal to the price of redemption or purchase; and the payment permissible under this subsection is referred to below in this Chapter as the permissible capital payment for the shares.

(4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

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(5) Subject to subsection (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased—

(a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and

(b) any amount representing unrealised profits of the company for the time being standing to the credit of any reserve maintained by the company in accordance with paragraph 34 of Schedule 4 **[**F118or paragraph 34 of Schedule 8**]** (revaluation reserve),

may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.

(6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

Textual Amendments

F118 Words in s. 171(5)(b) inserted (1.3.1997) by S.I. 1997/220, **reg. 7(1)**

172 Availability of profits for purposes of s. 171.

(1) The reference in section 171(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of Part VIII); but the question whether a company has any profits so available and the amount of any such profits are to be determined for purposes of that section in accordance with the following subsections, instead of sections 270 to 275 in that Part.

(2) Subject to the next subsection, that question is to be determined by reference to—

(a) profits, losses, assets and liabilities,

(b) provisions of any of the kinds mentioned in paragraphs 88 and 89 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.), and

(c) share capital and reserves (including undistributable reserves),

as stated in the relevant accounts for determining the permissible capital payment for shares.

(3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgment to be made as to the amounts of any of the items mentioned in subsection (2)(a) to (c) above.

(4) For purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(5) The reference in subsection (4) to distributions lawfully made by the company includes—

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(a) financial assistance lawfully given out of distributable profits in a case falling within section 154 or 155,

(b) any payment lawfully made by the company in respect of the purchase by it of any shares in the company (except a payment lawfully made otherwise than out of distributable profits), and

(c) a payment of any description specified in section 168(1) lawfully made by the company.

(6) References in this section to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with subsection (3) of the section next following.

173 Conditions for payment out of capital.

(1) Subject to any order of the court under section 177, a payment out of capital by a private company for the redemption or purchase of its own shares is now lawful unless the requirements of this and the next two sections are satisfied.

(2) The payment out of capital must be approved by a special resolution of the company.

(3) The company's directors must make a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion—

(a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and

(b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under **[**F119section 122 of the Insolvency Act**]** (winding up by the court) to the question whether a company is unable to pay its debts.

(5) The directors' statutory declaration must be in the prescribed form and contain such information with respect to the nature of the company's business as may be prescribed, and must in addition have annexed to it a report addressed to the directors by the company's auditors stating that—

(a) they have inquired into the company's state of affairs; and

(b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 171 and 172; and

(c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances.

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(6) A director who makes a declaration under this section without having reasonable grounds for the opinion expressed in the declaration is liable to imprisonment or a fine, or both.

Textual Amendments

F119 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

174 Procedure for special resolution under s. 173.

(1) The resolution required by section 173 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that section; and the payment out of capital must be made no earlier than 5 nor more than 7 weeks after the date of the resolution.

(2) The resolution is ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll; and notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

(4) The resolution is ineffective unless the statutory declaration and auditors' report required by the section are available for inspection by members of the company at the meeting at which the resolution is passed.

(5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

175 Publicity for proposed payment out of capital.

(1) Within the week immediately following the date of the resolution for payment out of capital the company must cause to be published in the Gazette a notice—

(a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);

(b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under section 173;

(c) stating that the statutory declaration of the directors and the auditors' report required by that section are available for inspection at the company's registered office; and

(d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 176 for an order prohibiting the payment.

(2) Within the week immediately following the date of the resolution the company must also either cause a notice to the same effect as that required by subsection (1) to be

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published in an appropriate national newspaper or give notice in writing to that effect to each of its creditors.

(3) "An appropriate national newspaper" means a newspaper circulating throughout England and Wales (in the case of a company registered in England and Wales), and a newspaper circulating throughout Scotland (in the case of a company registered in Scotland).

(4) References below in this section to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).

(5) Not later than the first notice date the company must deliver to the registrar of companies a copy of the statutory declaration of the directors and of the auditors' report required by section 173.

(6) The statutory declaration and auditors' report—

(a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital, and

(b) shall [F120] . . . be open to the inspection of any member or creditor of the company without charge.

(7) If an inspection required under subsection (6) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of refusal of an inspection required under subsection (6) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

Textual Amendments

F120 Words in s. 175(6) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(3), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

Modifications etc. (not altering text)

C127 S. 175(6) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.

176 Objections by company's members or creditors.

(1) Where a private company passes a special resolution approving for purposes of this Chapter any payment out of capital for the redemption or purchase of any of its shares—

(a) any member of the company other than one who consented to or voted in favour of the resolution; and

(b) any creditor of the company,

may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

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(3) If an application is made, the company shall—

(a) forthwith give notice in the prescribed form of that fact to the registrar of companies; and

(b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the registrar.

(4) A company which fails to comply with subsection (3), and any officer of it who is in default, is liable to a fine and for continued contravention, to a daily default fine.

177 Powers of court on application under s. 176.

(1) On the hearing of an application under section 176 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be); and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in this Chapter which applies to the redemption or purchase of shares to which the resolution refers.

(3) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.

(5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

Supplementary

178 Effect of company's failure to redeem or purchase.

(1) This section has effect where a company has, on or after 15th June 1982,—

(a) issued shares on terms that they are or are liable to be redeemed, or

(b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Subsection (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure; but the court shall not grant an order for specific performance of the terms of redemption or purchase if

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the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company; and when shares are redeemed or purchased under this subsection, they are treated as cancelled.

(5) However, subsection (4) does not apply if—

(a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or

(b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount which the company is liable under subsection (4) to pay in respect of any shares—

(a) all other debts and liabilities of the company (other than any due to members in their character as such),

(b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

(7) F121

Textual Amendments

F121 S. 178(7) repealed (E.W.S.) by Insolvency Act 1985 (c. 65, SIF 27), s. 235, **Sch. 10 Pt. II**, and Insolvency Act 1986 (c.45, SIF 66), s. 437, **Sch. 11 para. 7**

179 Power for Secretary of State to modify this Chapter.

(1) The Secretary of State may by regulations made by statutory instrument modify the provisions of this Chapter with respect to any of the following matters—

(a) the authority required for a purchase by a company of its own shares,

(b) the authority required for the release by a company of its rights under a contract for the purchase of its own shares or a contract under which the company may (subject to any conditions) become entitled or obliged to purchase its own shares,

(c) the information to be included in a return delivered by a company to the registrar of companies in accordance with section 169(1),

(d) the matters to be dealt with in the statutory declaration of the directors under section 173 with a view to indicating their opinion of their company's ability to make a proposed payment out of capital with due regard to its financial situation and prospects, and

(e) the contents of the auditors' report required by that section to be annexed to that declaration.

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(2) The Secretary of State may also by regulations so made make such provision (including modification of the provisions of this Chapter) as appears to him to be appropriate—

(a) for wholly or partly relieving companies from the requirement of section 171(3)(a) that any available profits must be taken into account in determining the amount of the permissible capital payment for shares under that section, or

(b) for permitting a company's share premium account to be applied, to any extent appearing to the Secretary of State to be appropriate, in providing for the premiums payable on the redemption or purchase by the company of any of its own shares.

(3) Regulations under this section—

(a) may make such further modification of any provisions of this Chapter as appears to the Secretary of State to be reasonably necessary in consequence of any provision made under such regulations by virtue of subsection (1) or (2),

(b) may make different provision for different cases or classes of case, and

(c) may contain such further consequential provisions, and such incidental and supplementary provisions, as the Secretary of State thinks fit.

(4) No regulations shall be made under this section unless a draft of the instrument containing them has been laid before Parliament and approved by resolution of each House.

Modifications etc. (not altering text)
C128 S. 179 amended by Insolvency Act 1986 (c. 45, SIF 66), **ss. 76(6)**, 79(3), 124(3)

180 Transitional cases arising under this Chapter; and savings.

(1) Any preference shares issued by a company before 15th June 1982 which could but for the repeal by the [M18]Companies Act 1981 of section 58 of the [M19]Companies Act 1948 (power to issue redeemable preference shares) have been redeemed under that section are subject to redemption in accordance with the provisions of this Chapter.

(2) In a case to which sections 159 and 160 apply by virtue of this section, any premium payable on redemption may, notwithstanding the repeal by the 1981 Act of any provision of the 1948 Act, be paid out of the share premium account instead of out of profits, or partly out of that account and partly out of profits (but subject to the provisions of this Chapter so far as payment is out of profits).

(3) Any capital redemption reserve fund established before 15th June 1982 by a company for the purposes of section 58 of the Act of 1948 is to be known as the company's capital redemption reserve and be treated as if it had been established for the purposes of section 170 of this Act; and accordingly, a reference in any enactment or in the articles of any company, or in any other instrument, to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

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Marginal Citations

M18 1981 c. 62.

M19 1948 c. 38.

181 Definitions for Chapter VII.

In this Chapter—

(a) "distributable profits", in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution (within the meaning given by section 263(2)) equal in value to the payment, and

(b) "permissible capital payment" means the payment permitted by section 171;

and references to payment out of capital are to be construed in accordance with section 171.

CHAPTER VIII

MISCELLANEOUS PROVISIONS ABOUT SHARES AND DEBENTURES

Share and debenture certificates, transfers and warrants

182 Nature, transfer and numbering of shares.

(1) The shares or other interest of any member in a company—

(a) are personal estate or, in Scotland, moveable property and are not in the nature of real estate or heritage,

(b) are transferable in manner provided by the company's articles, but subject to the [M20]Stock Transfer Act 1963 (which enables securities of certain descriptions to be transferred by a simple process) **[**[F122]and to regulations made under section 207 of the Companies Act 1989 (which enable title to securities to be evidenced and transferred without a written instrument).**][**[F123]and to regulations made under section 207 of the Companies Act 1989 (which enable title to securities to be evidenced and transferred without a written instrument).**]**.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number; except that, if at any time all the issued shares in a company, or all the issued shares in it of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks pari passu for all purposes with all shares of the same class for the time being issued and fully paid up.

Textual Amendments

F122 Words in s. 182(1)(b) inserted (26.11.2001) by S.I. 2001/3755, reg. 51, **Sch. 7 Pt. I para. 7** (with regs. 39, 45)

F123 Words in s. 182(1)(b) inserted (19.12.1995) by S.I. 1995/3272, **reg. 40(1)**

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Modifications etc. (not altering text)
C129 S. 182(1)(b) excluded (12.2.1992) by S.I. 1992/225, **reg. 18(2)(a)**.

Marginal Citations
M20 1963 c. 18.

183 Transfer and registration.

(1) It is not lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to it, or the transfer is an exempt transfer within the [M21]Stock Transfer Act 1982 **[**[F124]or is in accordance with regulations made under section 207 of the Companies Act 1989.**]**

This applies notwithstanding anything in the company's articles.

(2) Subsection (1) does not prejudice any power of the company to register as shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(3) A transfer of the share or other interest of a deceased member of a company made by his personal representative, although the personal representative is not himself a member of the company, is as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(4) On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(5) If a company refuses to register a transfer of shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

(6) If default is made in complying with subsection (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Textual Amendments
F124 Words in s. 183(1) inserted (26.11.2001) by S.I. 2001/3755, reg. 51, **Sch. 7 Pt. I para. 8** (with regs. 39, 45)

Modifications etc. (not altering text)
C130 S. 183 excluded (12.2.1992) by S.I. 1992/225, **reg. 18(2)(a)**.
C131 S. 183(1) modified (1.12.2001) by 2000 c. 8, **s. 112(6)(7)(a)**; S.I. 2001/3538, **art. 2(1)**
C132 S. 183(4) excluded (26.11.2001) by S.I. 2001/3755, **reg. 38(7)** (with regs. 39, 45)
C133 S. 183(5) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **reg. 27(8)(9)**(with regs. 39, 45)
S. 183(5) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **reg. 28(8)(9)** (with regs. 39, 45)
C134 S. 183(5) applied (with modifications) (19.12.1995) by S.I 1995/3272, reg. 23(8)
C135 S. 183(6) applied (26.11.2001) by virtue of S.I. 2001/3755, **reg. 32(9)** (with regs. 39, 45)
S. 183(6) applied (26.11.2001) by S.I. 2001/3755, **reg. 33(1)** (with regs. 39, 45)
S. 183(6) applied (26.11.2001) by S.I. 2001/3755, **reg. 42(12)** (with regs. 39, 45)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M21 1982 c. 41.

184 Certification of transfers.

(1) The certification by a company of any instrument of transfer of any shares in, or debentures of, the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a prima facie title to the shares or debentures in the transferor named in the instrument.

However, the certification is not to be taken as a representation that the transferor has any title to the shares or debentures.

(2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.

(3) For purposes of this section—

(a) an instrument of transfer is deemed certificated if it bears the words "certificate lodged" (or words to the like effect);

(b) the certification of an instrument of transfer is deemed made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf, and

(ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by an officer or servant either of the company or of a body corporate so authorised;

(c) a certification is deemed signed by a person if—

(i) it purports to be authenticated by his signature or initials (whether handwritten or not), and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by a person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

185 Duty of company as to issue of certificates.

(1) Subject to the following provisions, every company shall—

(a) within 2 months after the allotment of any of its shares, debentures or debenture stock, and

(b) within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company,

complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred (unless the conditions of issue of the shares, debentures or debenture stock otherwise provide).

(2) For this purpose, "transfer" means a transfer duly stamped and otherwise valid, or an exempt transfer within the [M22]Stock Transfer Act 1982, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

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(3) Subsection (1) does not apply in the case of a transfer to any person where, by virtue of regulations under section 3 of [M23]the Stock Transfer Act 1982, he is not entitled to a certificate or other document of or evidencing title in respect of the securities transferred; but if in such a case the transferee—

(a) subsequently becomes entitled to such a certificate or other document by virtue of any provision of those regulations, and

(b) gives notice in writing of that fact to the company,

this section has effect as if the reference in subsection (1)(b) to the date of the lodging of the transfer were a reference to the date of the notice.

[[F125](4) Subsection (4A) applies in relation to a company—

(a) of which shares or debentures are allotted to a financial institution,

(b) of which debenture stock is allotted to a financial institution, or

(c) with which a transfer for transferring shares, debentures or debenture stock to a financial institution is lodged.

(4A) The company is not required, in consequence of that allotment or transfer, to comply with subsection (1).

(4B) "Financial institution" means—

(a) a recognised clearing house acting in relation to a recognised investment exchange; or

(b) a nominee of—

(i) a recognised clearing house acting in that way; or

(ii) a recognised investment exchange.

(4C) No person may be a nominee for the purposes of this section unless he is a person designated for those purposes in the rules of the recognised investment exchange in question.

(4D) Expressions used in subsections (4B) and (4C) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.**]**

(5) If default is made in complying with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) If a company on which a notice has been served requiring it to make good any default in complying with subsection (1) fails to make good the default within 10 days after service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, exercise the power of the following subsection.

(7) The court may make an order directing the company and any officer of it to make good the default within such time as may be specified in the order; and the order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of it responsible for the default.

Textual Amendments

F125 S. 185(4)-(4D) substituted (1.12.2001) for s. 185(4) by S.I. 2001/3649, **art. 7**

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Modifications etc. (not altering text)

C136 S. 185 excluded (12.2.1992) by S.I. 1992/225, **reg. 48(1)**.

C137 S. 185 applied (with modifications) (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), **art. 3(7)**

C138 S. 185(1)(b) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **reg. 32(8)** (with regs. 39, 45)
S. 185(1)(b) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **reg. 42(5)(6)** (with regs. 39, 45)

C139 S. 185(1)(b) applied (with modifications) (19.12.1995) by S.I. 1995/3272, **reg. 26(3)**

Marginal Citations

M22 1982 c. 41.

M23 1982 c. 41.

[F126 186 Certificate to be evidence of title.

[A certificate under the common seal of the company . . . F128 specifying any shares F127(1)**]** held by a member is—

(a) in England and Wales, prima facie evidence, and

(b) in Scotland, sufficient evidence unless the contrary is shown, of his title to the shares.**]**

[(2) Without prejudice to subsection (1), as respects Scotland a certificate specifying any shares held by a member and subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995 is, unless the contrary is shown, sufficient evidence of his title to the shares.**]**

Textual Amendments

F126 S. 186 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 5**

F127 S. 186(1) re numbered (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 55** (with ss. 9(3)(5)(7), 13, 14(3))

F128 Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), Sch. 8 para. 33(4), **Sch. 9**

Modifications etc. (not altering text)

C140 S. 186 excluded (26.11.2001) by S.I. 2001/3755, **reg. 38(3)(a)** (with regs. 39, 45)

C141 S. 186 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**
S. 186 excluded (12.2.1992) by S.I. 1992/225, **reg. 48(2)**.

187 Evidence of grant of probate or confirmation as executor.

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company as sufficient evidence of the grant.

This has effect notwithstanding anything in the company's articles.

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[F129 188 Issue and effect of share warrant to bearer.

(1) A company limited by shares may, if so authorised by its articles, issue with respect to any fully paid shares a warrant ("a share warrant") stating that the bearer of the warrant is entitled to the shares specified in it.

(2) A share warrant issued under the company's common seal **[**F130(or, in the case of a company registered in Scotland, subscribed in accordance with the Requirements of Writing (Scotland) Act 1995)**]** . . . F131entitles the bearer to the shares specified in it; and the shares may be transferred by delivery of the warrant.

(3) A company which issues a share warrant may, if so authorised by its articles, provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant.**]**

Textual Amendments

F129 S. 188 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 6**

F130 Words in s. 188(2) inserted (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 56** (with ss. 9(3)(5)(7), 13, 14(3))

F131 Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), Sch. 8 para. 33(5), **Sch. 9**

189 Offences in connection with share warrants (Scotland).

(1) If in Scotland a person—

(a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or

(b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered;

he is on conviction thereof liable to imprisonment or a fine, or both.

(2) If in Scotland a person without lawful authority or excuse (proof whereof lies on him) —

(a) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be—

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or

(ii) a blank share warrant or coupon so issued or made; or

(iii) a part of such a share warrant or coupon; or

(b) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or

(c) knowingly has in his custody or possession any such plate, wood, stone, or other material;

he is on conviction thereof liable to imprisonment or a fine, or both.

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Debentures

190 Register of debenture holders.

(1) A company registered in England and Wales shall not keep in Scotland any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.

(2) A company registered in Scotland shall not keep in England and Wales any such register or duplicate as above-mentioned.

(3) Neither a register of holders of debentures of a company nor a duplicate of any such register or part of any such register which is kept outside Great Britain shall be kept in England and Wales (in the case of a company registered in England and Wales) or in Scotland (in the case of a company registered in Scotland) elsewhere than—

(a) at the company's registered office; or

(b) at any office of the company at which the work of making it up is done; or

(c) if the company arranges with some other person for the making up of the register or duplicate to be undertaken on its behalf by that other person, at the office of that other person at which the work is done.

(4) Where a company keeps (in England and Wales or in Scotland, as the case may be) both such a register and such a duplicate, it shall keep them at the same place.

(5) Every company which keeps any such register or duplicate in England and Wales or Scotland shall send to the registrar of companies notice (in the prescribed form) of the place where the register or duplicate is kept and of any change in that place.

(6) But a company is not bound to send notice under subsection (5) where the register or duplicate has, at all times since it came into existence, been kept at the company's registered office.

Modifications etc. (not altering text)
C142 S. 190 excluded by S.I. 1985/724, **art. 4(4)**
C143 S. 190 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 14(2)** (with regs. 39, 45)

191 Right to inspect register.

(1) Every register of holders of debentures of a company shall, except when duly closed [F132] . . ., be open to the inspection—

(a) of the registered holder of any such debentures or any holder of shares in the company without fee; and

(b) of any other person on payment of **[**[F133]such fee as may be prescribed**]**.

(2) Any such registered holder of debentures or holder of shares, or any other person, may require a copy of the register of the holders of debentures of the company or any part of it, on payment of **[**[F134]such fee as may be prescribed**]**.

(3) A copy of any trust deed for securing an issue of debentures shall be forwarded to every holder of any such debentures at his request on payment **[**[F135]of such fee as may be prescribed**]**— [F136]

(a) . . . . . .

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(b) . . . . . .

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) Where a company is in default as above-mentioned, the court may by order compel an immediate inspection of the register or direct that the copies required be sent to the person requiring them.

(6) For purposes of this section, a register is deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

(7) Liability incurred by a company from the making or deletion of an entry in its register of debenture holders, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

This is without prejudice to any lesser period of limitation.

Textual Amendments

F132 Words in s. 191(1) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(4)(a), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

F133 Words in s. 191(1)(b) substituted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(4)(a)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.

F134 Words in s. 191(2) substituted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(4)(b)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.

F135 Words in s. 191(3) inserted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(4)(c)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.

F136 S. 191(3)(*a*)(*b*) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(4)(c), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

Modifications etc. (not altering text)

C144 S. 191 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 14(2)** (with regs. 39, 45)

C145 S. 191 modified (12.2.1992) by S.I. 1992/225, reg. 16, **Sch. 2 para.2**.

C146 S. 191(1) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.
S. 191(1) amended (1.11.1991) by S.I. 1991/1998, **reg. 4(2)(b)**.

C147 S. 191(1)(2)(4)(5) applied (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 15(5)** (with regs. 39, 45)

C148 S. 191(2) amended (1.11.1991) by S.I. 1991/1998, **reg. 4(3)(b)**.

C149 S. 191(4) extended (12.2.1992) by S.I. 1992/225, **reg. 91(2)**.

192 Liability of trustees of debentures.

(1) Subject to this section, any provision contained—

(a) in a trust deed for securing an issue of debentures, or

(b) in any contract with the holders of debentures secured by a trust deed,

is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the

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degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) does not invalidate—

(a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) does not operate—

(a) to invalidate any provision in force on 1st July 1948 so long as any person then entitled to the benefit of that provision or afterwards given the benefit of that provision under the following subsection remains a trustee of the deed in question; or

(b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either—

(a) to all trustees of the deed, present and future; or

(b) to any named trustees or proposed trustees of it,

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

Modifications etc. (not altering text)
C150 S. 192 excluded (26.11.2001) by S.I. 2001/3755, **reg. 40(2)** (with regs. 39, 45)

193 Perpetual debentures.

A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency (however remote), or on the expiration of a period (however long), any rule of equity to the contrary notwithstanding.

This applies to debentures whenever issued, and to deeds whenever executed.

194 Power to re-issue redeemed debentures.

(1) Where (at any time) a company has redeemed debentures previously issued, then—

(a) unless provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

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(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company has, and is deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures, the person entitled to the debentures has, and is deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has (at any time) deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not deemed to have been redeemed by reason only of the company's account having ceased to be in debit while the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power which by this section is given to or deemed to be possessed by a company is to be treated as the issue of a new debenture for purposes of stamp duty; but it is not to be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

This applies whenever the issue or re-issue was made.

(5) A person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect of it, unless he had notice (or, but for his negligence, might have discovered) that the debenture was not duly stamped; but in that case the company is liable to pay the proper stamp duty and penalty.

195 Contract to subscribe for debentures.

A contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance.

[F137 196 Payment of debts out of assets subject to floating charge (England and Wales).

(1) The following applies in the case of a company registered in England and Wales, where debentures of the company are secured by a charge which, as created, was a floating charge.

(2) If possession is taken, by or on behalf of the holders of any of the debentures, of any property comprised in or subject to the charge, and the company is not at that time in course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the person taking possession in priority to any claims for principal or interest in respect of the debentures.

(3) "Preferential debts" means the categories of debts listed in Schedule 6 to the Insolvency Act; and for the purposes of that Schedule "the relevant date" is the date of possession being taken as above mentioned.

(4) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.]

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Textual Amendments

F137 S. 196 substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C151 S. 196 applied (11.12.1999) by S.I. 1999/2979, **reg. 14(5)(a)(ii)**

C152 S. 196 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 10(6)**

C153 S. 196 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), regs. 1(1), 46, **Sch. para. 1**

C154 S. 196(3) applied (7.2.1994) by 1993 c. 48, ss. 128, 193(2), **Sch. 4 para. 4(1)(a)**; S.I. 1994/86, **art 2**

197 Debentures to bearer (Scotland).

Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.

PART VI

DISCLOSURE OF INTERESTS IN SHARES

Individual and group acquisitions

198 Obligation of disclosure: the cases in which it may arise and "the relevant time".

(1) Where a person either—

(a) to his knowledge acquires an interest in shares comprised in a public company's relevant share capital, or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised), or

(b) becomes aware that he has acquired an interest in shares so comprised or that he has ceased to be interested in shares so comprised in which he was previously interested,

then in certain circumstances he comes under an obligation ("the obligation of disclosure") to make notification to the company **[**[F138]with respect to his interests (if any)**]**, in its shares.

(2) In relation to a public company, "relevant share capital" means the company's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company; and it is hereby declared for the avoidance of doubt that—

(a) where a company's share capital is divided into different classes of shares, references in this Part to a percentage of the nominal value of its relevant share capital are to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately, and

(b) the temporary suspension of voting rights in respect of shares comprised in issued share capital of a company of any such class does not affect the application of this Part in relation to interests in those or any other shares comprised in that class.

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(3) Where, otherwise than in circumstances within subsection (1), a person—

(a) is aware at the time when it occurs of any change of circumstances affecting facts relevant to the application of the next following section to an existing interest of his in shares comprised in a company's share capital of any description, or

(b) otherwise becomes aware of any such facts (whether or not arising from any such change of circumstances),

then in certain circumstances he comes under the obligation of disclosure.

(4) The existence of the obligation in a particular case depends (in part) on circumstances obtaining before and after whatever is in that case the relevant time; and that is—

(a) in a case within subsection (1)(a) or (3)(a), the time of the event or change of circumstances there mentioned, and

(b) in a case within subsection (1)(b) or (3)(b), the time at which the person became aware of the facts in question.

Textual Amendments

F138 Words in s. 198(1) substituted (18.9.1993) by S.I. 1993/1819, **reg.3**

199 Interests to be disclosed.

(1) For purposes of the obligation of disclosure, the interests to be taken into account are those in relevant share capital of the company concerned.

[F139(2) Where a person is interested in shares comprised in relevant share capital, then—

(a) if in some or all of those shares he has interests which are material interests, he has a notifiable interest at any time when the aggregate nominal value of the shares in which those material interests subsist is equal to or more than 3 per cent. of the nominal value of that share capital; and

(b) he has a notifiable interest at any time when, not having such an interest by virtue of paragraph (a), the aggregate nominal value of the shares in which he has interests (whether or not including material interests) is equal to or more than 10 per cent. of the nominal value of the relevant share capital.

(2A) For the purposes of this Part, a material interest is any interest other than—

(a) an interest which a person **[**F140who may lawfully**]** manage investments belonging to another has by virtue of having the management of such investments under an agreement in or evidenced in writing;

(b) an interest which a person has by virtue of being the operator of—

(i) an authorised unit trust scheme;

(ii) a recognised scheme; or

(iii) a UCITS (as defined in subsection (8));

[F141(bb) an interest belonging to an **[**F142open-ended investment company**]**;**]**

(c) an interest in shares in a listed company which, if that company were not listed, would fall to be disregarded by virtue of section 209(10); or

(d) an interest of another which a person is taken to have by virtue of the application of section 203 or 205, where the interest of that other person falls within paragraph **[**F143(a), (b),(bb) or (c)**]**.**]**

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(3) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of his interest) are taken to be what he knows the facts to be at that time.

(4) The obligation of disclosure arises under section 198(1) or (3) where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.

(5) The obligation also arises under section 198(1) **[**F144or (3)**]** where—

(a) the person had a notifiable interest immediately before the relevant time, but does not have such an interest immediately after it, or

(b) he had a notifiable interest immediately before that time, and has such an interest immediately after it, but the percentage levels of his interest immediately before and immediately after that time are not the same.

[F145(6) For the purposes of subsection (2A), a person ("A") may lawfully manage investments belonging to another if—

(a) A can manage those investments in accordance with a permission which A has under Part 4 of the Financial Services and Markets Act 2000;

(b) A is an EEA firm of the kind mentioned in sub-paragraph (a) or (b) of paragraph 5 of Schedule 3 to that Act, and can manage those investments in accordance with its EEA authorisation;

(c) A can, in accordance with section 327 of that Act, manage those investments without contravening the prohibition contained in section 19 of that Act; or

(d) A can lawfully manage those investments in another Member State and would, if he were to manage those investments in the United Kingdom, require permission under Part 4 of that Act.

F145(7) References in this section to the management of investments must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.**]**

[F146(8) In this Part "UCITS" means a collective investment scheme which—

(a) is constituted in a member State other than the United Kingdom, and

(b) **[**F147is certified by the competent authority in that member State as complying with the conditions imposed**]**by Council Directive 85/611/EEC[M24] co-ordinating the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;

and **[**F148subsection (5) of section 264 of the Financial Services and Markets Act 2000**]** (meaning of "constituted in a member State") applies for the purposes of paragraph (a) of this subsection as it applies for the purposes of that section.**]**

Textual Amendments

F139 S. 199(2)(2A) substituted (18.9.1993) for s. 199(2) by S.I. 1993/1819, **reg. 4(1)**

F140 Words in s. 199(2A)(a) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 8(1)(2)

F141 S. 199(2A)(bb) inserted (6.1.1997) by S.I 1996/2827, reg. 75, Sch. 8 Pt. I para. 5

F142 Words in s. 199(2A)(bb) substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 4(1)(2)**; S.I. 2001/3538, **art. 2(1)**

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F143 Words in s. 199(2A)(d) substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 4(1)(3)**; S.I. 2001/3538, **art. 2(1)**
F144 Words in s. 199(5) inserted (18.9.1993) by S.I. 1993/1819, **reg. 4(2)**
F145 S. 199(6)(7) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 8(1)(3)
F146 S. 199(8) inserted (18.9.1993) by S.I. 1993/1819, **reg. 4(3)**
F147 Words in s. 199(8)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 8(1)(4)(a)
F148 Words in s. 199(8) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 8(1)(4)(b)

Marginal Citations
M24 OJ No L375, 31.12.85, p.3.

[F149 200 "Percentage level" in relation to notifiable interests.

(1) Subject to the qualifications mentioned below, "percentage level", in section 199(5)(b), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person has material interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.

(2) In relation to a notifiable interest which a person has when the aggregate nominal value of the shares in which he is interested is equal to or more than 10 per cent. of the nominal value of that relevant share capital, subsection (1) shall have effect as if for the words "has material interests" there were substituted "is interested".

(3) Where the nominal value of the share capital is greater immediately after the relevant time than it was immediately before, the percentage level of the person's interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.**]**

Textual Amendments
F149 S. 200 substituted (18.9.1993) by S.I. 1993/1819, **reg.5**

F150 201 . . . . . .

Textual Amendments
F150 S. 201 repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

202 Particulars to be contained in notification.

(1) Where notification is required by section 198 with respect to a person's interest (if any) in shares comprised in relevant share capital of a public company, the obligation to make the notification must . . . F151 be performed within the period of **[**F152 2 days**]** next following the day on which that obligation arises; and the notification must be in writing to the company.

(2) The notification must specify the share capital to which it relates, and must also—

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[F153(a) subject to subsections (2A) and (2B), state the number of shares comprised in that share capital in which the person making the notification knows he had material interests immediately after the time when the obligation arose, or**]**

(b) in a case where the person no longer has a notifiable interest in shares comprised in that share capital, state that he no longer has that interest.

[F154(2A) Where, immediately after the relevant time, the aggregate nominal value of the shares in which the person making the notification is interested is equal to or more than 10 per cent. of the nominal value of that relevant share capital, subsection (2)(a) shall have effect as if for the words "had material interests" there were substituted "was interested".

(2B) Nothing in subsection (2) or (2A) requires a notification to state, in relation to any shares, whether the interest of the person making the notification is (or is not) a material interest.**]**

[F155(3) A notification (other than one stating that a person no longer has a notifiable interest) shall include the following particulars, so far as known to the person making the notification at the date when it is made—

(a) the identity of each registered holder of shares to which the notification relates and the number of such shares held by each of them, and

(b) the number of such shares in which the interest of the person giving the notification is such an interest as is mentioned in section 208(5).**]**

(4) A person who has an interest in shares comprised in a company's relevant share capital, that interest being notifiable, is under obligation to notify the company in writing—

(a) of any particulars in relation to those shares which are specified in subsection (3), and

(b) of any change in those particulars,

of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he comes under any further obligation of disclosure with respect to his interest in shares comprised in that share capital.

An obligation arising under this subsection must be performed within the period of **[**F156 2 days**]** next following the day on which it arises.

(5) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in a public company's relevant share capital, is to either of the following—

(a) the date of any notification made by him with respect to his interest under this Part, and

(b) where he has failed to make a notification, the date on which the period allowed for making it came to an end.

(6) A person who at any time has an interest in shares which is notifiable is to be regarded under subsection (4) as continuing to have a notifiable interest in them unless and until he comes under obligation to make a notification stating that he no longer has such an interest in those shares.

Textual Amendments

F151 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

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F152 Words substituted (in force on 31.5.1990 subject to a saving in S.I. 1990/713, **art. 5**) by Companies Act 1989 (c. 40, SIF 27), **ss. 134(3)**, 213(2)
F153 S. 202(2)(a) substituted (18.9.1993) by S.I. 1993/1819, **reg. 6(1)**
F154 S. 202(2A)(2B) inserted (18.9.1993) by S.I. 1993/1819, **reg. 6(2)**
F155 S. 202(3) substituted (1. 11. 1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 134(4)**, 213(2); S.I. 1991/1996, **art. 2(2)(a)**
F156 Words substituted (in force on 31.5.1990 subject to a saving in S.I. 1990/713, **art. 5**) by Companies Act 1989 (c. 40, SIF 27), **ss. 134(3)**, 213(2)

203 Notification of family and corporate interests.

(1) For purposes of sections 198 to 202, a person is taken to be interested in any shares in which his spouse or any infant child or step-child of his is interested; and "infant" means, in relation to Scotland, **[**[F157] person under the age of 18 years**]**.

(2) For those purposes, a person is taken to be interested in shares if a body corporate is interested in them and—

(a) that body or its directors are accustomed to act in accordance with his directions or instructions, or

(b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(3) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate ("the effective voting power") then, for purposes of subsection (2)(b), the effective voting power is taken as exercisable by that person.

(4) For purposes of subsections (2) and (3), a person is entitled to exercise or control the exercise of voting power if—

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or

(b) he is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.

Textual Amendments

F157 Words in s. 203(1) substituted (S.) (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), **Sch. 1 para. 39** (with s. 1(3))

204 Agreement to acquire interests in a particular company.

(1) In certain circumstances the obligation of disclosure may arise from an agreement between two or more persons which includes provision for the acquisition by any one or more of them of interests in shares of a particular public company ("the target company"), being shares comprised in the relevant share capital of that company.

(2) This section applies to such an agreement if—

(a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in that company's shares acquired in pursuance of

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the agreement (whether or not together with any other interests of theirs in the company's shares to which the agreement relates), and

(b) any interest in the company's shares is in fact acquired by any of the parties in pursuance of the agreement;

and in relation to such an agreement references below in this section, and in sections 205 and 206, to the target company are to the company which is the target company for that agreement in accordance with this and the previous subsection.

(3) The reference in subsection (2)(a) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(4) Once any interest in shares in the target company has been acquired in pursuance of such an agreement as is mentioned above, this section continues to apply to that agreement irrespective of—

(a) whether or not any further acquisitions of interest in the company's shares take place in pursuance of the agreement, and

(b) any change in the persons who are for the time being parties to it, and

(c) any variation of the agreement,

so long as the agreement continues to include provisions of any description mentioned in subsection (2)(a).

References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(5) In this section, and also in references elsewhere in this Part to an agreement to which this section applies, "agreement" includes any agreement or arrangement; and references in this section to provisions of an agreement—

(a) accordingly include undertakings, expectations or understandings operative under any arrangement, and

(b) (without prejudice to the above) also include any provisions, whether express or implied and whether absolute or not.

(6) However, this section does not apply to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; nor does the section apply to an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

Modifications etc. (not altering text)

C155 S. 204(5)(6) applied (20.5.2006) by The Takeovers Directive (Interim Implementation) Regulations 2006 (S.I. 2006/1183), reg. 30, **Sch. 2 para. 8(8)**

205 Obligation of disclosure arising under s. 204.

(1) In the case of an agreement to which section 204 applies, each party to the agreement is taken (for purposes of the obligation of disclosure) to be interested in all shares in the target company in which any other party to it is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

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(2) For those purposes, and also for those of the next section, an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 204 and this section in relation to the agreement.

(3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 203 or by the application of section 204 and this section in relation to any other agreement with respect to shares in the target company to which he is a party.

(4) A notification with respect to his interest in shares in the target company made to that company under this Part by a person who is for the time being a party to an agreement to which section 204 applies shall—

(a) state that the person making the notification is a party to such an agreement,

(b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and

(c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 204 and this section and, if so, the number of those shares.

(5) Where a person makes a notification to a company under this Part in consequence of ceasing to be interested in any shares of that company by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 204 applies, the notification shall include a statement that he or that other person has ceased to be a party to the agreement (as the case may require) and also (in the latter case) the name and (if known to him) the address of that other.

206 Obligation of persons acting together to keep each other informed.

(1) A person who is a party to an agreement to which section 204 applies is subject to the requirements of this section at any time when—

(a) the target company is a public company, and he knows it to be so, and

(b) the shares in that company to which the agreement relates consist of or include shares comprised in relevant share capital of the company, and he knows that to be the case; and

(c) he knows the facts which make the agreement one to which section 204 applies.

(2) Such a person is under obligation to notify every other party to the agreement, in writing, of the relevant particulars of his interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company—

(a) on his first becoming subject to the requirements of this section, and

(b) on each occurrence after that time while he is still subject to those requirements of any event or circumstances within section 198(1) (as it applies to his case otherwise than by reference to interests treated as his under section 205 as applying to that agreement).

(3) The relevant particulars to be notified under subsection (2) are—

(a) the number of shares (if any) comprised in the target company's relevant share capital in which the person giving the notice would be required to state his interest **[**F158if he were under the wide obligation of disclosure with respect to

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that interest**]** (apart from the agreement) immediately after the time when the obligation to give notice under subsection (2) arose, and

(b) the relevant particulars with respect to the registered ownership of those shares, so far as known to him at the date of the notice **[**F159and

(c) except in the circumstance mentioned in subsection (3A), the number of shares (if any) out of the number given under paragraph (a) in which he knows that, immediately after the time when the obligation to give the notice arose, he had interests (apart from the agreement) which were not material interests.**]**

[F160(3A) The circumstance referred to in subsection (3)(c) is that the aggregate nominal value of the shares comprised in relevant share capital in which the person is interested (apart from the agreement) is equal to or more than 10 per cent. of the nominal value of the relevant share capital.

(3B) For the purposes of subsection (3)(a) "the wide obligation of disclosure" means the obligation to disclose the number of shares in which the person concerned has any interest (material or otherwise).**]**

(4) A person who is for the time being subject to the requirements of this section is also under obligation to notify every other party to the agreement, in writing—

(a) of any relevant particulars with respect to the registered ownership of any shares comprised in relevant share capital of the target company in which he is interested apart from the agreement, and

(b) of any change in those particulars,

of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he becomes subject to any further obligation to give notice under subsection (2) with respect to his interest in shares comprised in that share capital.

(5) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in the target company's relevant share capital, is to either of the following—

(a) the date of any notice given by him with respect to his interest under subsection (2), and

(b) where he has failed to give that notice, the date on which the period allowed by this section for giving the notice came to an end.

(6) A person who is a party to an agreement to which section 204 applies is under an obligation to notify each other party to the agreement, in writing, of his current address—

(a) on his first becoming subject to the requirements of this section, and

(b) on any change in his address occurring after that time and while he is still subject to those requirements.

(7) A reference to the relevant particulars with respect to the registered ownership of shares is to such particulars in relation to those shares as are mentioned in section 202(3)(a) or (b).

(8) A person's obligation to give any notice required by this section to any other person must be performed within the period of **[**F1612 days**]** next following the day on which that obligation arose.

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Textual Amendments

F158 Words in s. 206(3)(a) substituted (18.9.1993) by S.I. 1993/1819, **reg. 7(1)**

F159 S. 206(3)(c) and the preceding word "and" inserted (18.9.1993) by S.I. 1993/1819, **reg. 7(1)**

F160 S. 206(3A)(3B) inserted (18.9.1993) by S.I. 1993/1819, **reg. 7(2)**

F161 Words substituted (in force on 31.5.1990 subject to a saving in S.I. 1990/713, **art. 5**) by Companies Act 1989 (c. 40, SIF 27), **ss. 134(3)**, 213(2)

207 Interests in shares by attribution.

(1) Where section 198 or 199 refers to a person acquiring an interest in shares or ceasing to be interested in shares, that reference in certain cases includes his becoming or ceasing to be interested in those shares by virtue of another person's interest.

(2) Such is the case where he becomes or ceases to be interested by virtue of section 203 or (as the case may be) section 205 whether—

(a) by virtue of the fact that the person who is interested in the shares becomes or ceases to be a person whose interests (if any) fall by virtue of either section to be treated as his, or

(b) in consequence of the fact that such a person has become or ceased to be interested in the shares, or

(c) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 204 applies to which the person interested in the shares is for the time being a party, or

(d) in consequence of the fact that an agreement to which both he and that person are parties becomes or ceases to be one to which that section applies.

(3) The person is then to be treated as knowing he has acquired an interest in the shares or (as the case may be) that he has ceased to be interested in them, if and when he knows both—

(a) the relevant facts with respect to the other person's interest in the shares, and

(b) the relevant facts by virtue of which he himself has become or ceased to be interested in them in accordance with section 203 or 205.

(4) He has the knowledge referred to in subsection (3)(a) if he knows (whether contemporaneously or not) either of the subsistence of the other person's interest at any material time or of the fact that the other has become or ceased to be interested in the shares at any such time; and "material time" is any time at which the other's interests (if any) fall or fell to be treated as his under section 203 or 205.

(5) A person is to be regarded as knowing of the subsistence of another's interest in shares or (as the case may be) that another has become or ceased to be interested in shares if he has been notified under section 206 of facts with respect to the other's interest which indicate that he is or has become or ceased to be interested in the shares (whether on his own account or by virtue of a third party's interest in them).

208 Interests in shares which are to be notified.

(1) This section applies, subject to the section next following, in determining for purposes of sections 198 to 202 whether a person has a notifiable interest in shares.

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(2) A reference to an interest in shares is to be read as including an interest of any kind whatsoever in the shares; and accordingly there are to be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

(3) Where property is held on trust and an interest in shares is comprised in the property, a beneficiary of the trust who apart from this subsection does not have an interest in the shares is to be taken as having such an interest.

(4) A person is taken to have an interest in shares if—

(a) he enters into a contract for their purchase by him (whether for cash or other consideration), or

(b) not being the registered holder, he is entitled to exercise any right conferred by the holding of the shares or is entitled to control the exercise of any such right.

(5) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust—

(a) he has a right to call for delivery of the shares to himself or to his order, or

(b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares,

whether in any case the right or obligation is conditional or absolute.

(6) For purposes of subsection (4)(b), a person is entitled to exercise or control the exercise of any right conferred by the holding of shares if he—

(a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or

(b) is under an obligation (whether so subject or not) the fulfilment of which would make him so entitled.

(7) Persons having a joint interest are taken each of them to have that interest.

(8) It is immaterial that shares in which a person has an interest are unidentifiable.

[F162 209 Interests to be disregarded.

(1) Subject to subsections (5) and (6), the following interests in shares are disregarded for the purposes of sections 198 to 202—

(a) where property is held on trust and an interest in shares is comprised in that property, an interest of a person, being a discretionary interest or an interest in reversion or remainder or an interest of a bare trustee;

(b) an interest which a person has by virtue of holding units in—

(i) an authorised unit trust scheme;

(ii) a recognised scheme; or

(iii) a UCITS;

(c) an interest of a person which is an exempt security interest within the meaning of subsection (2);

(d) an interest which a person has by virtue of his being a beneficiary under a retirement benefits scheme as defined in section 611 of the Income and Corporation Taxes Act 1988 [M25];

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(e) an interest which a person has in shares as a result of the acceptance of a takeover offer made by him (either alone or jointly with one or more other persons) for shares where—

(i) the offer is subject to a threshold acceptance condition; and

(ii) the threshold acceptance condition is not fulfilled;

(f) an interest of a person which is an exempt custodian interest within the meaning of subsection (4);

(g) an interest which a person has by virtue of his being a personal representative of any estate;

(h) an interest which a person has—

(i) by virtue of his being a trustee of an authorised unit trust scheme, F163 . . .

(ii) in relation to a recognised scheme or a UCITS, by virtue of his being entrusted with the custody of the property in question (whether or not under a trust) **[**F164or.

[by virtue of his being a depositary, within the meaning of the Open-F165(iii) Ended Investment Companies Regulations 2001, of an open-ended investment company.**]]**

[An interest in shares is an exempt security interest for the purposes of subsection (1) F166(2) (c) if the condition mentioned in subsection (2A) is satisfied and it is held by—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act **[**F167which falls within article 1(1)(a) of the banking consolidation directive (within the meaning of that Schedule)**]**;

(c) a person authorised under the law of a member State other than the United Kingdom to accept deposits who—

(i) would not qualify for authorisation under paragraph 12 of Schedule 3 to that Act; and

(ii) would require permission under another provision of that Act to accept such deposits in the United Kingdom;

(d) an authorised insurance undertaking;

(e) a person authorised under the law of a member State to deal in securities or derivatives, who deals in securities or derivatives on a relevant stock exchange or a relevant investment exchange, whether as a member or otherwise;

(f) a relevant stock exchange;

(g) a relevant investment exchange;

(h) a recognised clearing house;

(i) the Bank of England; or

(j) the central bank of a member State other than the United Kingdom.

(2A) The condition is that the interest in the shares must be held by way of security only for the purposes of a transaction entered into in the ordinary course of his or its business as a person or other body falling within any of paragraphs (a) to (j) of subsection (2).

(2B) Paragraphs (a) to (c) of subsection (2) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

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(2C) But paragraph (a) of subsection (2) does not include—

(a) a building society incorporated, or deemed to be incorporated, under the Building Societies Act 1986; or

(b) a credit union, within the meaning of the Credit Unions Act 1979 of the Credit Unions (Northern Ireland) Order 1985.**]**

(3) For the purposes of subsection (1)(e)—

(a) "takeover offer" has the same meaning as in Part XIIIA; and

(b) "a threshold acceptance condition" means a condition that acceptances are received in respect of such proportion of the shares for which the takeover offer is made as is specified in or determined in accordance with the terms of the takeover offer.

(4) For the purposes of subsection (1)(f) an interest of a person is an exempt custodian interest if it is held by him—

(a) as a custodian (whether under a trust or by a contract); or

(b) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts in respect of the shares concerned.

(5) An interest referred to in any paragraph of subsection (1) (except for paragraph (c)) is disregarded only if the person referred to in the relevant paragraph or in subsection (4) is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned; and for this purpose he is not so entitled if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another.

(6) In the case of an interest referred to in paragraph (c) of subsection (1), an interest of a person referred to in subsection (2) is disregarded only if that person—

(a) is not entitled (within the meaning of subsection (5)) to exercise or control the exercise of voting rights in respect of the shares concerned; or

(b) is so entitled, but has not evidenced any intention to exercise them or control their exercise nor taken any step to do so.

(7) For the purposes of subsections (5) and (6), voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when the circumstances have arisen and for so long as they continue to obtain.

(8) An interest in shares of a company is also disregarded for the purposes of sections 198 to 202—

(a) if it is held by a market maker in securities or derivatives for the purposes of his business, but

(b) only in so far as it is not used by him for the purpose of intervening in the management of the company.

(9) For the purposes of subsection (8) a person is a market maker in securities or derivatives if—

(a) he is authorised under the law of a member State to deal in securities or derivatives and so deals on a relevant stock exchange or on a relevant investment exchange (whether as a member or otherwise); and

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(b) he holds himself out at all normal times as willing to acquire and dispose of securities or derivatives at prices specified by him and in so doing is subject to the rules of that exchange;

and he holds an interest for the purposes of his business if he holds it for the purposes of a business carried on by him as a market maker in a member State.

[Where—

F168(9A) (a) in pursuance of arrangements made with the operator of a relevant system—

(i) securities of a particular aggregate value are on any day transferred by means of that system from a person ("A") to another person ("B");

(ii) the securities are of kinds and amounts determined by the operator-system; and

(iii) the securities, or securities of the same kinds and amounts, are on the following day transferred by means of the relevant system from B to A; and

(b) the securities comprise any shares of a company,

any interest of B in those shares is also disregarded for the purposes of sections 198 to 202.

(9B) For the purposes of subsection (9A)—

(a) any day which, in England and Wales, is a non-business day for the purposes of the Bills of Exchange Act 1882 is disregarded; and

(b) expressions which are used in the **[**F169Uncertificated Securities Regulations 2001**]** have the same meanings as in those Regulations.**]**

(10) The following interests in shares in a public company which is not listed are also disregarded for the purposes of sections 198 to 202—

(a) an interest which subsists by virtue of—

(i) a scheme made under section 24 or 25 of the Charities Act 1993 M26, section 25 of the Charities Act (Northern Ireland) 1964 M27, section 11 of the Trustee Investments Act 1961 M28 or section 42 of the Administration of Justice Act 1982 M29, or

(ii) the scheme set out in the Schedule to the Church Funds Investment Measure 1958 M30 ;

(b) an interest of the Church of Scotland General Trustees or of the Church of Scotland Trust in shares held by them or of any other person in shares held by those Trustees or that Trust otherwise than as simple trustees;

(c) an interest for the life of himself or another of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the conditions mentioned in subsection (11) are satisfied;

F170(d) . . . . . .

(e) an interest of the Accountant General of the Supreme Court in shares held by him;

(f) an interest of the Public Trustee;

(g) an interest of the Probate Judge subsisting by virtue of section 3 of the Administration of Estates Act (Northern Ireland) 1955 M31.

(11) The conditions referred to in subsection (10)(c) are, in relation to a settlement—

(a) that it is irrevocable, and

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(b) that the settlor (within the meaning of section 670 of the Income and Corporation Taxes Act 1988) has no interest in any income arising under, or property comprised in, the settlement.

(12) A person is not by virtue of section 208(4)(b) taken to be interested in shares by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting, or has been appointed by a corporation to act as its representative at any meeting of a company or of any class of its members.

(13) In the application of subsection (1)(a) to property held on trust according to the law of Scotland, for the words "or remainder or an interest of a bare trustee" there shall be substituted "or in fee or an interest of a simple trustee".**]**

Textual Amendments

F162 S. 209 substituted (18.9.1993) by S.I. 1993/1819, **reg. 8**

F163 Word in s. 209(1)(h)(i) omitted (6.1.1997) by virtue of S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 6**

F164 S. 209(1)(h)(iii) and the word "or" immediately preceding it inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 6**

F165 S. 209(1)(h)(iii) substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 5**; S.I. 2001/3538, **art. 2(1)**

F166 S. 209(2)-(2C) substituted (1.12.2001) for s. 209(2) by S.I. 2001/3649, **arts. 1**, 9

F167 Words in s. 209(2)(b) inserted (27.4.2002) by The Electronic Money (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/765), **reg. 2(1)**

F168 S. 209(9A)(9B) inserted (15.7.1996) by S.I 1996/1560, reg. 2

F169 Words in s. 209(9B)(b) substituted (26.11.2001) by S.I. 2001/3755, reg. 51, **Sch. 7 para. 9** (with regs. 39, 45)

F170 S. 209(10)(d) repealed (1.7.1995) by 1994 c. 36, s. 21(2), **Sch. 2** (with s. 20); S.I. 1995/1317, **art. 2**

Modifications etc. (not altering text)

C156 S. 209(10) modified (1.1.1995 in accordance with Sch. para. 3 of the amending Act) by 1994 c. V, s. 1, Sch. para. 42(1)

Marginal Citations

M25 1988 c.1.

M26 1993 c.10.

M27 1964 c.33 (N.I.).

M28 1961 c.62.

M29 1982 c.53.

M30 1958 No.1.

M31 1955 c.24 (N.I.).

210 Other provisions about notification under this Part.

(1) Where a person authorises another ("the agent") to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a public company, he shall secure that the agent notifies him immediately of acquisitions or disposals effected by the agent which will or may give rise to any obligation of disclosure imposed on him by this Part with respect to his interest in that share capital.

(2) An obligation of disclosure imposed on a person by any provision of sections 198 to 202 is treated as not being fulfilled unless the notice by means of which it purports to

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be fulfilled identifies him and gives his address and, in a case where he is a director of the company, is expressed to be given in fulfilment of that obligation.

(3) A person who—

(a) fails to fulfil, within the proper period, an obligation of disclosure imposed on him by this Part, or

(b) in purported fulfilment of any such obligation makes to a company a statement which he knows to be false, or recklessly makes to a company a statement which is false, or

(c) fails to fulfil, within the proper period, an obligation to give another person a notice required by section 206, or

(d) fails without reasonable excuse to comply with subsection (1) of this section,

is guilty of an offence and liable to imprisonment or a fine, or both.

(4) It is a defence for a person charged with an offence under subsection (3)(c) to prove that it was not possible for him to give the notice to the other person required by section 206 within the proper period, and either—

(a) that it has not since become possible for him to give the notice so required, or

(b) that he gave the notice as soon after the end of that period as it became possible for him to do so.

(5) Where a person is convicted of an offence under this section (other than an offence relating to his ceasing to be interested in a company's shares), the Secretary of State may by order direct that the shares in relation to which the offence was committed shall, until further order, be subject to the restrictions of Part XV of this Act; and such an order may be made notwithstanding any power in the company's memorandum or articles enabling the company to impose similar restrictions on those shares.

[F171(5A) If the Secretary of State is satisfied that an order under subsection (5) may unfairly affect the rights of third parties in respect of shares then the Secretary of State, for the purpose of protecting such rights and subject to such terms as he thinks fit, may direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order, shall not constitute a breach of the restrictions of Part XV of this Act.**]**

(6) Sections 732 (restriction on prosecutions) and 733(2) and (3) (liability of directors, etc.) apply to offences under this section.

Textual Amendments

F171 S. 210(5A) inserted by S.I. 1991/1646, **reg.3**

[F172**210A Power to make further provision by regulations.**

(1) The Secretary of State may by regulations amend—

(a) the definition of "relevant share capital" (section 198(2)),

(b) the percentage giving rise to a "notifiable interest" (section 199(2)),

(c) the periods within which an obligation of disclosure must be fulfilled or a notice must be given (sections 202(1) and (4) and 206(8)),

(d) the provisions as to what is taken to be an interest in shares (section 208) and what interests are to be disregarded (section 209), and

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(e) the provisions as to company investigations (section 212);

and the regulations may amend, replace or repeal the provisions referred to above and make such other consequential amendments or repeals of provisions of this Part as appear to the Secretary of State to be appropriate.

(2) The regulations may in any case make different provision for different descriptions of company; and regulations under subsection (1)(b), (c) or (d) may make different provision for different descriptions of person, interest or share capital.

(3) The regulations may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate, and may in particular make provision as to the obligations of a person whose interest in a company's shares becomes or ceases to be notifiable by virtue of the regulations.

(4) Regulations under this section shall be made by statutory instrument.

(5) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.**]**

Textual Amendments

F172 S. 210A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 134(5)**, 213(2)

Registration and investigation of share acquisitions and disposals

211 Register of interests in shares.

(1) Every public company shall keep a register for purposes of sections 198 to 202, and whenever the company receives information from a person in consequence of the fulfilment of an obligation imposed on him by any of those sections, it is under obligation to inscribe in the register, against that person's name, that information and the date of the inscription.

(2) Without prejudice to subsection (1), where a company receives a notification under this Part which includes a statement that the person making the notification, or any other person, has ceased to be a party to an agreement to which section 204 applies, the company is under obligation to record that information against the name of that person in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).

(3) An obligation imposed by subsection (1) or (2) must be fulfilled within the period of 3 days next following the day on which it arises.

(4) The company is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.

(5) The register must be so made up that the entries against the several names entered in it appear in chronological order.

(6) Unless the register is in such form as to constitute in itself an index, the company shall keep an index of the names entered in the register which shall in respect of each name contain a sufficient indication to enable the information entered against it to be readily

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found; and the company shall, within 10 days after the date on which a name is entered in the register, make any necessary alteration in the index.

(7) If the company ceases to be a public company it shall continue to keep the register and any associated index until the end of the period of 6 years beginning with the day next following that on which it ceased to be such a company.

(8) The register and any associated index—

(a) shall be kept at the place at which the register required to be kept by the company by section 325 (register of directors' interests) is kept, and

(b) subject to the next subsection, shall be available for inspection in accordance with section 219 below.

(9) Neither the register nor any associated index shall be available for inspection in accordance with that section in so far as it contains information with respect to a company for the time being entitled to avail itself of the benefit conferred by **[**F173section 231(3)**]** (disclosure or shareholdings not required if it would be harmful to company's business).

(10) If default is made in complying with subsection (1) or (2), or with any of subsections (5) to (7), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(11) Any register kept by a company immediately before 15th June 1982 under section 34 of the M32Companies Act 1967 shall continue to be kept by the company under and for the purposes of this section.

Textual Amendments

F173 Words substituted (subject to transitional and saving provisions in S.I. 1990/355, **arts. 6–9**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 3**

Marginal Citations

M32 1967 c. 81.

212 Company investigations.

(1) A public company may by notice in writing require a person whom the company knows or has reasonable cause to believe to be or, at any time during the 3 years immediately preceding the date on which the notice is issued, to have been interested in shares comprised in the company's relevant share capital—

(a) to confirm that fact or (as the case may be) to indicate whether or not it is the case, and

(b) where he holds or has during that time held an interest in sharers so comprised, to give such further information as may be required in accordance with the following subsection.

(2) A notice under this section may require the person to whom it is addressed—

(a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company (held by him at any time during the 3-year period mentioned in subsection (1)),

(b) where the interest is a present interest and any other interest in the shares subsists or, in any case, where another interest in the shares subsisted during

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that 3-year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be required by the notice,

(c) where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.

(3) The particulars referred to in subsection (2)(a) and (b) include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to any agreement to which section 204 applies or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notice under this section shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.

(5) Sections 203 to 205 and 208 apply for the purpose of construing references in this section to persons interested in shares and to interests in shares respectively, as they apply in relation to sections 198 to 201 (but with the omission of any reference to section 209).

(6) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a public company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was interested in shares so comprised; and references above in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.

213 Registration of interests disclosed under s. 212.

(1) Whenever in pursuance of a requirement imposed on a person under section 212 a company receives information to which this section applies relating to shares comprised in its relevant share capital, it is under obligation to enter against the name of the registered holder of those shares, in a separate part of its register of interests in shares—

(a) the fact that the requirement was imposed and the date on which it was imposed, and

(b) any information to which this section applies received in pursuance of the requirement.

(2) This section applies to any information received in pursuance of a requirement imposed by section 212 which relates to the present interests held by any persons in shares comprised in relevant share capital of the company in question.

(3) Subsections (3) to (10) of section 211 apply in relation to any part of the register maintained in accordance with subsection (1) of this section as they apply in relation to the remainder of the register, reading references to subsection (1) of that section to include subsection (1) of this.

(4) In the case of a register kept by a company immediately before 15th June 1982 under section 34 of the [M33]Companies Act 1967, any part of the register so kept for the purposes of section 27 of the [M34]Companies Act 1976 shall continue to be kept by the company under and for the purposes of this section.

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Marginal Citations

M33 1967 c. 81.

M34 1976 c. 69.

214 Company investigation on requisition by members.

(1) A company may be required to exercise its powers under section 212 on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company.

(2) The requisition must—

(a) state that the requisitionists are requiring the company to exercise its powers under section 212,

(b) specify the manner in which they require those powers to be exercised, and

(c) give reasonable grounds for requiring the company to exercise those powers in the manner specified,

and must be signed by the requisitionists and deposited at the company's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section it is the company's duty to exercise its powers under section 212 in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the company and every officer of it who is in default is liable to a fine.

215 Company report to members.

(1) On the conclusion of an investigation carried out by a company in pursuance of a requisition under section 214, it is the company's duty to cause a report of the information received in pursuance of that investigation to be prepared, and the report shall be made available at the company's registered office within a reasonable period after the conclusion of that investigation.

(2) Where—

(a) a company undertakes an investigation in pursuance of a requisition under section 214, and

(b) the investigation is not concluded before the end of 3 months beginning with the date immediately following the date of the deposit of the requisition,

it is the duty of the company to cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation. Each such report shall be made available at the company's registered office within a reasonable period after the end of the period to which it relates.

(3) The period for making any report prepared under this section available as required by subsection (1) or (2) shall not exceed 15 days.

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(4) Such a report shall not include any information with respect to a company entitled to avail itself of the benefit conferred by **[**F174section 231(3)**]** (disclosure of shareholdings not required if it would be harmful to company's business); but where any such information is omitted, that fact shall be stated in the report.

(5) The company shall, within 3 days of making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.

(6) An investigation carried out by a company in pursuance of a requisition under section 214 is regarded for purposes of this section as concluded when the company has made all such inquiries as are necessary or expedient for the purposes of the requisition and in the case of each such inquiry, either a response has been received by the company or the time allowed for a response has elapsed.

(7) A report prepared under this section—

(a) shall be kept at the company's registered office from the day on which it is first available there in accordance with subsection (1) or (2) until the expiration of 6 years beginning with the day next following that day, and

(b) shall be available for inspection in accordance with section 219 below so long as it is so kept.

(8) If default is made in complying with subsection (1), (2), (5) or (7)(a), the company and every officer of it who is in default is liable to a fine.

Textual Amendments

F174 Words substituted (subject to transitional and saving provisions in S.I. 1990/355, **arts. 6–9**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 3**

216 Penalty for failure to provide information.

(1) Where a notice is served by a company under section 212 on a person who is or was interested in shares of the company and that person fails to give the company any information required by the notice within the time specified in it, the company may apply to the court for an order directing that the shares in question be subject to the restrictions of Part XV of this Act.

[F175(1A) On an application made under subsection (1) the court may make an interim order and any such order may be made unconditionally or on such terms as the court thinks fit.

(IB) If the court is satisfied that an order under subsection (1) may unfairly affect the rights of third parties in respect of shares then the court, for the purpose of protecting such rights and subject to such terms as it thinks fit, may direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order, shall not constitute a breach of the restrictions of Part XV of this Act**]**

(2) **[**F176An order under this section**]** may be made by the court notwithstanding any power contained in the applicant company's memorandum or articles enabling the company itself to impose similar restrictions on the shares in question.

(3) Subject to the following subsections, a person who fails to comply with a notice under section 212 or who, in purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement

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which is false in a material particular is guilty of an offence and liable to imprisonment or a fine, or both.

Section 733(2) and (3) of this Act (liability of individuals for corporate default) apply to offences under this subsection.

(4) A person is not guilty of an offence by virtue of failing to comply with a notice under section 212 if he proves that the requirement to give the information was frivolous or vexatious.

(5) A person is not obliged to comply with a notice under section 212 if he is for the time being exempted by the Secretary of State from the operation of that section; but the Secretary of State shall not grant any such exemption unless—

(a) he has consulted with the Governor of the Bank of England, and

(b) he (the Secretary of State) is satisfied that, having regard to any undertaking given by the person in question with respect to any interest held or to be held by him in any shares, there are special reasons why that person should not be subject to the obligations imposed by that section.

Textual Amendments

F175 S. 216(1A)(1B) inserted by S.I. 1991/1646, **reg. 4(a)**

F176 Words in s. 216(2) substituted by S.I. 1991/1646, **reg. 4(b)**

217 Removal of entries from register.

(1) A company may remove an entry against a person's name from its register of interests in shares if more than 6 years have elapsed since the date of the entry being made, and either—

(a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under this Part in relevant share capital of the company, or

(b) it has been superseded by a later entry made under section 211 against the same person's name;

and in a case within paragraph (a) the company may also remove that person's name from the register.

(2) If a person in pursuance of an obligation imposed on him by any provision of this Part gives to a company the name and address of another person as being interested in shares in the company, the company shall, within 15 days of the date on which it was given that information, notify the other person that he has been so named and shall include in that notification—

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the company in its register of interests in shares, and

(b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a company in pursuance of subsection (2) that an entry relating to him has been made in the company's register of interests in shares may apply in writing to the company for the removal of that entry from the register; and the company shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

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(4) If a person who is identified in a company's register of interests in shares as being a party to an agreement to which section 204 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as mentioned in subsection (2)(a)) ceases to be a party to that agreement, he may apply in writing to the company for the inclusion of that information in the register; and if the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(5) If an application under subsection (3) or (4) is refused (in a case within subsection (4), otherwise than on the ground that the information has already been recorded) the applicant may apply to the court for an order directing the company to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.

(6) Where a name is removed from a company's register of interests in shares in pursuance of subsection (1) or (3) or an order under subsection (5), the company shall within 14 days of the date of that removal make any necessary alteration in any associated index.

(7) If default is made in complying with subsection (2) or (6), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

218 Otherwise, entries not to be removed.

(1) Entries in a company's register of interests in shares shall not be deleted except in accordance with section 217.

(2) If an entry is deleted from a company's register of interests in shares in contravention of subsection (1), the company shall restore that entry to the register as soon as is reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention of subsection (2), to a daily default fine.

219 Inspection of register and reports.

(1) Any register of interests in shares and any report which is required by section 215(7) to be available for inspection in accordance with this section shall, [F177] . . . be open to the inspection of any member of the company or of any other person without charge.

(2) Any such member or other person may require a copy of any such register or report, or any part of it, on payment of **[**[F178]such fee as may be prescribed**]**; and the company shall cause any copy so required by a person to be sent to him before the expiration of the period of 10 days beginning with the day next following that on which the requirement is received by the company.

(3) If an inspection required under this section is refused or a copy so required is not sent within the proper period, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) In the case of a refusal of an inspection required under this section of any register or report, the court may by order compel an immediate inspection of it; and in the case

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of failure to send a copy required under this section, the court may by order direct that the copy required shall be sent to the person requiring it.

(5) The Secretary of State may by regulations made by statutory instrument substitute a sum specified in the regulations for the sum for the time being mentioned in subsection (2).

Textual Amendments

F177 Words in s. 219(1) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(5), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

F178 Words in s. 219(2) substituted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(5)(b)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.

Modifications etc. (not altering text)

C157 S. 219(1) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.

Supplementary

220 Definitions for Part VI.

[F179(1) In this Part of this Act—

"associated index", in relation to a register, means the index kept in relation to that register in pursuance of section 211(6);

F180 . . .

"authorised insurance undertaking" means an insurance undertaking which has been authorised in accordance with Article 6 or 23 of Council Directive 73/239/EEC[M35] or Article 6 or 27 of Council Directive 79/267/EEC[M36], or is authorised under the law of a member State to carry on insurance business restricted to re-insurance;

"authorised unit trust scheme" has the same meaning as in **[**F181Part 17 of the Financial Services and Markets Act 2000**]**;

"depositary receipt" means a certificate or other record (whether or not in the form of a document)—

(a) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular company; and

(b) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the same kind, which shall include the right to receive such shares (or evidence of the right to receive such shares) from the person mentioned in paragraph (a);

[F182"derivatives" means options and futures in relation to shares;**]**

[F183"EEA authorisation" has the same meaning as in paragraph 6 of Schedule 3 to the Financial Services and Markets Act 2000;**]**

F180 . . .

F184 . . .

"listed company" means a company any of the shares in which are officially listed on a relevant stock exchange and "listed" shall be construed accordingly;

"material interest" shall be construed in accordance with section 199(2A);

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[F185“open-ended investment company” has the same meaning as in the Open-Ended Investment Companies Regulations 2001;**]**

“operator”, in relation to a collective investment scheme, shall be construed in accordance with **[**F186section 237(2) of the Financial Services and Markets Act 2000**]**;

[F187“recognised clearing house” has the same meaning as in the Financial Services and Markets Act 2000;

F187“recognised scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000;**]**

“register of interests in shares” means the register kept in pursuance of section 211 including, except where the context otherwise requires, that part of the register kept in pursuance of section 213;

“relevant investment exchange” means an exchange situated or operating in a member State on which derivatives are traded;

“relevant share capital” has the meaning given by section 198(2);

“relevant stock exchange” means a stock exchange situated or operating in a member State;

“UCITS” has the meaning given by section 199(8);

“units” has the same meaning as in **[**F188section 237(2) of the Financial Services and Markets Act 2000**]**.**]**

[F189(1A) References in subsection (1) to contracts of insurance (of any description), options and futures must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.**]**

(2) Where the period allowed by any provision of this Part for fulfilling an obligation is expressed as a number of days, any day that is a Saturday or Sunday or a bank holiday in any part of Great Britain is to be disregarded in reckoning that period.

Textual Amendments

F179 S. 220(1) substituted (18.9.1993) by S.I. 1993/1819, **reg. 9**

F180 Definitions of “authorised credit institution” and “designated agency” in s. 220(1) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 10(1)(2)

F181 Words in definition of “authorised unit trust scheme” in s. 220(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 10(1)(3)

F182 Definition of “derivatives” in s. 220(1) substituted (1.12.2001) by s.I. 2001/3649, arts. 1, 10(1)(4)

F183 Definition of “EEA authorisation” in s. 220(1) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 10(1)(5)

F184 Definition of “investment company with variable capital” in s. 220(1) omitted (1.12.2001) by virtue of S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 6**; S.I. 2001/1228, **art. 2(1)**

F185 Definition of “open-ended investment company” in s. 220(1) inserted (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 6**; S.I. 2001/1228, **art. 2(1)**

F186 Words in definition of “operator” in s. 220(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 10(1)(6)

F187 Definitions of “recognised clearing house” and “recognised scheme” in s. 220(1) substituted (1.12.2001) for definition of “recognised clearing house” by S.I. 2001/3649, **arts. 1**, 10(1)(7)

F188 Words in definition of “units” in s. 220(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 10(1)(8)

F189 S. 220(1A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 10(1)(9)

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Marginal Citations

M35 OJ No. L228, 16.8.73, p. 3.
M36 OJ No. L63, 13.3.79, p. 1.

PART VII

ACCOUNTS AND AUDIT

Modifications etc. (not altering text)

C158 Pt. VII (ss. 221–262) applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**
C159 Part VII (ss. 221-262) continued by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 13(1)(a)**
C160 Part VII (ss. 221-262) amended by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 1(2)(5)**
C161 Part VII (ss. 221-262) extended by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 1(3)(5)**
C162 Part VII (ss. 221-262) modified by S.I. 1990/355, arts. 6, 7, Sch. 2 paras. 1(4)(5), **3(2)(3)**
C163 Part VII (ss. 221-262) excluded by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 3(1)(3)**
C164 Part VII (ss. 221-262) restricted by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 13(1)(b)**
Pt. VII (ss. 221-262) applied (with modifications) (21.7.1993) by S.I. 1993/1820, reg. 4, Sch. paras.1, 2 (as amended (1.10.2005) by S.I. 2005/1987, **reg. 3**)
Pt. VII (ss. 221-262) applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 3, Sch. 1 (as amended (4.3.2004) by S.I. 2004/355, **art. 8**, (1.10.2005) by S.I. 2005/1989, reg. 2, **Sch. 1** and (12.1.2006) by S.I. 2005/3442, reg. 2(2)(b), **Sch. 2 para. 3(1)**)
C165 Pt. 7 (ss. 221-262) modified (1.8.2007) by The European Grouping of Territorial Cooperation Regulations 2007 (S.I. 2007/1949), regs. 6, 7, **Sch. Pt. 1**

CHAPTER I

PROVISIONS APPLYING TO COMPANIES GENERALLY

Accounting records

221 Duty to keep accounting records.

(1) Every company shall keep accounting records which are sufficient to show and explain the company's transactions and are such as to—

(a) disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(b) enable the directors to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Act.

(2) The accounting records shall in particular contain—

(a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place, and

(b) a record of the assets and liabilities of the company.

(3) If the company's business involves dealing in goods, the accounting records shall contain-

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(a) statements of stock held by the company at the end of each financial year of the company,

(b) all statements of stocktakings from which any such statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

(4) A parent company which has a subsidiary undertaking in relation to which the above requirements do not apply shall take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Act.

(5) If a company fails to comply with any provision of this section, every officer of the company who is in default is guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(6) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

Modifications etc. (not altering text)

C166 S. 221 excluded (coming into force in accordance with s. 3 of the amending Act) by 1999 c. iv, **ss. 3**, 7(5)

[F190 222 Where and for how long records to be kept.

(1) A company's accounting records shall be kept at its registered office or such other place as the directors think fit, and shall at all times be open to inspection by the company's officers.

(2) If accounting records are kept at a place outside Great Britain, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at, a place in Great Britain, and shall at all times be open to such inspection.

(3) The accounts and returns to be sent to Great Britain shall be such as to—

(a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and

(b) enable the directors to ensure that the company's balance sheet and profit and loss account comply with the requirements of this Act.

(4) If a company fails to comply with any provision of subsections (1) to (3), every officer of the company who is in default is guilty of an offence, and liable to imprisonment or a fine or both, unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(5) Accounting records which a company is required by section 221 to keep shall be preserved by it—

(a) in the case of a private company, for three years from the date on which they are made, and

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(b) in the case of a public company, for six years from the date on which they are made.

This is subject to any provision contained in rules made under section 411 of the Insolvency Act 1986 (company insolvency rules).

(6) An officer of a company is guilty of an offence, and liable to imprisonment or a fine or both, if he fails to take all reasonable steps for securing compliance by the company with subsection (5) or intentionally causes any default by the company under that subsection.**]**

Textual Amendments

F190 New ss. 221, 222 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**), by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 2, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

Modifications etc. (not altering text)

C167 S. 222 extended by S.I. 1986/304, **rule 6**

C168 S. 222 applied by S.I. 1986/385, **rule 6**

C169 S. 222(2) modified by S.I. 1985/724, **reg. 6(5)**

A company's financial year and accounting reference periods

223 A company's financial year.

(1) A company's "financial year" is determined as follows.

(2) Its first financial year begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(3) Subsequent financial years begin with the day immediately following the end of the company's previous financial year and end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(4) In relation to an undertaking which is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.

(5) The directors of a parent company shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

Modifications etc. (not altering text)

C170 S. 223 applied (E.W.) (*prosp.*) by Charities Act 1992 (c. 41), **ss. 1(1)**, 79(2).
S. 223 applied (E.W.)(temporarily) (1.8.1993) by 1993 c. 10, s. 99(1)(3)(4), **Sch. 8 Pt.II**

C171 S. 223(4) applied (with modifications) (6.3.1997) by S.I. 1997/648, reg. 3(2), **Sch. 1 para. 4(1)(a)(ii)**

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[F191 224 Accounting reference periods and accounting reference date.

(1) A company's accounting reference periods are determined according to its accounting reference date.

(2) A company **[**F192 incorporated before 1st April 1996**]** may, at any time before the end of the period of nine months beginning with the date of its incorporation, by notice in the prescribed form given to the registrar specify its accounting reference date, that is, the date on which its accounting reference period ends in each calendar year.

(3) Failing such notice, **[**F193 the accounting reference date of such a company**]** is—

(a) in the case of a company incorporated before **[**F194 1st April 1990**]**, 31st March;

(b) in the case of a company incorporated after **[**F195 1st April 1990**]**, the last day of the month in which the anniversary of its incorporation falls.

[F196 (3A) The accounting reference date of a company incorporated on or after 1st April 1996 is the last day of the month in which the anniversary of its incorporation falls.**]**

(4) A company's first accounting reference period is the period of more than six months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date.

(5) Its subsequent accounting reference periods are successiveperiods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

(6) This section has effect subject to the provisions of section 225 relating to the alteration of accounting reference dates and the consequences of such alteration.**]**

Textual Amendments

F191 New ss. 223–225 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 3, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F192 Words in s. 224(2) inserted (1.4.1996) by S.I. 1996/189, **reg. 2(2)**

F193 Words in s. 224(3) substituted (1.4.1996) by S.I. 1996/189, **reg. 2(3)**

F194 Words substituted by S.I. 1990/355, **art. 15(a)**

F195 Words substituted by S.I. 1990/355, **art. 15(b)**

F196 S. 224(3A) inserted (1.4.1996) by S.I. 1996/189, **reg. 2(4)**

Modifications etc. (not altering text)

C172 S. 224(4) modified by Trustee Savings Bank Act 1985 (c. 58, SIF 110), s. 3, **Sch. 1 para. 6(3)**
S. 224(4) modified (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 4(2)**

[F197 225 Alteration of accounting reference date.

(1) A company may by notice in the prescribed form given to the registrar specify a new accounting reference date **[**F198 having effect in relation to -

(a) the company's current accounting reference period and subsequent periods; or

(b) the company's previous accounting reference period and subsequent periods.

A company's "previous accounting reference period" means that immediately preceding its current accounting reference period.**]**

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(2) . . . . . .

(3) The notice shall state whether the current or previous accounting reference period—

(a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or

(b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

(4) A notice under subsection (1) stating that the current **[**F199or previous**]** accounting reference period is to be extended is ineffective, except as mentioned below, if given less than five years after the end of an earlier accounting reference period of the company which was extended by virtue of this section.

This subsection does not apply—

(a) **[**F200to a notice given by a company which is a subsidiary undertaking or parent undertaking of another EEA undertaking if the new accounting reference date coincides with that of the other EEA undertaking or, where that undertaking is not a company, with the last day of its financial year, or**]**

(b) where an administration order is in force under Part II of the Insolvency Act 1986,

or where the Secretary of State directs that it should not apply, which he may do with respect to a notice which has been given or which may be given.

(5) A notice under **[**F201subsection (1)**]**may not be given **[**F202in respect of a previous accounting reference period**]**if the period allowed for laying and delivering accounts and reports in relation to **[**F203that period**]** has already expired.

(6) An accounting reference period may not in any case, unless an administration order is in force under Part II of the Insolvency Act 1986, be extended so as to exceed 18 months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.**]**

[F204(7) In this section "EEA undertaking" means an undertaking established under the law of any part of the United Kingdom or the law of any other EEA State.**]**

Textual Amendments

F197 New ss. 223–225 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 3, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F198 S. 225(1)(a)(b) and words preceding and subsequent to them substituted (1.4.1996) for words in s. 225(1) by S.I. 1996/189, **reg. 3(2)**

F199 Words in s. 225(3) inserted (1.4.1996) by S.I. 1996/189, **reg. 3(4)(a)**

F200 S. 225(4)(a) substituted (1.4.1996) by S.I. 1996/189, **reg. 3(4)(b)**

F201 Words in s. 225(5) substituted (1.4.1996) by S.I. 1996/189, **reg. 3(5)(a)**

F202 Words in s. 225(5) inserted (1.4.1996) by S.I. 1996/189, **reg. 3(5)(b)**

F203 Words in s. 225(5) substituted (1.4.1996) by 1996/189, reg. 3(5)(c)

F204 S. 225(7) inserted (1.4.1996) by 1996/189, reg. 3(6)

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[F205 Annual accounts]

Textual Amendments

F205 New s. 226 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 4(1), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

226 Duty to prepare individual company accounts.

(1) The directors of every company shall prepare for each financial year of the company—

(a) a balance sheet as at the last day of the year, and

(b) a profit and loss account.

Those accounts are referred to in this Part as the company's "individual accounts".

(2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the financial year.

(3) A company's individual accounts shall comply with the provisions of Schedule 4 as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with the provisions of that Schedule, and the other provisions of this Act as to the matters to be included in a company's individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.

(5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.

Modifications etc. (not altering text)

C173 S. 226 modified (*temp.*) (in force in accordance with **s. 3** of the amending Act) by 1999 c. iv, ss. 3, 7(6)
C174 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**
C175 S. 226(2) applied with modifications by S.I. 1990/2570, **regs. 3(2)**, 16(1)

VALID FROM 12/11/2004

226A Companies Act individual accounts

(1) Companies Act individual accounts must comprise–

(a) a balance sheet as at the last day of the financial year, and

(b) a profit and loss account.

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(2) The balance sheet must give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account must give a true and fair view of the profit or loss of the company for the financial year.

(3) Companies Act individual accounts must comply with the provisions of Schedule 4 as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with the provisions of that Schedule, and the other provisions of this Act as to the matters to be included in a company's individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.

(5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.

(6) Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

Modifications etc. (not altering text)
C176 S. 226A applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 3(4)(a)**, Sch.

VALID FROM 12/11/2004

226B IAS individual accounts

Where the directors of a company prepare IAS individual accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards.

[F206 227 Duty to prepare group accounts.

(1) If at the end of a financial year a company is a parent company the directors shall, as well as preparing individual accounts for the year, prepare group accounts.

(2) Group accounts shall be consolidated accounts comprising—
(a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
(b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.

(3) The accounts shall give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(4) A company's group accounts shall comply with the provisions of Schedule 4A as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Where compliance with the provisions of that Schedule, and the other provisions of this Act, as to the matters to be included in a company's group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.

(6) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.**]**

Textual Amendments

F206 New s. 227 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 5(1), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

Modifications etc. (not altering text)

C177 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

C178 S. 227(3) applied with modifications by S.I. 1990/2570, **regs. 3(2)**, 16(1)

VALID FROM 12/11/2004

227A Companies Act group accounts

(1) Companies Act group accounts must comprise–

(a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and

(b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.

(2) The accounts must give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(3) Companies Act group accounts must comply with the provisions of Schedule 4A as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with the provisions of that Schedule, and the other provisions of this Act as to the matters to be included in a company's group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.

(5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

VALID FROM 12/11/2004

227B IAS group accounts

Where the directors of a parent company prepare IAS group accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards.

VALID FROM 12/11/2004

227C Consistency of accounts

(1) The directors of a parent company must secure that the individual accounts of–

(a) the parent company, and

(b) each of its subsidiary undertakings,

are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.

(2) Subsection (1) does not apply if the directors do not prepare group accounts for the parent company.

(3) Subsection (1) only applies to accounts of subsidiary undertakings that are required to be prepared under this Part.

(4) Subsection (1) does not require accounts of undertakings that are charities to be prepared using the same financial reporting framework as accounts of undertakings which are not charities.

(5) Subsection (1)(a) does not apply where the directors of a parent company prepare IAS group accounts and IAS individual accounts.

[F207228 Exemption for parent companies included in accounts of larger group.

(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its immediate parent undertaking is established under the law of a member State of the European Economic Community, in the following cases—

(a) where the company is a wholly-owned subsidiary of that parent undertaking;

(b) where the parent undertaking holds more than 50 per cent. of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate—

(i) more than half of the remaining shares in the company, or

(ii) 5 per cent. of the total shares in the company.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Such notice must be served not later than six months after the end of the financial year before that to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions—

(a) that the company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of a member State of the European Economic Community;

(b) that those accounts are drawn up and audited, and that parent undertaking's annual report is drawn up, according to that law, in accordance with the provisions of the Seventh Directive (83/349/EEC) **[**F208(where applicable as modified by the provisions of the Bank Accounts Directive 86/635/EEC) **[**F209or the Insurance Accounts Directive (91/674/EEC)**]**)**]**;

(c) that the company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;

(d) that the company states in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and—

(i) if it is incorporated outside Great Britain, the country in which it is incorporated,

F210(ii) . . . . . .

(iii) if it is unincorporated, the address of its principal place of business;

(e) that the company delivers to the registrar, within the period allowed for delivering its individual accounts, copies of those group accounts and of the parent undertaking's annual report, together with the auditors' report on them; and

(f) **[**F211(subject to section 710B(6) (delivery of certain Welsh documents without a translation))**]**that if any document comprised in accounts and reports delivered in accordance with paragraph (e) is in a language other than English, there is annexed to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(3) The exemption does not apply to a company any of whose securities are listed on a stock exchange in any member State of the European Economic Community.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of subsection (1)(a) whether the company is a wholly-owned subsidiary.

(5) For the purposes of subsection (1)(b) shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking.

(6) In subsection (3) "securities" includes—

(a) shares and stock,

(b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,

(c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and

(d) certificates or other instruments which confer—

(i) property rights in respect of a security falling within paragraph (a), (b) or (c),

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Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or

(iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.**]**

Textual Amendments

F207 New ss. 228, 229 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**), by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 5(3), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F208 Words in s. 228(2)(b) inserted (1.1.1993) by S.I. 1992/3178, **reg. 4**.

F209 Words in s. 228(2)(b) inserted (19.12.1993) by S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 1**

F210 S. 228(2)(d)(ii) repealed (2.2.1996) by S.I. 1996/189, **reg. 4**

F211 Words in s. 228(2)(f) inserted (1.2.1994) by 1993 c. 38, **s. 30(3)**; S.I. 1994/115, **art. 2(2)**

Modifications etc. (not altering text)

C179 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg. 3**

C180 S. 228(6)(b) extended (24.6.2003) by The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), reg. 15, **Sch. 2 para. 8(2)(e)**

VALID FROM 12/11/2004

228A Exemption for parent companies included in non-EEA group accounts

(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its parent undertaking is not established under the law of an EEA State, in the following cases –

(a) where the company is a wholly-owned subsidiary of that parent undertaking;

(b) where that parent undertaking holds more than 50 per cent of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate–

(i) more than half of the remaining shares in the company, or

(ii) 5 per cent of the total shares in the company.

Such notice must be served not later than six months after the end of the financial year before that to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions–

(a) that the company and all of its subsidiary undertakings are included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking;

(b) that those accounts and, where appropriate, the group's annual report, are drawn up in accordance with the provisions of the Seventh Directive (83/349/EEC) (where applicable as modified by the provisions of the Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC)), or in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up;

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Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) that the consolidated accounts are audited by one or more persons authorised to audit accounts under the law under which the parent undertaking which draws them up is established;

(d) that the company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;

(e) that the company states in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and–

(i) if it is incorporated outside Great Britain, the country in which it is incorporated, and

(ii) if it is unincorporated, the address of its principal place of business;

(f) that the company delivers to the registrar, within the period allowed for delivering its individual accounts, copies of the group accounts and, where appropriate, of the consolidated annual report, together with the auditors' report on them; and

(g) subject to section 710B(6) (delivery of certain Welsh documents without a translation) that if any document comprised in accounts and reports delivered in accordance with paragraph (f) is in a language other than English, there is annexed to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(3) The exemption does not apply to a company any of whose securities are admitted to trading on a regulated market of any EEA State within the meaning of Council Directive 93/22/EEC on investment services in the securities field.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement are disregarded in determining for the purposes of subsection (1)(a) whether the company is a wholly-owned subsidiary.

(5) For the purposes of subsection (1)(b), shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, are attributed to the parent undertaking.

(6) In subsection (3) "securities" includes–

(a) shares and stock,

(b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,

(c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and

(d) certificates or other instruments which confer–

(i) property rights in respect of a security falling within paragraph (a), (b) or (c),

(ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or

(iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

[F212F213 229 Subsidiary undertakings included in the consolidation.

(1) Subject to the exceptions authorised or required by this section, all the subsidiary undertakings of the parent company shall be included in the consolidation.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view; but two or more undertakings may be excluded only if they are not material taken together.

(3) In addition, a subsidiary undertaking may be excluded from consolidation where—

(a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or

(b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or

(c) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not previously been included in consolidated group accounts prepared by the parent company.

The reference in paragraph (a) to the rights of the parent company and the reference in paragraph (c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of section 258(definition of "parent undertaking") in the absence of which it would not be the parent company.

(4) Where the activities of one or more subsidiary undertakings are so different from those of other undertakings to be included in the consolidation that their inclusion would be incompatible with the obligation to give a true and fair view, those undertakings shall be excluded from consolidation.

This subsection does not apply merely because some of the undertakings are industrial, some commercial and some provide services, or because they carry on industrial or commercial activities involvingdifferent products or provide different services.

(5) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no group accounts are required.**]**

Textual Amendments

F212 New ss. 228, 229 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**), by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 5(3), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F213 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

[F214 230 Treatment of individual profit and loss account where group accounts prepared.

(1) The following provisions apply with respect to the individual profit and loss account of a parent company where—

(a) the company is required to prepare and does prepare group accounts in accordance with this Act, and

(b) the notes of the company's individual balance sheet show the company's profit or loss for the financial year determined in accordance with this Act.

(2) The profit and loss account need not contain the information specified in paragraphs 52 to 57 of Schedule 4 (information supplementing the profit and loss account).

(3) The profit and loss account must be approved in accordance with section 233(1) (approval by board of directors) but may be omitted from the company's annual accounts for the purposes of the other provisions below in this Chapter.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The exemption conferred by this section is conditional upon its being disclosed in the company's annual accounts that the exemption applies.**]**

Textual Amendments

F214 New s. 230 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**), by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 5(4), 213(2) as part of the text inserted in place of ss. 221–261 (as mentioned in s. 1(a) of the 1989 Act)

Modifications etc. (not altering text)

C181 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

[F215231 Disclosure required in notes to accounts:related undertakings.

(1) The information specified in Schedule 5 shall be given in notes to a company's annual accounts.

(2) Where the company is not required to prepare group accounts, the information specified in Part I of that Schedule shall be given; and where the company is required to prepare group accounts, the information specified in Part II of that Schedule shall be given.

(3) The information required by Schedule 5 need not be disclosed with respect to an undertaking which—

(a) is established under the law of a country outside the United Kingdom, or

(b) carries on business outside the United Kingdom.

if in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of that undertaking, or to the business of the company or any of its subsidiary undertakings, and the Secretary of State agrees that the information need not be disclosed.

This subsection does not apply in relation to the information required under **[**F216paragraph F217. . ., 6, 9A, 20 or 28A**]** of that Schedule.

(4) Where advantage is taken of subsection (3), that fact shall be stated in a note to the company's annual accounts.

(5) If the directors of the company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of Schedule 5 to this Act is such that compliance with that provision would result in information of excessive length being given, the information need only be given in respect of—

(a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts, and

(b) undertakings excluded from consolidation under section 229(3) or (4).

F218. . .

(6) If advantage is taken of subsection (5)—

(a) there shall be included in the notes to the company's annual accounts a statement that the information is given only with respect to such undertakings as are mentioned in that subsection, and

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(b) the full information (both that which is disclosed in the notes to the accounts and that which is not) shall be annexed to the company's next annual return.

For this purpose the "next annual return" means that next delivered to the registrar after the accounts in question have been approved under section 233.

(7) If a company fails to comply with subsection (6)(b), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.**]**

Textual Amendments

F215 New s. 231 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**), by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 6(1), 213(2) as part of the text inserted in place of ss. 221–261 (as mentioned in s. 1(a) of the 1989 Act)

F216 Words in s. 231(3) substituted (21.7.1993) by S.I. 1993/1820, **reg. 11(1)**

F217 Words in s. 231(3) repealed (2.2.1996) by 1996/189, reg. 15(1)

F218 Words in s. 231(5) repealed (2.2.1996) by 1996/189, reg. 15(1)

Modifications etc. (not altering text)

C182 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg. 3**

VALID FROM 12/11/2004

231A Disclosure required in notes to annual accounts: particulars of staff

(1) The following information with respect to the employees of the company must be given in notes to the company's annual accounts–

(a) the average number of persons employed by the company in the financial year, and

(b) the average number of persons so employed within each category of persons employed by the company.

(2) The average number required by subsection (1)(a) or (b) is determined by dividing the relevant annual number by the number of months in the financial year.

(3) The relevant annual number is determined by ascertaining for each month in the financial year–

(a) for the purposes of subsection (1)(a), the number of persons employed under contracts of service by the company in that month (whether throughout the month or not);

(b) for the purposes of subsection (1)(b), the number of persons in the category in question of persons so employed;

and, in either case, adding together all the monthly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of subsection (1)(a) there must also be stated the aggregate amounts respectively of–

(a) wages and salaries paid or payable in respect of that year to those persons;

(b) social security costs incurred by the company on their behalf; and

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(c) other pension costs so incurred.

This does not apply in so far as those amounts, or any of them, are stated elsewhere in the company's accounts.

(5) For the purposes of subsection (1)(b), the categories of person employed by the company are such as the directors may select, having regard to the manner in which the company's activities are organised.

(6) This section applies in relation to group accounts as if the undertakings included in the consolidation were a single company.

(7) In this section "social security costs" and "pension costs" have the same meaning as in Schedule 4 (see paragraph 94(1) and (2) of that Schedule).

Modifications etc. (not altering text)

C183 Ss. 231-234 applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Account) Regulations 2004 (S.I. 2004/3219), **reg. 3(4)(a)**, Sch.

[F219 232 Disclosure required in notes to accounts: emoluments and other benefits of directors and others.

(1) The information specified in Schedule 6 shall be given in notes to a company's annual accounts.

(2) In that Schedule—

Part I relates to the emoluments of directors (including emoluments waived), pensions of directors and past directors, compensation for loss of office to directors and past directors and sums paid to third parties in respect of directors' services,

Part II relates to loans, quasi-loans and other dealings in favour of directors and connected persons, and

Part III relates to transactions, arrangements and agreements made by the company or a subsidiary undertaking for officers of the company other than directors.

(3) It is the duty of any director of a company, and any person who is or has at any time in the preceding five years been an officer of the company, to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part I of Schedule 6.

(4) A person who makes default in complying with subsection (3) commits an offence and is liable to a fine.]

Textual Amendments

F219 New s. 232 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**), by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 6(3), 213(2) as part of the text inserted in place of ss. 221–261 (as mentioned in s. 1(a) of the 1989 Act)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)
C184 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

Approval and signing of accounts

233 Approval and signing of accounts

(1) A company's annual accounts shall be approved by the board of directors and signed on behalf of the board by a director of the company.

(2) The signature shall be on the company's balance sheet.

(3) Every copy of the balance sheet which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the board.

(4) The copy of the company's balance sheet which is delivered to the registrar shall be signed on behalf of the board by a director of the company.

(5) If annual accounts are approved which do not comply with the requirements of this Act, every director of the company who is party to their approval and who knows that they do not comply or is reckless as to whether they comply is guilty of an offence and liable to a fine.

For this purpose every director of the company at the time the accounts are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(6) If a copy of the balance sheet—

(a) is laid before the company, or otherwise circulated, published or issued, without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.

Modifications etc. (not altering text)
C185 S. 233 applied with modifications by S.I. 1990/2570, **reg. 4(1)**
C186 S. 233 restricted by S.I. 1990/2570, **reg. 4(2)**
C187 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**
C188 S. 233(5) excluded by S.I. 1990/2569, **art. 6(2)**
C189 S. 233(5) applied with modifications by S.I. 1990/2570, **reg. 4(2)**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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[F220 Director's report]

Textual Amendments

F220 New ss. 234, 234A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 8(1), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

234 Duty to prepare director's report.

(1) The directors of a company shall for each financial year prepare a report—

(a) containing a fair review of the development of the business of the company and its subsidiary undertakings during the financial year and of their position at the end of it, and

(b) stating the amount (if any) which they recommend should be paid as dividend F221 . . ..

(2) The report shall state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company and its subsidiary undertakings in the course of the year and any significant change in those activities in the year.

(3) The report shall also comply with Schedule 7 as regards the disclosure of the matters mentioned there.

(4) In Schedule 7—

Part I relates to matters of a general nature, including changes in asset values, directors' shareholdings and other interests and contributions for political and charitable purposes,

Part II relates to the acquisition by a company of its own shares or a charge on them,

Part III relates to the employment, training and advancement of disabled persons,

F222 . . .

Part V relates to the involvement of employees in the affairs, policy and performance of the company.

[F223Part VI relates to the company's policy **[**F224and practice**]** on the payment of creditors.**]**

(5) In the case of any failure to comply with the provisions of this Part as to the preparation of a directors' report and the contents of the report, every person who was a director of the company immediately before the end of the period for laying and delivering accounts and reports for the financial year in question is guilty of an offence and liable to a fine.

(6) In proceedings against a person for an offence under this section it is a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F221 Words in s. 234(1)(b) substituted (2.2.1996) by S.I. 1996/189, **reg. 5(2)**

F222 Words in s. 234(4) omitted (2.2.1996) by virtue of S.I. 1996/189, **reg. 5(3)(a)**

F223 Words in s. 234(4) inserted (2.2.1996) by S.I. 1996/189, **reg. 5(3)(b)**

F224 Words in s. 234(4) inserted (4.3.1997) by S.I. 1997/571, **reg. 2(1)** (with reg. 3)

Modifications etc. (not altering text)

C190 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg. 3**

C191 Ss. 231-234 applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Account) Regulations 2004 (S.I. 2004/3219), **reg. 3(4)(a)**, Sch.

C192 S. 234(5) applied with modifications by S.I. 1990/2570, **reg. 5(2)**

VALID FROM 22/03/2005

234ZZA Directors' report: general requirements

(1) The directors' report for a financial year must state—

(a) the names of the persons who, at any time during the financial year, were directors of the company,

(b) the principal activities of the company in the course of the year, and

(c) the amount (if any) that the directors recommend should be paid by way of dividend.

(2) In relation to a group directors' report subsection (1)(b) has effect as if the reference to the company was a reference to the company and its subsidiary undertakings included in the consolidation.

(3) The report must also comply with Schedule 7 as regards the disclosure of the matters mentioned there.

(4) In Schedule 7—

Part 1 relates to matters of a general nature, including changes in asset values, directors' shareholdings and other interests and contributions for political and charitable purposes;

Part 2 relates to the acquisition by a company of its own shares or a charge on them;

Part 3 relates to the employment, training and advancement of disabled persons;

Part 5 relates to the involvement of employees in the affairs, policy and performance of the company;

Part 6 relates to the company's policy and practice on the payment of creditors.

VALID FROM 22/03/2005

234ZZB Directors' report: business review

(1) The directors' report for a financial year must contain—

(a) a fair review of the business of the company, and

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) a description of the principal risks and uncertainties facing the company.

(2) The review required is a balanced and comprehensive analysis of—

(a) the development and performance of the business of the company during the financial year, and

(b) the position of the company at the end of that year,

consistent with the size and complexity of the business.

(3) The review must, to the extent necessary for an understanding of the development, performance or position of the business of the company, include—

(a) analysis using financial key performance indicators, and

(b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

(4) The review must, where appropriate, include references to, and additional explanations of, amounts included in the annual accounts of the company.

(5) In this section, "key performance indicators" means factors by reference to which the development, performance or position of the business of the company can be measured effectively.

(6) In relation to a group directors' report this section has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.

VALID FROM 06/04/2005

234ZA Statement as to disclosure of information to auditors

(1) This section applies to a directors' report unless the directors have taken advantage of the exemption conferred by section 249A(1) or 249AA(1).

(2) The report must contain a statement to the effect that, in the case of each of the persons who are directors at the time when the report is approved under section 234A, the following applies—

(a) so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and

(b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditors are aware of that information.

(3) In subsection (2) "relevant audit information" means information needed by the company's auditors in connection with preparing their report.

(4) For the purposes of subsection (2) a director has taken all the steps that he ought to have taken as a director in order to do the things mentioned in paragraph (b) of that subsection if he has—

(a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and

(b) taken such other steps (if any) for that purpose,

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Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

as were required by his duty as a director of the company to exercise due care, skill and diligence.

(5) In determining for the purposes of subsection (2) the extent of that duty in the case of a particular director, the following considerations (in particular) are relevant—

(a) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the director in relation to the company, and

(b) (so far as they exceed what may reasonably be so expected) the knowledge, skill and experience that the director in fact has.

(6) Where a directors' report containing the statement required by subsection (2) is approved under section 234A but the statement is false, every director of the company who—

(a) knew that the statement was false, or was reckless as to whether it was false, and

(b) failed to take reasonable steps to prevent the report from being approved,

is guilty of an offence and liable to imprisonment or a fine, or both.

[F225 234A Approval and signing of directors' report.

(1) The directors' report shall be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(2) Every copy of the directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.

(3) The copy of the directors' report which is delivered to the registrar shall be signed on behalf of the board by a director or the secretary of the company.

(4) If a copy of the directors' report—

(a) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this section or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.**]**

Textual Amendments

F225 New ss. 234, 234A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 8(1), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

Modifications etc. (not altering text)

C193 S. 234A applied with modifications by S.I. 1990/2570, **reg. 5(1)**
S. 234A applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 3(4)(a)**, Sch.

C194 S. 234A restricted by S.I. 1990/2570, **reg. 5(2)**

C195 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

C196 S. 234A applied (1.7.2005) by The Community Interest Company Regulations 2005 (S.I. 2005/1788), **reg. 29(1)**

VALID FROM 22/03/2005

Quoted companies: operating and financial review

234AA Duty to prepare operating and financial review

(1) The directors of a quoted company shall for each financial year prepare an operating and financial review.

(2) The review must comply with Schedule 7ZA (objective and contents of operating and financial review), save that nothing in that Schedule requires the disclosure of information about impending developments or about matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

(3) For a financial year in which—

(a) the company is a parent company, and

(b) the directors of the company prepare group accounts,

the operating and financial review must be a consolidated review (a "group operating and financial review") relating, to the extent specified in Schedule 7ZA, to the company and its subsidiary undertakings included in the consolidation.

(4) A group operating and financial review may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole.

(5) If an operating and financial review does not comply with the provisions of this Part relating to the preparation and contents of the review, every director of the company who—

(a) knew that it did not comply or was reckless as to whether it complied, and

(b) failed to take all reasonable steps to secure compliance with the provision in question,

is guilty of an offence and liable to a fine.

Modifications etc. (not altering text)

C197 S. 234AA(5) applied (1.10.2005) by S.I. 1990/2570, reg. 5B(2) (as inserted by The Companies (Revision of Defective Accounts and Report) (Amendment) Regulations 2005 (S.I. 2005/2282), **art. 6**)

234AB Approval and signing of operating and financial review

(1) The operating and financial review must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Every copy of the operating and financial review laid before the company in general meeting, or that is otherwise circulated, published or issued, must state the name of the person who signed it on behalf of the board.

(3) The copy of the operating and financial review delivered to the registrar must be signed on behalf of the board by a director or the secretary of the company.

(4) If a copy of the operating and financial review—

(a) is laid before the company, or otherwise circulated, published or issued without the review having been signed as required by this section or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.

Modifications etc. (not altering text)

C198 S. 234AB applied (with modifications) (1.10.2005) by S.I. 1990/2570, reg. 5B(1) (as inserted by The Companies (Revision of Defective Accounts and Report) (Amendment) Regulations 2005 (S.I. 2005/2282), **art. 6**)

VALID FROM 01/08/2002

Quoted companies: directors' remuneration report

234B Duty to prepare directors' remuneration report

(1) The directors of a quoted company shall for each financial year prepare a directors' remuneration report which shall contain the information specified in Schedule 7A and comply with any requirement of that Schedule as to how information is to be set out in the report.

(2) In Schedule 7A—

Part 1 is introductory,

Part 2 relates to information about remuneration committees, performance related remuneration and liabilities in respect of directors' contracts,

Part 3 relates to detailed information about directors' remuneration (information included under Part 3 is required to be reported on by the auditors, see section 235), and

Part 4 contains interpretative and supplementary provisions.

(3) In the case of any failure to comply with the provisions of this Part as to the preparation of a directors' remuneration report and the contents of the report, every person who was a director of the quoted company immediately before the end of the period for laying and delivering accounts and reports for the financial year in question is guilty of an offence and liable to a fine.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In proceedings against a person for an offence under subsection (3) it is a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

(5) It is the duty of any director of a company, and any person who has at any time in the preceding five years been a director of the company, to give notice to the company of such matters relating to himself as may be necessary for the purposes of Parts 2 and 3 of Schedule 7A.

(6) A person who makes default in complying with subsection (5) commits an offence and is liable to a fine.

Modifications etc. (not altering text)

C199 S. 234B(3) applied (1.10.2005) by S.I. 1990/2570, reg. 5A(2) (as inserted by The Companies (Revision of Defective Accounts and Report) (Amendment) Regulations 2005 (S.I. 2005/2282), **art. 6**)

234C Approval and signing of directors' remuneration report

(1) The directors' remuneration report shall be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(2) Every copy of the directors' remuneration report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.

(3) The copy of the directors' remuneration report which is delivered to the registrar shall be signed on behalf of the board by a director or the secretary of the company.

(4) If a copy of the directors' remuneration report—

(a) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this section or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.

Modifications etc. (not altering text)

C200 S. 234C applied (with modifications) (1.10.2005) by S.I. 1990/2570, reg. 5A(1) (as inserted by The Companies (Revision of Defective Accounts and Report) (Amendment) Regulations 2005 (S.I. 2005/2282), **art. 6**)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Auditors' report

235 Auditors' report.

(1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Act, and in particular whether a true and fair view is given—

(a) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year,

(b) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,

(c) in the case of group accounts, of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(3) The auditors shall consider whether the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts; and if they are of opinion that it is not they shall state that fact in their report.

Modifications etc. (not altering text)
C201 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**
C202 S. 235(1) excluded by S.I. 1990/2570, **regs. 6(1)(b)**, 15

[F226 236 Signature of auditors' report.

(1) The auditors' report shall state the names of the auditors and be signed by them.

(2) Every copy of the auditors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the auditors.

(3) The copy of the auditors' report which is delivered to the registrar shall state the names of the auditors and be signed by them.

(4) If a copy of the auditors' report—

(a) is laid before the company, or otherwise circulated, published or issued, without the required statement of the auditors' names, or

(b) is delivered to the registrar without the required statement of the auditors' names or without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) References in this section to signature by the auditors are, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf.**]**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F226 New ss. 235–237 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 9, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

Modifications etc. (not altering text)

C203 S. 236 applied with modifications by S.I. 1990/2570, **regs. 6(5)**, 7(4), 15

C204 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

[F227 237 Duties of auditors.

(1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to—

(a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them, and

(b) whether the company's individual accounts are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the company's individual accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(4) If the requirements of Schedule 6 (disclosure of information: emoluments and other benefits of directors and others) are not complied with in the annual accounts, the auditors shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.]

[F228 (4A) If the directors of the company have taken advantage of the exemption conferred by section 248 (exemption for small and medium-sized groups from the need to prepare group accounts) and in the auditors' opinion they were not entitled so to do, the auditors shall state that fact in their report.]

Textual Amendments

F227 New ss. 235–237 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 9, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F228 S. 237(4A) inserted (2.2.1996) by S.I. 1996/189, **reg. 6**

Modifications etc. (not altering text)

C205 S. 237 applied with modifications by S.I. 1990/2570, **regs. 6(1)(a)**, 15

C206 Ss. 226-237 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg. 3**

C207 S. 237(1)-(3) applied (with modifications)(23.12.1996) by S.I. 1996/943, **reg. 29(2)(a)**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F229 Publication of accounts and reports]

Textual Amendments

F229 New ss. 238–240 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 10, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

238 Persons entitled to receive copies of accounts and reports.

(1) A copy of the company's annual accounts, together with a copy of the directors' report for that financial year and of the auditors' report on those accounts, shall be sent to—

(a) every member of the company,

(b) every holder of the company's debentures, and

(c) every person who is entitled to receive notice of general meetings,

not less than 21 days before the date of the meeting at which copies of those documents are to be laid in accordance with section 241.

(2) Copies need not be sent—

(a) to a person who is not entitled to receive notices of general meetings and of whose address the company is unaware, or

(b) to more than one of the joint holders of shares or debentures none of whom is entitled to receive such notices, or

(c) in the case of joint holders of shares or debentures some of whom are, and some not, entitled to receive such notices, to those who are not so entitled.

(3) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.

(4) If copies are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

[F230(4A) References in this section to sending to any person copies of a company's annual accounts, of the directors' report and of the auditors' report include references to using electronic communications for sending copies of those documents to such address as may for the time being be notified to the company by that person for that purpose.

F230(4B) For the purposes of this section copies of those documents are also to be treated as sent to a person where—

(a) the company and that person have agreed to his having access to the documents on a web site (instead of their being sent to him);

(b) the documents are documents to which that agreement applies; and

(c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of—

(i) the publication of the documents on a web site;

(ii) the address of that web site; and

(iii) the place on that web site where the documents may be accessed, and how they may be accessed.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F230(4C) For the purposes of this section documents treated in accordance with subsection (4B) as sent to any person are to be treated as sent to him not less than 21 days before the date of a meeting if, and only if—

(a) the documents are published on the web site throughout a period beginning at least 21 days before the date of the meeting and ending with the conclusion of the meeting; and

(b) the notification given for the purposes of paragraph (c) of that subsection is given not less than 21 days before the date of the meeting.

F230(4D) Nothing in subsection (4C) shall invalidate the proceedings of a meeting where—

(a) any documents that are required to be published as mentioned in paragraph (a) of that subsection are published for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish those documents throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

F230(4E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of any of subsections (4A) to (4D).**]**

(5) If default is made in complying with this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(6) Where copies are sent out under this section over a period of days, references elsewhere in this Act to the day on which copies are sent out shall be construed as references to the last day of that period.

Textual Amendments

F230 S. 238(4A)-(4E) inserted (22.12.2000) by S.I. 2000/3373, **art. 12(2)**

Modifications etc. (not altering text)

C208 S. 238 amended by S.I. 1990/2570, **regs. 8(2)(b)**, 9(2)(b)

C209 S. 238(2)(3) applied by S.I. 1990/2570, **reg. 10(3)**

C210 S. 238(5) applied with modifications by S.I. 1990/2570, **reg. 10(4)**

VALID FROM 01/10/2007

[F231238A Time allowed for sending out copies of accounts and reports

(1) The time allowed for sending out copies of the company's annual accounts and reports is as follows.

(2) A private company must comply with section 238(1) not later than—

(a) the end of the period for delivering accounts and reports (see section 244), or

(b) if earlier, the date on which it actually delivers its accounts and reports under section 242.

(3) A public company must comply with section 238(1) not less than 21 days before the date of the meeting at which copies of the documents are to be laid in accordance with section 241.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If in the case of a public company copies are sent out later than is required by subsection (3), they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.**]**

Textual Amendments

F231 S. 238A inserted (1.10.2007 with effect as mentioned in Sch. 4 para. 3(8) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 3(3)** (with art. 12)

[F232239 Rights to demand copies of accounts and reports.

(1) Any member of a company and any holder of a company's debentures is entitled to be furnished, on demand and without charge, with a copy of the company's last annual accounts and director's report and a copy of the auditor's report on those accounts.

(2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 238.

[F233(2A) Any obligation by virtue of subsection (1) to furnish a person with a document may be complied with by using electronic communications for sending that document to such address as may for the time being be notified to the company by that person for that purpose.

F233(2B) A company may, notwithstanding any provision to the contrary in its articles, take advantage of subsection (2A).**]**

(3) If a demand under this section is not complied with within seven days, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(4) If in proceedings for such an offence the issue arises whether a person had already been furnished with a copy of the relevant document under this section, it is for the defendant to prove that he had.**]**

Textual Amendments

F232 New ss. 238–240 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 10, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F233 S. 239(2A)(2B) inserted (22.12.2000) by S.I. 2000/3373, **art. 13**

Modifications etc. (not altering text)

C211 S. 239 amended by S.I. 1990/2570, **regs. 8(2)(a)**, 9(2)(a)

[F234240 Requirements in connection with publication of accounts.

(1) If a company publishes any of its statutory accounts, they must be accompanied by the relevant auditors' report under section 235 **[**F235or, as the case may be, the relevant report made for the purposes of section 249A(2)**]**.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A company which is required to prepare group accounts for a financial year shall not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.

(3) If a company publishes non-statutory accounts, it shall publish with them a statement indicating—

(a) that they are not the company's statutory accounts,

(b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar,

(c) whether the company's auditors have made a report under section 235 on the statutory accounts for any such financial year **[**F236and, if no such report has been made, whether the company's reporting accountant has made a report for the purposes of section 249A(2) on the statutory accounts for any such financial year**]**, and

(d) whether any **[**F237auditors**]** report so made was qualified or contained a statement under section 237(2) or (3) (accounting records or returns inadequate, accounts not agreeing with records and returns or failure to obtain necessary information and explanations) **[**F238or whether any report made for the purposes of section 249A(2) was qualified**]**;

and it shall not publish with the non-statutory accounts any auditors' report under section 235 **[**F239or any report made for the purposes of section 249A(2)**]**.

(4) For the purposes of this section a company shall be regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

(5) References in this section to a company's statutory accounts are to its individual or group accounts for a financial year as required to be delivered to the registrar under section 242; and references to the publication by a company of "non-statutory accounts" are to the publication of—

(a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company, or

(b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company,

otherwise than as part of the company's statutory accounts.

(6) A company which contravenes any provision of this section, and any officer of it who is in default, is guilty of an offence and liable to a fine.**]**

Textual Amendments

F234 New ss. 238–240 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 10, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F235 Words in s. 240(1) added (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. I para.1(2)**

F236 Words in s. 240(3)(c) inserted (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. I para. 1(3)(a)**

F237 Word in s. 140(3)(d) inserted (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. I para. 1(3)(b)**

F238 Words in s. 140(3)(d) added (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. I para. 1(3)(b)**

F239 Words in s. 240(3) added (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. I para. 1(3)(c)**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)
C212 S. 240(5) amended by S.I. 1990/2570, **reg. 8(2)(a)**

[F240 Laying and delivering of accounts and reports]

Textual Amendments
F240 New ss. 241–244 inserted (1.4.1990 and 1.7.1992 as to s. 242A) (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**; S.I. 1991/2945, **art. 2** (subject to transitional provisions in art. 3)) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 11, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

241 Accounts and reports to be laid before company in general meeting.

(1) The directors of a company shall in respect of each financial year lay before the company in general meeting copies of the company's annual accounts, the directors' report and the auditors' report on those accounts.

(2) If the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(4) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.

Modifications etc. (not altering text)
C213 S. 241 amended by S.I. 1990/2570, **regs. 8(2)(b)**, 9(2)(b)
C214 S. 241(2)–(4) applied with modifications by S.I. 1990/2570, **reg. 11(3)**

VALID FROM 01/08/2002

241A Members' approval of directors' remuneration report

(1) This section applies to every company that is a quoted company immediately before the end of a financial year.

(2) In this section "the meeting" means the general meeting of the company before which the company's annual accounts for the financial year are to be laid.

(3) The company must, prior to the meeting, give to the members of the company entitled to be sent notice of the meeting notice of the intention to move at the meeting, as

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an ordinary resolution, a resolution approving the directors' remuneration report for the financial year.

(4) Notice under subsection (3) shall be given to each such member in any manner permitted for the service on him of notice of the meeting.

(5) The business that may be dealt with at the meeting includes the resolution.

(6) The existing directors must ensure that the resolution is put to the vote of the meeting.

(7) Subsection (5) has effect notwithstanding—

(a) any default in complying with subsections (3) and (4);

(b) anything in the company's articles.

(8) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section.

(9) In the event of default in complying with the requirements of subsections (3) and (4), every officer of the company who is in default is liable to a fine.

(10) If the resolution is not put to the vote of the meeting, each existing director is guilty of an offence and liable to a fine.

(11) If an existing director is charged with an offence under subsection (10), it is a defence for him to prove that he took all reasonable steps for securing that the resolution was put to the vote of the meeting.

(12) In this section "existing director" means a person who, immediately before the meeting, is a director of the company.

[F241 242 Accounts and reports to be delivered to the registrar.

(1) The directors of a company shall in respect of each financial year deliver to the registrar a copy of the company's annual accounts together with a copy of the directors' report for that year and a copy of the auditors' report on those accounts.

[F242[F243Subject to section 255E (delivery of accounting documents in Welsh only),]**]** if any document comprised in those accounts or reports is in a language other than English, **[**F244then, subject to section 710B(6) (delivery of certain Welsh documents without a translation),**]** the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(2) If the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Further, if the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance, the court may on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

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(4) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing that the requirements of subsection (1) would be complied with before the end of the period allowed for laying and delivering accounts and reports.

(5) It is not a defence in any proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.**]**

Textual Amendments

F241 New ss. 241–244 inserted (1.7.1992 as to s. 242A) (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**; S.I. 1991/2945, **art. 2** (subject to transitional provision in art. 3)) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 11, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F242 Words in s. 242(1) inserted (1.6.1992) by S.I. 1992/1083, **reg. 2(2)**

F243 Words in s. 242(1) repealed (1.2.1994) by 1993 c. 38, s. 35(1), **Sch.2**; S.I. 1994/115, **art. 2(2)**

F244 Words in s. 242(1) inserted (1.2.1994) by 1993 c. 38, **s. 30(4)(a)**; S.I. 1994/115, **art. 2(2)**

Modifications etc. (not altering text)

C215 S. 242 amended by S.I. 1990/2570, **regs. 8(2)(b)**, 9(2)

C216 S. 242(2)–(5) applied with modifications by S.I. 1990/2570, **regs. 12(1)(3)**, 13(1)(5), 16(2)

[F245 242A Civil penalty for failure to deliver accounts.

(1) Where the requirements of section 242(1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, the company is liable to a civil penalty. This is in addition to any liability of the directors under section 242.

(2) The amount of the penalty is determined by reference to the length of the period between the end of the period allowed for laying and delivering accounts and reports and the day on which the requirements are complied with, and whether the company is a public or private company, as follows:—**]**

Length of period	Public company	Private company
Not more than 3 months.	£500	£100
More than 3 months but not more than 6 months.	£1,000	£250
More than 6 months but not more than 12 months.	£2,000	£500
More than 12 months.	£5,000	£1,000

(3) The penalty may be recovered by the registrar and shall be paid by him into the Consolidated Fund.

(4) It is not a defence in proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.

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Textual Amendments

F245 New ss. 241–244 inserted (1.7.1992 as to s. 242A) (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 11, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act); S.I. 1991/2945, **arts. 2**, 3

Modifications etc. (not altering text)

C217 S. 242A modified (1.7.1992) by S.I. 1991/2945, **art. 3(2)**

[F246 242B Delivery and publication of accounts in ECUs

(1)

The amounts set out in the annual accounts of a company may also be shown in the same accounts translated into ECUs.

(2) When complying with section 242, the directors of a company may deliver to the registrar an additional copy of the company's annual accounts in which the amounts have been translated into ECUs.

(3) In both cases—

(a) the amounts must have been translated at the relevant exchange rate prevailing on the balance sheet date, and

(b) that rate must be disclosed in the notes to the accounts.

(4) For the purposes of section 240 any additional copy of the company's annual accounts delivered to the registrar under subsection (2) shall be treated as statutory accounts of the company and, in the case of such a copy, references in section 240 to the auditors' report under section 235 shall be read as references to the auditors' report on the annual accounts of which it is a copy.

(5) In this section—

"ECU" means a unit with a value equal to the value of the unit of account known as the ecu used in the European Monetary System, and

"relevant exchange rate" means the rate of exchange used for translating the value of the ecu for the purposes of that System.**]**

Textual Amendments

F246 S. 242B inserted (16.11.1992) by S.I. 1992/2452, **reg.3**.

Modifications etc. (not altering text)

C218 S. 242B extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

C219 S. 242B applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 3(4)(a)**, Sch.

[F247 243 Accounts of subsidiary undertakings to be appended in certain cases.

(1) The following provisions apply where at the end of the financial year a parent company has as a subsidiary undertaking—

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(a) a body corporate incorporated outside Great Britain which does not have an established place of business in Great Britain, or

(b) an unincorporated undertaking,

which is excluded from consolidation in accordance with section 229(4) (undertaking with activities different from the undertakings included in the consolidation).

(2) There shall be appended to the copy of the company's annual accounts delivered to the registrar in accordance with section 242 a copy of the undertaking's latest individual accounts and, if it is a parent undertaking, its latest group accounts.

If the accounts appended are required by law to be audited, a copy of the auditors' report shall also be appended.

(3) The accounts must be for a period ending not more than 12 months before the end of the financial year for which the parent company's accounts are made up.

(4) **[**F248[F249Subject to section 255E (delivery of accounting documents in Welsh only),]**]** if any document required to be appended is in a language other than English, **[**F250then, subject to section 710B(6) (delivery of certain Welsh documents without a translation),**]** the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(5) The above requirements are subject to the following qualifications—

(a) an undertaking is not required to prepare for the purposes of this section accounts which would not otherwise be prepared, and if no accounts satisfying the above requirements are prepared none need be appended;

(b) a document need not be appended if it would not otherwise be required to be published, or made available for public inspection, anywhere in the world, but in that case the reason for not appending it shall be stated in a note to the company's accounts;

(c) where an undertaking and all its subsidiary undertakings are excluded from consolidation in accordance with section 229(4), the accounts of such of the subsidiary undertakings of that undertaking as are included in its consolidated group accounts need not be appended.

(6) Subsections (2) to (4) of section 242 (penalties, &c. in case of default) apply in relation to the requirements of this section as they apply in relation to the requirements of subsection (1) of that section.**]**

Textual Amendments

F247 New ss. 241–244 inserted (1.7.1992 as to s. 242A) (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**; S.I. 1991/2945, **art. 2** (subject to transitional provisions in art. 3)) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 11, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F248 Words in s. 243(4) inserted (1.6.1992) by S.I. 1992/1083, **reg. 2(3)**.

F249 Words in s. 243(4) repealed (1.2.1994) by 1993 c. 38, s. 35(1), **Sch. 2**; S.I. 1994/115, **art. 2(2)**

F250 Words in s. 243(4) inserted (1.2.1994) by 1993 c. 38, **s. 30(4)(a)**; S.I. 1994/115, **art. 2(2)**

[F251**244 Period allowed for laying and delivering accounts and reports.**

(1) The period allowed for laying and delivering accounts and reports is—

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(a) for a private company, 10 months after the end of the relevant accounting reference period, and

(b) for a public company, 7 months after the end of that period.

This is subject to the following provisions of this section.

(2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is—

(a) 10 months or 7 months, as the case may be, from the first anniversary of the incorporation of the company, or

(b) 3 months from the end of the accounting reference period,

whichever last expires.

(3) Where a company carries on business, or has interests, outside the United Kingdom, the Channel Islands and the Isle of Man, the directors may, in respect of any financial year, give to the registrar before the end of the period allowed by subsection (1) or (2) a notice in the prescribed form—

(a) stating that the company so carries on business or has such interests, and

(b) claiming a 3 month extension of the period allowed for laying and delivering accounts and reports;

and upon such a notice being given the period is extended accordingly.

(4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under section 225 (alteration of accounting reference date), the period allowed for laying and delivering accounts is that applicable in accordance with the above provisions or 3 months from the date of the notice under that section, whichever last expires.

(5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.

(6) In this section "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.**]**

Textual Amendments

F251 New ss. 241–244 inserted (1.7.1992 as to s. 242A) (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**; S.I. 1991/2945, **art. 2** (subject to transitionals in art. 3)) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 11, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

[F252 Revision of defective accounts and reports]

Textual Amendments

F252 New ss. 245–245C inserted (subject to the saving and transitional provisions in S.I. 1990/2569, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 12, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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245 Voluntary revision of annual accounts or directors' report.

(1) If it appears to the directors of a company that any annual accounts of the company, or any directors' report, did not comply with the requirements of this Act, they may prepare revised accounts or a revised report.

(2) Where copies of the previous accounts or report have been laid before the company in general meeting or delivered to the registrar, the revisions shall be confined to—

(a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Act, and

(b) the making of any necessary consequential alterations.

(3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to revised annual accounts or a revised directors' report.

(4) The regulations may, in particular—

(a) make different provision according to whether the previous accounts or report are replaced or are supplemented by a document indicating the corrections to be made;

(b) make provision with respect to the functions of the company's auditors **[**[F253]or reporting acountant**]**in relation to the revised accounts or report;

(c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been —

(i) sent out to members and others under section 238(1),

(ii) laid before the company in general meeting, or

(iii) delivered to the registrar,

or where a summary financial statement based on the previous accounts or report has been sent to members under section 251;

(d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.

(5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F253 Words in s. 245(4)(b) inserted (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. I para. 2**

Modifications etc. (not altering text)

C220 S. 245(1) and (2) excluded by S.I. 1990/2569, **art. 6(2)**

[[F254]245A Secretary of State's notice in respect of annual accounts.

(1) Where copies of a company's annual accounts have been sent out under section 238, or a copy of a company's annual accounts has been laid before the company in general meeting or delivered to the registrar, and it appears to the Secretary of State that there is, or may be, a question of whether the accounts comply with the requirements of this Act, he may give notice to the directors of the company indicating the respects in which it appears to him that such a question arises, or may arise.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(2) The notice shall specify a period of not less than one month for the directors to give him an explanation of the accounts or prepare revised accounts.

(3) If at the end of the specified period, or such longer period as he may allow, it appears to the Secretary of State that no satisfactory explanation of the accounts has been given and that the accounts have not been revised so as to comply with the requirements of this Act, he may if he thinks fit apply to the court.

(4) The provisions of this section shall apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.**]**

Textual Amendments

F254 New ss. 245–245C inserted (subject to the saving and transitional provisions in S.I. 1990/2569, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 12, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

Modifications etc. (not altering text)

C221 Ss. 245A and 245B excluded by S.I. 1990/2569, **art. 6(2)**

[F255 245B Application to court in respect of defective accounts.

(1) An application may be made to the court—

(a) by the Secretary of State, after having complied with section 245A, or

(b) by a person authorised by the Secretary of State for the purposes of this section,

for a declaration or declarator that the annual accounts of a company do not comply with the requirements of this Act and for an order requiring the directors of the company to prepare revised accounts.

(2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.

(3) If the court orders the preparation of revised accounts, it may give directions with respect to—

(a) the auditing of the accounts,

(b) the revision of any directors' report or summary financial statement, and

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts,

and such other matters as the court thinks fit.

(4) If the court finds that the accounts did not comply with the requirements of this Act it may order that all or part of—

(a) the costs (or in Scotland expenses) of and incidental to the application, and

(b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts,

shall be borne by such of the directors as were party to the approval of the defective accounts.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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For this purpose every director of the company at the time the accounts were approved shall be taken to have been a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(5) Where the court makes an order under subsection (4) it shall have regard to whether the directors party to the approval of the defective accounts knew or ought to have known that the accounts did not comply with the requirements of this Act, and it may exclude one or more directors from the order or order the payment of different amounts by different directors.

(6) On the conclusion of proceedings on an application under this section, the applicant shall give to the registrar for registration an office copy of the court order or, as the case may be, notice that the application has failed or been withdrawn.

(7) The provisions of this section apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.**]**

Textual Amendments

F255 New ss. 245–245C inserted (subject to the saving and transitional provisions in S.I. 1990/2569, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 12, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

Modifications etc. (not altering text)

C222 Ss. 245A and 245B excluded by S.I. 1990/2569, **art. 6(2)**

[F256245COther persons authorised to apply to court.

(1) The Secretary of State may authorise for the purposes of section 245B any person appearing to him—

(a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the accounting requirements of this Act,

(b) to have satisfactory procedures for receiving and investigating complaints about the annual accounts of companies, and

(c) otherwise to be a fit and proper person to be authorised.

(2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.

(3) The Secretary of State may refuse to authorise a person if he considers that his authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.

(4) Authorisation shall be by order made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Where authorisation is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.

(6) Neither a person authorised under this section, nor any officer, servant or member of the governing body of such a person, shall be liable in damages for anything done or purporting to be done for the purposes of or in connection with—

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(a) the taking of steps to discover whether there are grounds for an application to the court,

(b) the determination whether or not to make such an application, or

(c) the publication of its reasons for any such decision,

unless the act or omission is shown to have been in bad faith.**]**

Textual Amendments

F256 New ss. 245–245C inserted (subject to the saving and transitional provisions in S.I. 1990/2569, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 12, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

VALID FROM 06/04/2005

245D Disclosure of information held by Inland Revenue to persons authorised to apply to court

(1) Information which is held by or on behalf of the Commissioners of Inland Revenue may be disclosed to a person who is authorised under section 245C of this Act, or under Article 253C of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), if the disclosure—

(a) is made for a permitted purpose, and

(b) is made by the Commissioners or is authorised by them.

(2) Such information—

(a) may be so disclosed despite any other restriction on the disclosure of information whether imposed by any statutory provision or otherwise, but

(b) in the case of personal data (within the meaning of the Data Protection Act 1998), may not be disclosed in contravention of that Act.

(3) For the purposes of subsection (1), a disclosure is made for a permitted purpose if it is made for the purpose of facilitating—

(a) the taking of steps by the authorised person to discover whether there are grounds for an application to the court under section 245B of this Act or Article 253B of the Companies (Northern Ireland) Order 1986; or

(b) a determination by the authorised person as to whether or not to make such an application.

(4) The power of the Commissioners to authorise a disclosure under subsection (1)(b) may be delegated (either generally or for a specified purpose) to an officer of the Board of Inland Revenue.

Modifications etc. (not altering text)

C223 S. 245D applied (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 15**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 06/04/2005

245E Restrictions on use and further disclosure of information disclosed under section 245D

(1) Information that is disclosed to an authorised person under section 245D may not be used except in or in connection with—

(a) taking steps to discover whether there are grounds for an application to the court as mentioned in section 245D(3)(a);

(b) determining whether or not to make such an application; or

(c) proceedings on any such application.

(2) Information that is disclosed to an authorised person under section 245D may not be further disclosed except—

(a) to the person to whom the information relates; or

(b) in or in connection with proceedings on any such application to the court.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable to imprisonment or a fine, or both.

(4) It is a defence for a person charged with an offence under subsection (3) to prove—

(a) that he did not know, and had no reason to suspect, that the information had been disclosed under section 245D; or

(b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) Sections 732 (restriction on prosecutions), 733(2) and (3) (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to offences under this section.

Modifications etc. (not altering text)

C224 S. 245E applied (with modifications) (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 15**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

VALID FROM 06/04/2005

245F Power of authorised persons to require documents, information and explanations

(1) This section applies where it appears to a person who is authorised under section 245C of this Act that there is, or may be, a question whether the **[**[F257] a company's annual accounts, directors' report or operating and financial review**]** comply with the requirements of this Act **[**[F258](or, where applicable, of Article 4 of the IAS Regulation)**]** .

(2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—

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(a) discovering whether there are grounds for an application to the court under section 245B; or

(b) determining whether or not to make such an application.

(3) Those persons are—

(a) the company;

(b) any officer, employee, or auditor of the company;

(c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.

(4) If a person fails to comply with a requirement under subsection (2), the authorised person may apply to the court for an order under subsection (5).

(5) If on such an application the court decides that the person has failed to comply with the requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this section compels any person to disclose documents or information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.

(8) In this section "document" includes information recorded in any form.

Textual Amendments

F257 Words in s. 245F(1) substituted (22.3.2005) by The Companies Act 1985 (Operating and Financial Review and Directors' Report etc.) Regulations 2005 (S.I. 2005/1011), **reg. 18**

F258 Words in s. 245F(1) inserted (22.3.2005) by The Companies Act 1985 (Operating and Financial Review and Directors' Report etc.) Regulations 2005 (S.I. 2005/1011), reg. 19, **Sch. para. 6**

Modifications etc. (not altering text)

C225 S. 245F applied (with modifications) (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 15**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

VALID FROM 06/04/2005

245G Restrictions on further disclosure of information obtained under section 245F

(1) This section applies to information (in whatever form) which—

(a) has been obtained in pursuance of a requirement or order under section 245F, and

(b) relates to the private affairs of an individual or to any particular business.

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(2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(3) Subsection (2) does not apply to any disclosure of information which—

(a) is made for the purpose of facilitating the carrying out by a person authorised under section 245C of his functions under section 245B;

(b) is made to a person specified in Part 1 of Schedule 7B;

(c) is of a description specified in Part 2 of that Schedule; or

(d) is made in accordance with Part 3 of that Schedule.

(4) The Secretary of State may by order amend Schedule 7B.

(5) An order under subsection (4) must not—

(a) amend Part 1 of Schedule 7B by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);

(b) amend Part 2 of Schedule 7B by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;

(c) amend Part 3 of Schedule 7B so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.

(6) An order under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) A person who discloses any information in contravention of this section—

(a) is guilty of an offence, and

(b) is liable on conviction to imprisonment or a fine, or both.

(8) However, it is a defence for a person charged with an offence under subsection (7) to prove—

(a) that he did not know, and had no reason to suspect, that the information had been disclosed under section 245F; or

(b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(9) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to offences under this section.

(10) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

(11) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998.

Modifications etc. (not altering text)

C226 S. 245G applied (with modifications) (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 15**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

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CHAPTER II

EXEMPTIONS, EXCEPTIONS AND SPECIAL PROVISIONS

Small and medium-sized companies and groups

[F259246 Special provisions for small companies

(1) Subject to section 247A, this section applies where a company qualifies as a small company in relation to a financial year.

(2) If the company's individual accounts for the year—

(a) comply with the provisions of Schedule 8, or

(b) fail to comply with those provisions only in so far as they comply instead with one or more corresponding provisions of Schedule 4,

they need not comply with the provisions or, as the case may be, the remaining provisions of Schedule 4; and where advantage is taken of this subsection, references in section 226 to compliance with the provisions of Schedule 4 shall be construed accordingly.

F260(3) **[** The company's individual accounts for the year—

(a) may give the total of the aggregates required by paragraphs (a), (c) and (d) of paragraph 1(1) of Schedule 6 (emoluments and other benefits etc. of directors) instead of giving those aggregates individually; and

(b) need not give the information required by—

(i) paragraph 4 of Schedule 5 (financial years of subsidiary undertakings);

(ii) paragraph 1(2)(b) of Schedule 6 (numbers of directors exercising share options and receiving shares under long term incentive schemes);

(iii) paragraph 2 of Schedule 6 (details of highest paid director's emoluments etc.); or

(iv) paragraph 7 of Schedule 6 (excess retirement benefits of directors and past directors).**]**

(4) The directors' report for the year need not give the information required by—

(a) section 234(1)(a) and (b) (fair review of business and amount to be paid as dividend);

(b) paragraph 1(2) of Schedule 7 (statement of market value of fixed assets where substantially different from balance sheet amount);

(c) paragraph 6 of Schedule 7 (miscellaneous disclosures); or

(d) paragraph 11 of Schedule 7 (employee involvement).

(5) Notwithstanding anything in section 242(1), the directors of the company need not deliver to the registrar any of the following, namely–

(a) a copy of the company's profit and loss account for the year;

(b) a copy of the directors' report for the year; and

(c) if they deliver a copy of a balance sheet drawn up as at the last day of the year which complies with the requirements of Schedule 8A, a copy of the company's balance sheet drawn up as at that day.

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(6) Neither a copy of the company's accounts for the year delivered to the registrar under section 242(1), nor a copy of a balance sheet delivered to the registrar under subsection (5)(c), need give the information required by–

(a) paragraph 4 of Schedule 5 (financial years of subsidiary undertakings);

(b) paragraph 6 of Schedule 5 (shares of company held by subsidiary undertakings);

(c) Part I of Schedule 6 (directors' and chairman's emoluments, pensions and compensation for loss of office); or

(d) section 390A(3) (amount of auditors' remuneration).

(7) The provisions of section 233 as to the signing of the copy of the balance sheet delivered to the registrar apply to a copy of a balance sheet delivered under subsection (5)(c).

(8) Subject to subsection (9), each of the following, namely–

(a) accounts prepared in accordance with subsection (2) or (3),

(b) a report prepared in accordance with subsection (4), and

(c) a copy of accounts delivered to the registrar in accordance with subsection (5) or (6),

shall contain a statement in a prominent position on the balance sheet, in the report or, as the case may be, on the copy of the balance sheet, above the signature required by section 233, 234A or subsection (7), that they are prepared in accordance with the special provisions of this Part relating to small companies.

(9) Subsection (8) does not apply where **[**[F261]the directors of the company have taken advantage of the exemption from audit conferred by section 249AA (dormant companies)**].]**

Textual Amendments

F259 S. 246 substituted (1.3.1997) by S.I. 1997/220, **reg. 2(1)**

F260 S. 246(3) substituted (31.3.1997 with effect as mentioned in reg. 1(2) of the amending S.I.) by S.I. 1997/570, **reg. 6(1)**

F261 Words in s. 246(9) substituted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 8(1)

[[F262]246A Special provisions for medium-sized companies

(1) Subject to section 247A, this section applies where a company qualifies as a medium-sized company in relation to a financial year.

(2) The company's individual accounts for the year need not comply with the requirements of paragraph 36A of Schedule 4 (disclosure with respect to compliance with accounting standards).

(3) The company may deliver to the registrar a copy of the company's accounts for the year—

(a) which includes a profit and loss account in which the following items listed in the profit and loss account formats set out in Part I of Schedule 4 are combined as one item under the heading "gross profit or loss"—

Items 1, 2, 3 and 6 in Format 1;

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Items 1 to 5 in Format 2;
Items A.1, B.1 and B.2 in Format 3;
Items A.1, A.2 and B.1 to B.4 in Format 4;

(b) which does not contain the information required by paragraph 55 of Schedule 4 (particulars of turnover).

(4) A copy of accounts delivered to the registrar in accordance with subsection (3) shall contain a statement in a prominent position on the copy of the balance sheet, above the signature required by section 233, that the accounts are prepared in accordance with the special provisions of this Part relating to medium-sized companies.**]**

Textual Amendments
F262 S. 246A inserted (1.3.1997) by S.I. 1997/220, **art. 3**

[F263247 Qualification of company as small or medium-sized.

(1) A company qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met—

(a) in the case of the company's first financial year, in that year, and

(b) in the case of any subsequent financial year, in that year and the preceding year.

(2) A company shall be treated as qualifying as small or medium-sized in relation to a financial year—

(a) if it so qualified in relation to the previous financial year under **[**F264subsection (1) above or was treated as so qualifying under paragraph (b) below**]**; or

(b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.

(3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

Small company	
1. Turnover	**[**F265Not more than £2.8million**]**
2. Balance sheet total	**[**F265Not more than £1.4 million**]**
3. Number of employees	Not more than 50
Medium-sized company	
1. Turnover	**[**F265Not more than £11.2 million**]**
2. Balance sheet total	**[**F265Not more than £5.6 million**]**
3. Number of employees	Not more than 250.

(4) For a period which is a company's financial year but not in fact a year the maximum figures for turnover shall be proportionately adjusted.

(5) The balance sheet total means—

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(a) where in the company's accounts Format 1 of the balance sheet formats set out in Part I of Schedule 4 **[**F266or Part I of Schedule 8**]** is adopted, the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D in that Format, and

(b) where Format 2 is adopted, the aggregate of the amounts shown under the general heading "Assets".

(6) The number of employees means the average number of persons employed by the company in the year (determined on a **[**F267monthly**]** basis).

That number shall be determined by applying the method of calculation prescribed by paragraph 56(2) and (3) of Schedule 4 for determining the corresponding number required to be stated in a note to the company's accounts.**]**

Textual Amendments

F263 New ss. 246, 247 inserted as the beginning of Chapter II (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 13(1), 213(2), as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F264 Words in s. 247(2)(a) substituted (16.11.1992) by S.I. 1992/2452, **regs. 5(2)**, 7.

F265 Words in s. 247(3) substituted (16.11.1992) by S.I. 1992/2452, **regs. 5(3)(4)**, 7.

F266 Words in s. 247(5) inserted (1.3.1997) by S.I. 1997/220, **reg. 7(2)**

F267 Words in s. 247(6) substituted (2.2.1996) by S.I. 1996/189, **reg. 8**

Modifications etc. (not altering text)

C227 S. 247(3) applied (21.4.1995) by S.I. 1995/116, **reg. 17(2)**

C228 S. 247 modified (16.11.1992) by S.I. 1992/2452, **reg. 7(2)**.

C229 S. 247(4)(5)(6) applied by 1986 c. 45, Sch. A1 para. 3(3) (as inserted (1.1.2003 subject to arts. 3-5 of the commencing S.I.) by 2000 c. 39, ss. 1, 16(1), Sch. 1 para. 4; S.I. 2002/2711, **art. 2**)

[F268**247A Cases in which special provisions do not apply**

(1) Nothing in section 246 or 246A shall apply where—

[F269(a) the company is, or was at any time within the financial year to which the accounts relate—

(i) a public company,

(ii) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on one or more regulated activities, or

(iii) a person who carries on insurance market activity;**]**

(b) the company is, or was at any time during that year, a member of an ineligible group.

(2) A group is ineligible if any of its members is—

(a) a public company or a body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,

[F270(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or

(c) a person who carries on an insurance market activity.**]**

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(3) A parent company shall not be treated as qualifying as a small company in relation to a financial year unless the group headed by it qualifies as a small group, and shall not be treated as qualifying as a medium-sized company in relation to a financial year unless that group qualifies as a medium-sized group (see section 249).**]**

Textual Amendments

F268 S. 247A inserted (1.3.1997) by S.I. 1997/220, **reg. 4**

F269 S. 247A(1)(a) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 11(1)(2)

F270 S. 247A(2)(b)(c) substituted (1.12.2001) for s. 247A(2)(b)-(d) by S.I. 2001/3649, **arts. 1**, 11(1)(3)

[F271247B Special auditors' report

(1) This section applies where—

(a) the directors of a company propose to deliver to the registrar copies of accounts ("abbreviated accounts") prepared in accordance with section 246(5) or (6) or 246A(3) ("the relevant provision"),

(b) the directors have not taken advantage of the exemption from audit conferred by section 249A(1) or (2) **[**F272or section 249AA**]**, F273. . .

F274(c) . . . . . .

(2) If abbreviated accounts prepared in accordance with the relevant provision are delivered to the registrar, they shall be accompanied by a copy of a special report of the auditors stating that in their opinion—

(a) the company is entitled to deliver abbreviated accounts prepared in accordance with that provision, and

(b) the abbreviated accounts to be delivered are properly prepared in accordance with that provision.

(3) In such a case a copy of the auditors' report under section 235 need not be delivered, but—

(a) if that report was qualified, the special report shall set out that report in full together with any further material necessary to understand the qualification; and

(b) if that report contained a statement under—

(i) section 237(2) (accounts, records or returns inadequate or accounts not agreeing with records and returns), or

(ii) section 237(3) (failure to obtain necessary information and explanations),

the special report shall set out that statement in full.

(4) Section 236 (signature of auditors' report) applies to a special report under this section as it applies to a report under section 235.

(5) If abbreviated accounts prepared in accordance with the relevant provision are delivered to the registrar, references in section 240 (requirements in connection with publication of accounts) to the auditors' report under section 235 shall be read as references to the special auditors' report under this section.**]**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F271 S. 247B inserted (1.3.1997) by S.I. 1997/220, **reg. 5**

F272 Words in s. 247B(1)(b) inserted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 8(2)(a)

F273 Word in s. 247B(1)(b) omitted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by virtue of S.I. 2000/1430, **arts. 1(2)**, 8(2)(b)

F274 S. 247B(1)(c) omitted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by virtue of S.I. 2000/1430, **arts. 1(2)**, 8(2)(c)

[F275 248 Exemption for small and medium-sized groups.

(1) A parent company need not prepare group accounts for a financial year in relation to which the group headed by that company qualifies as a small or medium-sized group and is not an ineligible group.

(2) A group is ineligible if any of its members is—

(a) a public company or a body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,

[F276(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or

F276(c) a person who carries on an insurance market activity.**]**

F277(3) . . . . . .

(4) . . . . . .**]**

Textual Amendments

F275 New ss. 248, 249 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 13(3), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F276 S. 248(2)(b)(c) substituted (1.12.2001) for s. 248(2)(b)-(d) by S.I. 2001/3649, **arts. 1**, 12

F277 S. 248(3)(4) repealed (2.2.1996) by S.I. 1996/189, **reg. 9**

Modifications etc. (not altering text)

C230 S. 248(2) amended (1.7.1994) by S.I. 1994/1696, reg. 68, **Sch. 8 Pt. I para. 9(1)(a)**

[F278 248A Group accounts prepared by small company

(1) This section applies where a small company–

(a) has prepared individual accounts for a financial year in accordance with section 246(2) or (3), and

(b) is preparing group accounts in respect of the same year.

(2) If the group accounts–

(a) comply with the provisions of Schedule 8, or

(b) fail to comply with those provisions only in so far as they comply instead with one or more corresponding provisions of Schedule 4,

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they need not comply with the provisions or, as the case may be, the remaining provisions of Schedule 4; and where advantage is taken of this subsection, references in Schedule 4A to compliance with the provisions of Schedule 4 shall be construed accordingly.

(3) For the purposes of this section, Schedule 8 shall have effect as if, in each balance sheet format set out in that Schedule, for item B.III there were substituted the following item–

"B.III INVESTMENTS

1. Shares in group undertakings

2. Interests in associated undertakings

3. Other participating interests

4. Loans to group undertakings and undertakings in which a participating interest is held

5. Other investments other than loans

6. Others."

(4) The group accounts need not give the information required by the provisions specified in section 246(3).

(5) Group accounts prepared in accordance with this section shall contain a statement in a prominent position on the balance sheet, above the signature required by section 233, that they are prepared in accordance with the special provisions of this Part relating to small companies.**]**

Textual Amendments
F278 S. 248A inserted (1.3.1997) by S.I. 1997/220, **reg. 6**

[F279249 Qualification of group as small or medium-sized.

(1) A group qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met—

(a) in the case of the parent company's first financial year, in that year, and

(b) in the case of any subsequent financial year, in that year and the preceding year.

(2) A group shall be treated as qualifying as small or medium-sized in relation to a financial year—

(a) if it so qualified in relation to the previous financial year under **[**F280subsection (1) above or was treated as so qualifying under paragraph (b) below**]**; or

(b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.

(3) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements—

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Small group	
1. Aggregate turnover	**[**F281Not more than £2.8 million net (or £3.36 million gross)**]**
2. Aggregate balance sheet total	**[**F281Not more than £1.4 million net (or £1.68 million gross)**]**
3. Aggregate number of employees	Not more than 50
Medium-sized group	
1. Aggregate turnover	**[**F281Not more than £11.2 million net (or £13.44 million gross)**]**
2. Aggregate balance sheet total	**[**F281Not more than £5.6 million net (or £6.72 million gross)**]**
3. Aggregate number of employees	Not more than 250.

(4) The aggregate figures shall be ascertained by aggregating the relevant figures determined in accordance with section 247 for each member of the group.

In relation to the aggregate figures for turnover and balance sheet total, "net" means with the set-offs and other adjustments required by Schedule 4A in the case of group accounts and "gross" means without those set-offs and other adjustments; and a company may satisfy the relevant requirement on the basis of either the net or the gross figure.

(5) The figures for each subsidiary undertaking shall be those included in its accounts for the relevant financial year, that is—

(a) if its financial year ends with that of the parent company, that financial year, and

(b) if not, its financial year ending last before the end of the financial year of the parent company.

(6) if those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.**]**

Textual Amendments

F279 New ss. 248, 249 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**, by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 13(3), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F280 Words in s. 249(2)(a) substituted (16.11.1992) by S.I. 1992/2452, **regs. 6(2)**, 7.

F281 Words in s. 249(3) substituted (16.11.1992) by S.I. 1992/2452, **regs. 6(3)(4)**, 7.

Modifications etc. (not altering text)

C231 S. 249 amended (31.7.1997 with effect as mentioned in s. 44(1) of the amending Act) by 1990 c. 1, **s. 22A(8)(a)** (as inserted (31.7.1997 with effect as mentioned in s. 44(1) of the amending Act)) by 1997 c. 58, **s. 43**

C232 S. 249 modified (16.11.1992) by S.I. 1992/2452, **reg. 7(2)**.

C233 S. 249(3)–(6) modified by S.I. 1986/1865, **regs. 4**, 5

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[F282 Exemptions from audit for certain categories of small company]

Textual Amendments

F282 Ss. 249A-249E and preceding cross-heading inserted (11.8.1994) by S.I. 1994/1935, **reg. 2**

F283 249A Exemptions from audit

(1) Subject to section 249B, a company which meets the total exemption conditions set out below in respect of a financial year is exempt from the provisions of this Part relating to the audit of accounts in respect of that year.

(2) Subject to section 249B, **[**F284a company which is a charity and**]** which meets the report conditions set out below in respect of a financial year is exempt from the provisions of this Part relating to the audit of accounts in respect of that year if the directors cause a report in respect of the company's individual accounts for that year to be prepared in accordance with section 249C and made to the company's members.

(3) The total exemption conditions are met by a company in respect of a financial year if—

(a) it qualifies as a small company in relation to that year for the purposes of section 246,

(b) its turnover in that year is not more than **[**F285£1 million**]**, and

(c) its balance sheet total for that year is not more than £1.4 million.

[F286(3A) In relation to any company which is a charity, subsection (3)(b) shall have effect with the substitution—

(a) for the reference to turnover of a reference to gross income, and

(b) for the reference to **[**F287£1 million**]** of a reference to £90,000.**]**

(4) The report conditions are met by **[**F288a company which is a charity**]** in respect of a financial year if—

(a) it qualifies as a small company in relation to that year for the purposes of section 246,

(b) its **[**F289gross income**]** in that year is more than £90,000 but not more than **[**F290£250,000**]**, and

(c) its balance sheet total for that year is not more than £1.4 million.

F291(5) . . . . . .

(6) For a period which is a company's financial year but not in fact a year the maximum figures for turnover or gross income shall be proportionately adjusted.

[F292(6A) A company is entitled to the exemption conferred by subsection (1) or (2) notwithstanding that it falls within paragraph (a) or (b) of **[**F293section 249AA(1)**]**.**]**

(7) In this section—

"balance sheet total" has the meaning given by section 247(5), and

"gross income" means the company's income from all sources, as shown in the company's income and expenditure account

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Textual Amendments

F283 Ss. 249A-249E and preceding cross-heading inserted (11.8.1994) by S.I. 1994/1935, **reg. 2**

F284 Words in s. 249A(2) substituted (15.4.1997) by S.I. 1997/936, **reg. 2(2)**

F285 Words in s. 249A(3)(b) substituted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 2(1)(2)

F286 Words in s. 249A(3A) inserted (15.4.1997) by S.I. 1997/936, **reg. 2(4)**

F287 Words in s. 249A(3A)(b) substituted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 2(1)(2)

F288 Words in s. 249A(4) substituted (15.4.1997) by S.I. 1997/936, **reg. 2(5)(a)**

F289 Words in s. 249A(4)(b) substituted (15.4.1997) by S.I. 1997/936, **reg. 2(5)(b)(i)**

F290 Words in s. 249A(4)(b) substituted (15.4.1997) by S.I. 1997/936, **reg. 2(5)(b)(ii)**

F291 S. 249A(5) substituted (15.4.1997) by S.I. 1997/936, **reg. 2(6)**

F292 S. 249(6A) inserted (*retrospectively*) by S.I. 1997/936, **reg. 2(7)(8)**

F293 Words in s. 249A(6A) substituted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 2(1)(3)

[F294 249AA Dormant companies

(1) Subject to section 249B(2) to (5), a company is exempt from the provisions of this Part relating to the audit of accounts in respect of a financial year if—

(a) it has been dormant since its formation, or

(b) it has been dormant since the end of the previous financial year and subsection (2) applies.

(2) This subsection applies if the company—

(a) is entitled in respect of its individual accounts for the financial year in question to prepare accounts in accordance with section 246, or would be so entitled but for the application of section 247A(1)(a)(i) or (b), and

(b) is not required to prepare group accounts for that year.

(3) Subsection (1) does not apply if at any time in the financial year in question the company was—

[F295(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on one or more regulated activities; or

(b) a person who carries on insurance market activity**]**

(4) A company is "dormant" during any period in which it has no significant accounting transaction.

(5) "Significant accounting transaction" means a transaction which—

(a) is required by section 221 to be entered in the company's accounting records; but

(b) is not a transaction to which subsection (6) or (7) applies.

(6) This subsection applies to a transaction arising from the taking of shares in the company by a subscriber to the memorandum as a result of an undertaking of his in the memorandum.

(7) This subsection applies to a transaction consisting of the payment of—

(a) a fee to the registrar on a change of name under section 28 (change of name),

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(b) a fee to the registrar on the re-registration of a company under Part II (re-registration as a means of altering a company's status),

(c) a penalty under section 242A (penalty for failure to deliver accounts), or

(d) a fee to the registrar for the registration of an annual return under Chapter III of Part XI.**]**

Textual Amendments

F294 S. 249AA inserted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 3

F295 S. 249AA(3)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 13

Modifications etc. (not altering text)

C234 S. 249AA(3) applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 80(5)(a)(b)**

VALID FROM 06/04/2008

249B Cases where exemptions not available

F296 . . . . . .

Textual Amendments

F296 S. 249B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

F297 249C The report required for the purposes of section 249A(2).

(1) The report required for the purposes of section 249A(2) shall be prepared by a person (referred to in this Part as "the reporting accountant") who is eligible under section 249D

(2) The report shall state whether in the opinion of the reporting accountant making it—

(a) the accounts of the company for the financial year in question are in agreement with the accounting records kept by the company under section 221, and

(b) having regard only to, and on the basis of, the information contained in those accounting records, those accounts have been drawn up in a manner consistent with the provisions of this Act specified in subsection (6), so far as applicable to the company.

(3) The report shall also state that in the opinion of the reporting accountant, having regard only to, and on the basis of, the information contained in the accounting records kept by the company under section 221, the company satisfied the requirements of subsection (4) of section 249A F298. . .for the financial year in question, and did not fall within section 249B(1)(a) to (f) at any time within that financial year

(4) The report shall state the name of the reporting accountant and be signed by him

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(5) Where the reporting accountant is a body corporate or partnership, any reference to signature of the report, or any copy of the report, by the reporting accountant is a reference to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf

(6) The provisions referred to in subsection (2)(b) are—

(a) section 226(3) and Schedule 4,

(b) section 231 and paragraphs 7 to 9A and 13(1), (3) and (4) of Schedule 5, and

(c) section 232 and Schedule 6,

where appropriate as modified by **[**F299section 246(2) and (3)**]**.

Textual Amendments

F297 Ss. 249A-249E and preceding cross-heading inserted (11.8.1994) by S.I. 1994/1935, **reg. 2**

F298 Words in s. 249C(3) omitted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by virtue of S.I. 2000/1430, **arts. 1(2)**, 8(3)

F299 Words in s. 249C(6) substituted (1.3.1997) by S.I. 1997/220, **reg. 7(3)**

F300 249D The reporting accountant

[F301(1) The reporting accountant shall be either—

(a) any member of a body listed in subsection (3) who, under the rules of the body—

(i) is entitled to engage in public practice, and

(ii) is not ineligible for appointment as a reporting accountant, or

(b) any person (whether or not a member of any such body) who—

(i) is subject to the rules of any such body in seeking appointment or acting as auditor under Chapter V of Part XI, and

(ii) under those rules, is eligible for appointment as auditor under that Chapter.

(1A) In subsection (1), references to the rules of a body listed in subsection (3) are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of Part II of the Companies Act 1989 or this section.

This includes rules relating to the admission and expulsion of members of the body, so far as relevant for the purposes of that Part or this section.**]**

(2) An individual, a body corporate or a partnership may be appointed as a reporting accountant, and section 26 of the Companies Act 1989 (effect of appointment of partnership) shall apply to the appointment as reporting accountant of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any other country or territory in which a partnership is not a legal person

(3) The bodies referred to in **[**F302subsections (1) and (1A)**]** are—

(a) the Institute of Chartered Accountants in England and Wales,

(b) the Institute of Chartered Accountants of Scotland,

(c) the Institute of Chartered Accountants in Ireland,

(d) **[**F303the Association of Chartered Certified Accountants**]**, F304. . .

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(e) the Association of Authorised Public Accountants.
[F305(f) the Association of Accounting Technicians,
F305(g) the Association of International Accountants, and
F305(h) the Chartered Institute of Management Accountants.**]**

(4) A person is ineligible for appointment by a company as reporting accountant if he would be ineligible for appointment as an auditor of that company under section 27 of the Companies Act 1989 (ineligibility on ground of lack of independence).

Textual Amendments

F300 Ss. 249A-249E and preceding cross-heading inserted (11.8.1994) by S.I. 1994/1935, **reg. 2**
F301 S. 249D(1)(1A) substituted (30.3.1995) for s. 249D(1) by S.I. 1995/589, **reg. 2(1)(2)**
F302 Words in s. 249D(3) substituted (30.3.1995) for s. 249D(3) by S.I. 1995/589, **reg. 2(1)(3)**
F303 Words in s. 249D(3)(d) substituted (15.4.1997) by S.I. 1997/936, **reg. 4(2)**
F304 Word in s. 249D(3)(d) omitted (1.1.1997) by virtue of S.I. 1996/3080, **art. 2(2)(a)**
F305 S. 249D(3)(f)-(h) inserted (1.1.1997) by S.I. 1996/3080, **reg. 2(2)(b)**

F306 249E Effect of exemptions

(1) Where the directors of a company have taken advantage of the exemption conferred by section 249A(1) **[**F307or 249AA(1)**]**—

(a) sections 238 and 239 (right to receive or demand copies of accounts and reports) shall have effect with the omission of references to the auditors' report;

(b) no copy of an auditors' report need be delivered to the registrar or laid before the company in general meeting;

(c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply.

[F308(1A) Where the directors of a company have taken advantage of the exemption conferred by section 249AA, then for the purposes of that section the company shall be treated as a company entitled to prepare accounts in accordance with section 246 even though it is a member of an ineligible group.**]**

(2) Where the directors of a company have taken advantage of the exemption conferred by section 249A(2)—

(a) subsections (2) to (4) of section 236 (which require copies of the auditos report to state the names of the auditors) shall have effect with the substitution for references to the auditors and the auditors' report of references to the reporting accountant and the report made for the purposes of section 249A(2) respectively;

(b) sections 238 and 239 (right to receive or demand copies of accounts and reports), section 241 (accounts and reports to be laid before company in general meeting) and section 242 (accounts and reports to be delivered to the registrar) shall have effect with the substitution for references to the auditors' report of references to the report made for the purposes of section 249A(2);

(c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply;

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(d) section 389A(1) and (2) (rights to information) shall have effect with the substitution for references to the auditors of references to the reporting accountant.

Textual Amendments

F306 Ss. 249A-249E and preceding cross-heading inserted (11.8.1994) by S.I. 1994/1935, **reg. 2**

F307 Words in s. 249E(1) inserted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 8(4)

F308 S. 249E(1A) inserted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **arts. 1(2)**, 8(5)

Dormant companies

F309250 . . . . . .

Textual Amendments

F309 S. 250 repealed (26.5.2000 with application as mentioned in art. 1(2) of the amending Act) by S.I. 2000/1430, **arts. 1(2)**, 8(6)

Listed public companies

251 Provision of summary financial statement to shareholders.

(1) A public company whose shares **[**F310or debentures**]**, or any class of whose shares **[**F310or debentures**]**, are listed need not, in such cases as may be specified by regulations made by the Secretary of State, and provided any conditions so specified are complied with, send copies of the documents referred to in section 238(1) to **[**F311entitled persons**]**, but may instead send them a summary financial statement.

[F312In this section—

"entitled persons", in relation to a company, means such of the persons specified in paragraphs (a) to (c) of subsection (1) of section 238 as are or would apart from this section be entitled to be sent copies of those documents relating to the company which are referred to in that subsection;**]**

[F313 "listed" means included in the official list by the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (official listing); and

F313 "the official list" has the meaning given in section 103(1) of that Act.**]**

(2) Copies of the documents referred to in section 238(1) shall, however, be sent to **[**F314any entitled person**]** who wishes to receive them; and the Secretary of State may by regulations make provision as to the manner in which it is to be ascertained **[**F315(whether before or after he becomes an entitled person)**]** whether **[**F314an entitled person**]** wishes to receive them.

[F316(2A) References in this section to sending a summary financial statement to an entitled person include references to using electronic communications for sending the

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statement to such address as may for the time being be notified to the company by that person for that purpose.

F316(2B) For the purposes of this section a summary financial statement is also to be treated as sent to an entitled person where—

(a) the company and that person have agreed to his having access to summary financial statements on a web site (instead of their being sent to him);

(b) the statement is a statement to which that agreement applies; and

(c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of—

(i) the publication of the statement on a web site;

(ii) the address of that web site; and

(iii) the place on that web site where the statement may be accessed, and how it may be accessed.

F316(2C) For the purposes of this section a statement treated in accordance with subsection (2B) as sent to an entitled person is to be treated as sent to him if, and only if—

(a) the statement is published on the web site throughout a period beginning at least 21 days before the date of the meeting at which the accounts and directors' report from which the statement is derived are to be laid and ending with the conclusion of that meeting; and

(b) the notification given for the purposes of paragraph (c) of that subsection is given not less than 21 days before the date of the meeting.

F316(2D) Nothing in subsection (2C) shall invalidate the proceedings of a meeting where—

(a) any statement that is required to be published as mentioned in paragraph (a) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish that statement throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

F316(2E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of any of subsections (2A) to (2D).**]**

(3) The summary financial statement shall be derived from the company's annual accounts and the directors' report and shall be in such form and contain such information as may be specified by regulations made by the Secretary of State.

(4) Every summary financial statement shall—

(a) state that it is only a summary of information in the company's annual accounts and the directors' report;

(b) contain a statement by the company's auditors of their opinion as to whether the summary financial statement is consistent with those accounts and that report and complies with the requirements of this section and regulations made under it;

(c) state whether the auditors' report on the annual accounts was unqualified or qualified, and if it was qualified set out the report in full together with any further material needed to understand the qualification;

(d) state whether the auditors' report on the annual accounts contained a statement under—

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(i) section 237(2) (accounting records or returns inadequate or accounts not agreeing with records and returns), or

(ii) section 237(3) (failure to obtain necessary information and explanations),

and if so, set out the statement in full.

(5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) If default is made in complying with this section or regulations made under it, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(7) Section 240 (requirements in connection with publication of accounts) does not apply in relation to the provision to **[**[F317]entitled persons**]** of a summary financial statement in accordance with this section.

Textual Amendments

F310 Words in s. 251(1) inserted (4.12.1992) by S.I. 1992/3003, **reg. 3(2)(a)**.

F311 Words in s. 251(1) substituted (4.12.1992) by S.I. 1992/3003, **reg. 3(2)(b)**.

F312 Second paragraph of s. 251(1) substituted (4.12.1992) by S.I. 1992/3003, **reg. 3(3)**.

F313 Definitions of "listed" and "the official list" in s. 251(1) substituted (1.12.2001) for definition of "listed" and preceding word by S.I. 2001/3649, **arts. 1**, 15

F314 Words in s. 251(2) substituted (4.12.1992) by S.I. 1992/3003, **reg. 3(4)(a)**.

F315 Words in s. 251(2) inserted (4.12.1992) by S.I. 1992/3003, **reg. 3(4)(b)**.

F316 S. 251(2A)-(2E) inserted (22.12.2000) by S.I. 2000/3373, **art. 14**

F317 Words in s. 251(7) substituted (4.12.1992) by S.I. 1992/3003, **reg. 3(5)**.

Modifications etc. (not altering text)

C235 S. 251 modified by S.I. 1990/355, art. 7(2)(d), Sch. 2 paras. 14(2)(d), **18**

C236 S. 251 restricted by S.I. 1990/515, **reg. 5**

C237 S. 251(1)–(4) applied with modifications by S.I. 1990/2570, **regs. 14(1)(2)**, 16(3)

C238 S. 251(2) amended by S.I. 1990/515, **reg. 6(1)**

C239 S. 251(6)(7) applied with modifications by S.I. 1990/2570, **regs. 14(1)(2)(6)**, 16(3)

Private companies

252 Election to dispense with laying of accounts and reports before general meeting.

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the laying of accounts and reports before the company in general meeting.

(2) An election has effect in relation to the accounts and reports in respect of the financial year in which the election is made and subsequent financial years.

(3) Whilst an election is in force, the references in the following provisions of this Act to the laying of accounts before the company in general meeting shall be read as references to the sending of copies of the accounts to members and others under section 238(1)—

(a) section 235(1) (accounts on which auditors are to report),

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(b) section 270(3) and (4) (accounts by reference to which distributions are justified), and

(c) section 320(2) (accounts relevant for determining company's net assets for purposes of ascertaining whether approval required for certain transactions);

and the requirement in section 271(4) that the auditors' statement under that provision be laid before the company in general meeting shall be read as a requirement that it be sent to members and others along with the copies of the accounts sent to them under section 238(1).

(4) If an election under this section ceases to have effect, section 241 applies in relation to the accounts and reports in respect of the financial year in which the election ceases to have effect and subsequent financial years.

Modifications etc. (not altering text)

C240 S. 252(1)(2)(4) applied (1.7.2005) by The Community Interest Company Regulations 2005 (S.I. 2005/1788), **reg. 29**

[F318 253 Right of shareholder to require laying of accounts.

(1) Where an election under section 252 is in force, the copies of the accounts and reports sent out in accordance with section 238(1)—

(a) shall be sent not less than 28 days before the end of the period allowed for laying and delivering accounts and reports, and

(b) shall be accompanied, in the case of a member of the company, by a notice informing him of his right to require the laying of the accounts and reports before a general meeting;

and section 238(5) (penalty for default) applies in relation to the above requirements as to the requirements contained in that section.

(2) Before the end of the period of 28 days beginning with the day on which the accounts and reports are sent out in accordance with section 238(1), any member or auditor of the company may by notice in writing deposited at the registered office of the company require that a general meeting be held for the purpose of laying the accounts and reports before the company.

F319 **[** (2A) The power of a member or auditor under subsection (2) to require the holding of a general meeting is exercisable not only by the deposit of a notice in writing but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.**]**

(3) If the directors do not within 21 days from the date of **[**F320 -

F320 (a) the deposit of a notice containing a requirement under subsection (2), or

(b) the receipt of such a requirement contained in an electronic communication, proceed**]**

duly to convene a meeting, the person who **[**F321 required the holding of the meeting**]** may do so himself.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(4) A meeting so convened shall not be held more than three months from that date and shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Where the directors do not duly convene a meeting, any reasonable expenses incurred by reason of that failure by the person who **[**F322required the holding of the meeting**]** shall be made good to him by the company, and shall be recouped by the company out of any fees, or other remuneration in respect of their services, due or to become due to such of the directors as were in default.

(6) The directors shall be deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening it.**]**

Textual Amendments

F318 New ss. 252, 253 inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**), by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 16–22 as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F319 S. 253(2A) inserted (22.12.2000) by S.I. 2000/3373, **art. 15(1)(2)**

F320 S. 253(3)(a)(b) and preceding "-" substituted (22.12.2000) for words in s. 253(3) by S.I. 2000/3373, **art. 15(1)(3)(a)**

F321 Words in s. 253(3) substituted (22.12.2000) by S.I. 2000/3373, **art. 15(1)(3)(b)**

F322 Words in s. 253(5) substituted (22.12.2000) by S.I. 2000/3373, **art. 15(1)(4)**

Unlimited companies

254 Exemption from requirement to deliver accounts and reports.

(1) The directors of an unlimited company are not required to deliver accounts and reports to the registrar in respect of a financial year if the following conditions are met.

(2) The conditions are that at no time during the relevant accounting reference period—

(a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited, or

(b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it, or

(c) has the company been a parent company of an undertaking which was then limited.

The references above to an undertaking being limited at a particular time are to an undertaking (under whatever law established) the liability of whose members is at that time limited.

(3) The exemption conferred by this section does not apply **[**F323if—

(a) the company is a banking **[**F324or insurance**]** company or the parent company of a banking **[**F324or insurance**]** group, or

(b) the company is a qualifying company within the meaning of the Partnerships and Unlimited Companies (Accounts) Regulations 1993, or

(c)**]** at any time during the relevant accounting period the company carried on business as the promoter of a trading stamp scheme within the Trading Stamps Act 1964.

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at any time during the relevant accounting period the company carried on business as the promoter of a trading stamp scheme within the Trading Stamps Act 1964.

(4) Where a company is exempt by virtue of this section from the obligation to deliver accounts, section 240 (requirements in connection with publication of accounts) has effect with the following modifications—

(a) in subsection (3)(b) for the words from "whether statutory accounts" to "have been delivered to the registrar" substitute "that the company is exempt from the requirement to deliver statutory accounts", and

(b) in subsection (5) for "as required to be delivered to the registrar under section 242" substitute "as prepared in accordance with this Part and approved by the board of directors".

Textual Amendments

F323 Words in s. 254(3) substituted (21.7.1993) by S.I. 1993/1820, **reg. 10**

F324 Words in s. 254(3) substituted (19.12.1993) by S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para.2**

Banking and insurance companies and groups

F325255 Special provisions for banking and insurance companies.

(1) A banking company shall prepare its individual accounts in accordance with Part I of Schedule 9 rather than Schedule 4.

(2) An insurance company **[**F326shall**]** prepare its individual accounts in accordance with Part I of Schedule 9A rather than Schedule 4.

(3) Accounts so prepared shall contain a statement that they are prepared in accordance with the special provisions of this Part relating to banking companies or to insurance companies, as the case may be.

(4) In relation to the preparation of individual accounts in accordance with the special provisions of this Part, the references to Schedule 4 in section 226(4) and (5) (relationship between specific requirements and duty to give true and fair view) shall be read as references to the provisions of Part I of Schedule 9, in the case of the accounts of banking companies, or to the provisions of Part I of Schedule 9A, in the case of the accounts of insurance companies.

F327(5) . . . . . .

Textual Amendments

F325 Ss. 255-255B substituted (2.12.1991) by S.I. 1991/2705, **regs. 3**, 9.

F326 Word in s. 255(2) substituted (19.12.1993) by S.I. 1993/3246, **regs. 2(1)**, 6, 7

F327 S. 255(5) omitted (19.12.1993) by S.I. 1993/3246, **regs. 2(2)**, 6, 7

Modifications etc. (not altering text)

C241 S. 255 modified (*temp.*) (in force in accordance with **s. 3** of the amending Act) by 1999 c. iv, ss. 3, 7(6)

C242 S. 255 extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg.3**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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[F328]255A Special provisions for banking and insurance groups.

(1) The parent company of a banking group shall prepare group accounts in accordance with the provisions of this Part as modified by Part II of Schedule 9.

(2) The parent company of an insurance group **[**[F329]shall**]** prepare group accounts in accordance with the provisions of this Part as modified by Part II of Schedule 9A.

(3) Accounts so prepared shall contain a statement that they are prepared in accordance with the special provisions of this Part relating to banking groups or to insurance groups, as the case may be.

[[F330](4) References in this Part to a banking group are to a group where the parent company is a banking company or where—

(a) the parent company's principal subsidiary undertakings are wholly or mainly credit institutions, and

(b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings.

(5) References in this Part to an insurance group are to a group where the parent company is an insurance company or where —

(a) the parent company's principal subsidiary undertakings are wholly or mainly insurance companies, and

(b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings.

(5A) For the purposes of subsections (4) and (5) above—

(a) a parent company's principal subsidiary undertakings are the subsidiary undertakings of the company whose results or financial position would principally affect the figures shown in the group accounts, and

(b) the management of interests in subsidiary undertakings includes the provision of services to such undertakings.**]**

(6) In relation to the preparation of group accounts in accordance with the special provisions of this Part:

(a) the references to the provisions of Schedule 4A in section 227(5) and (6) (relationship between specific requirements and duty to give true and fair view) shall be read as references to those provisions as modified by Part II of Schedule 9, in the case of the group accounts of a banking group, or Part II of Schedule 9A, in the case of the group accounts of an insurance group; and

(b) the reference to paragraphs 52 to 57 of Schedule 4 in section 230(2) (relief from obligation to comply with those paragraphs where group accounts prepared) shall be read as a reference to paragraphs **[**[F331]75 to 77**]**, 80 and 81 of Part I of Schedule 9, in the case of the group accounts of a banking group **[**[F332], and as a reference to paragraphs 73, 74, 79 and 80 of Part I of Schedule 9A, in the case of the group accounts of an insurance group**]**..

[F333](7) . . . . . .

Textual Amendments

F328 Ss. 255-255B substituted (2.12.1991) by S.I. 1991/2705, **regs. 3**, 9.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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F329 Word in s. 255A substituted (19.12.1993) by S.I. 1993/3246, **regs. 3(1)**, 6, 7
F330 S. 255A(4)-(5A) substituted (19.12.1993) for s. 255A(4)(5) by S.I. 1993/3246, **regs. 3(2)**, 6, 7
F331 Words in s. 255A(6)(b) substituted (2.2.1996) by S.I. 1996/189, **reg. 15(2)**
F332 Words in s. 255A(6) inserted (19.12.1993) by S.I. 1993/3246, **regs. 3(3)**, 6, 7
F333 S. 255A(7) omitted (19.12.1993) by S.I. 1993/3246, **regs. 3(4)**, 6, 7

Modifications etc. (not altering text)
C243 S. 255A extended (with modifications) (19.12.1993) by S.I. 1993/3245, **reg. 3**

[F334]255B Modification of disclosure requirements in relation to banking company or group.

(1) In relation to a banking company, or the **[**[F335]parent company of a banking group**]**, the provisions of Schedule 5 (Disclosure of information: related undertakings) have effect subject to Part III of Schedule 9.

(2) In relation to a banking company, or the **[**[F336]holding company of a credit institution**]**, the provisions of Schedule 6 (Disclosure of information: emoluments and other benefits of directors and others) have effect subject to Part IV of Schedule 9.

Textual Amendments
F334 Ss. 255-255B substituted (2.12.1991) by S.I. 1991/2705, **regs. 3**, 9.
F335 Words in s. 255B(1) substituted (1.1.1993) by S.I. 1992/3178, **reg. 6**.
F336 Words in s. 255B(2) substituted (28.2.1994) by S.I. 1994/233, **reg. 3**

[F337]255C . . . . . .

Textual Amendments
F337 S. 255C omitted (19.12.1993) by S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para.3**

[[F338]255D Power to apply provisions to banking partnerships.

(1) The Secretary of State may by regulations apply to banking partnerships, subject to such exceptions, adaptations and modifications as he considers appropriate, the provisions of this Part applying to banking companies.

[A "banking partnership" means a partnership which has permission under Part 4 of [F339](2) the Financial Services and Markets Act 2000.

(2A) But a partnership is not a banking partnership if it has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.**]**

(3) Regulations under this section shall be made by statutory instrument.

(4) No regulations under this section shall be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.

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[Subsections (2) and (2A) must be read with—

F340(5) (a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.**]]**

Textual Amendments

F338 New s. 255D inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 18(2), 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F339 S. 255D(2)(2A) substituted (1.12.2001) for s. 255D(2) by S.I. 2001/3649, **arts. 1**, 16(1)

F340 S. 255D(5) inserted (1.12.2001) for s. 255D(5) by S.I. 2001/3649, **arts. 1**, 16(2)

Welsh private companies

[F341F342255E Delivery of accounting documents in Welsh only.

(1) The directors of a private company whose memorandum states that its registered office is to be situated in Wales may deliver to the registrar a copy of any document to which this section applies in Welsh without annexing to the copy a translation of the document into English.

(2) This section applies to any document required to be delivered to the registrar by the following provisions of this Part—

(a) section 242(1) (accounts and reports to be delivered to the registrar);

(b) section 243 (accounts of subsidiary undertakings to be appended in certain cases); and

(c) paragraph 7 of Part II of Schedule 9 (banking groups: information as to undertaking in which shares held as a result of financial assistance operation).

(3) The registrar shall, having received any document in Welsh under this section, obtain a translation of it into English; and the translation shall be regarded as a document delivered to the registrar for the purposes of sections 707A and 709 F343 and shall be registered by him accordingly.]

Textual Amendments

F341 S. 255E inserted (1.6.1992) by S.I. 1992/1083, **reg. 2(4)**.

F342 S. 255E repealed (1.2.1994) by 1993 c. 38, s. 30(5), 35(1), **Sch. 2**; S.I. 1994/115, **art. 2(2)**

F343 Sections 707A and 709 were inserted into the 1985 Act by section 126 of the Companies Act 1989.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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CHAPTER III

SUPPLEMENTARY PROVISIONS

Accounting standards

256 Accounting standards.

(1) In this Part "accounting standards" means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.

(2) References in this Part to accounting standards applicable to a company's annual accounts are to such standards as are, in accordance with their terms, relevant to the company's circumstances and to the accounts.

(3) The Secretary of State may make grants to or for the purpose of bodies concerned with—

(a) issuing accounting standards,

(b) overseeing and directing the issuing of such standards, or

(c) investigating departures from such standards or from the accounting requirements of this Act and taking steps to secure compliance with them.

(4) Regulations under this section may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.

VALID FROM 22/03/2005

256A Reporting standards

(1) In this Part, "reporting standards" means statements of standard reporting practice which—

(a) relate to operating and financial reviews, and

(b) are issued by a body or bodies specified in an order made by the Secretary of State in accordance with section 257(4B).

(2) References in this Part to relevant reporting standards, in relation to a company's operating and financial review, are to such standards as are, in accordance with their terms, applicable to the company's circumstances and to the review.

(3) Where or to the extent that the directors of a company have complied with a reporting standard, they are presumed (unless the contrary is proved) to have complied with the corresponding requirements of this Part relating to the contents of an operating and financial review.

Power to alter accounting requirements

257 Power of Secretary of State to alter accounting requirements.

(1) The Secretary of State may by regulations made by statutory instrument modify the provisions of this Part.

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(2) Regulations which—

(a) add to the classes of documents required to be prepared, laid before the company in general meeting or delivered to the registrar,

(b) restrict the classes of company which have the benefit of any exemption, exception or special provision,

(c) require additional matter to be included in a document of any class, or

(d) otherwise render the requirements of this Part more onerous,

shall not be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.

(3) Otherwise, a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Regulations under this section may—

(a) make different provision for different cases or classes of case,

(b) repeal and re-enact provisions with modifications of form or arrangement, whether or not they are modified in substance,

(c) make consequential amendments or repeals in other provisions of this Act, or in other enactments, and

(d) contain such transitional and other incidental and supplementary provisions as the Secretary of State thinks fit.

(5) Any modification by regulations under this section of section 258 or Schedule 10A (parent and subsidiary undertakings) does not apply for the purposes of enactments outside the Companies Act unless the regulations so provide.

Parent and subsidiary undertakings

258 Parent and subsidiary undertakings.

(1) The expressions "parent undertaking" and "subsidiary undertaking" in this Part shall be construed as follows; and a "parent company" means a parent undertaking which is a company.

(2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

(a) it holds a majority of the voting rights in the undertaking, or

(b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or

(c) it has the right to exercise a dominant influence over the undertaking—

(i) by virtue of provisions contained in the undertaking's memorandum or articles, or

(ii) by virtue of a control contract, or

(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking—

(a) if any of its subsidiary undertakings is a member of that undertaking, or

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(b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking and—

(a) it actually exercises a dominant influence over it, or

(b) it and the subsidiary undertaking are managed on a unified basis.

(5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

(6) Schedule 10A contains provisions explaining expressions used in this section and otherwise supplementing this section.

Modifications etc. (not altering text)

C244 S. 258 applied (with modifications) (18.7.1996) by S.I. 1996/1669, reg. 2(3), **Sch. 1 paras. 1-3(1)(2)**
S. 258 applied (19.3.1997) by 1997 c. 16, s. 82, **Sch. 12 Pt. IV para. 28(6)(a)**
S. 258 applied (1.12.1997) by 1986 c. 53, **s. 83A(9)** (as inserted (1.12.1997) by 1997 c. 32, **s. 35**; S.I. 1997/2668, art. 2, **Sch. Pt. I**)
S. 258 applied (1.10.2001) by S.I. 2001/3270, **art. 2(1)**

Other interpretation provisions

259 Meaning of "undertaking" and related expressions.

(1) In this Part "undertaking" means—

(a) a body corporate or partnership, or

(b) an unincorporated association carrying on a trade or business, with or without a view to profit.

(2) In this Part references to shares—

(a) in relation to an undertaking with a share capital, are to alloted shares;

(b) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and

(c) in relation to an undertaking without capital, are to interests—

(i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

This is subject to provision in any specific context providing for the translation of such expressions.

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(4) References in this Part to "fellow subsidiary undertakings" are to undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.

(5) In this Part "group undertaking", in relation to an undertaking, means an undertaking which is—

(a) a parent undertaking or subsidiary undertaking of that undertaking, or

(b) a subsidiary undertaking of any parent undertaking of that undertaking.

Modifications etc. (not altering text)
C245 S. 259 applied (with modifications) (18.7.1996) by S.I. 1996/1669, reg. 2(3), Sch. 1 paras. 1, **3(3)**

[F344 260 Participating interests.

(1) In this Part "participating interest" means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20 per cent. or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes—

(a) an interest which is convertible into an interest in shares, and

(b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.

(5) For the purposes of this section as it applies in relation to the expression "participating interest" in section 258(4) (definition of "subsidiary undertaking")—

(a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings, and

(b) the references in subsection (1) to the purpose and activities of an undertaking include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.

(6) In the balance sheet and profit and loss formats set out in Part I of Schedule 4 **[**F345Part I of Schedule 8, Schedule 8A,**][**F346, Chapter I of Part I of Schedule 9 and Chapter I of Part I of Schedule 9A**]**, "participating interest" does not include an interest in a group undertaking.

(7) For the purposes of this section as it applies in relation to the expression "participating interest"—

(a) in those formats as they apply in relation to group accounts, and

(b) in paragraph 20 of Schedule 4A (group accounts: undertakings to be accounted for as associated undertakings),

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the references in subsections (1) to (4) to the interest held by, and the purposes and activities of, the undertaking concerned shall be construed as references to the interest held by, and the purposes and activities of, the group (within the meaning of paragraph 1 of that Schedule).**]**

Textual Amendments

F344 New ss. 259–262A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 22, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F345 Words in s. 260(6) inserted (1.3.1997) by S.I. 1997/220, **reg. 7(5)**

F346 Words in s. 260(6) substituted (19.12.1993) by S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para.4**

Modifications etc. (not altering text)

C246 S. 260 applied (with modifications) (18.7.1996) by S.I. 1996/1669, reg. 2(3), Sch. 1 paras. 1, **3(4)**

[F347261 Notes to the accounts.

(1) Information required by this Part to be given in notes to a company's annual accounts may be contained in the accounts or in a separate document annexed to the accounts.

(2) References in this Part to a company's annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision of this Act, and required or allowed by any such provision to be given in a note to company accounts.**]**

Textual Amendments

F347 New ss. 259–262A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 22, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

[F348262 Minor definitions.

(1) In this Part—

[F349 "address", except in section 228, in relation to electronic communications, includes any number or address used for the purposes of such communications**]**

"annual accounts" means—

(a) the individual accounts required by section 226, and

(b) any group accounts required by section 227,

(but see also section 230 (treatment of individual profit and loss account where group accounts prepared));

"annual report", in relation to a company, means the directors' report required by section 234;

"balance sheet date" means the date as at which the balance sheet was made up;

"capitalisation", in relation to work or costs, means treating that work or those costs as a fixed asset;

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[F350 "credit institution" means a credit institution as defined in **[**F351article 1(1)(a)**]** of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, that is to say an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;**]**
F352 . . .

"fixed assets" means assets of a company which are intended for use on a continuing basis in the company's activities, and "current assets" means assets not intended for such use;

"group" means a parent undertaking and its subsidiary undertakings;

"included in the consolidation", in relation to group accounts, or "included in consolidated group accounts", means that the undertaking is included in the accounts by the method of full (and not proportional) consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly;

"purchase price", in relation to an asset of a company or any raw materials or consumables used in the production of such an asset, includes any consideration (whether in cash or otherwise) given by the company in respect of that asset or those materials or consumables, as the case may be;

"qualified", in relation to an auditors' report, means that the report does not state the auditors' unqualified opinion that the accounts have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare accounts in accordance with this Act, under any corresponding legislation under which it is required to prepare accounts;

"true and fair view" refers—

(a) in the case of individual accounts, to the requirement of section 226(2), and

(b) in the case of group accounts, to the requirement of section 227(3);

"turnover", in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of—

(i) trade discounts,

(ii) value added tax, and

(iii) any other taxes based on the amounts so derived.

(2) In the case of an undertaking not trading for profit, any reference in this Part to a profit and loss account is to an income and expenditure account; and references to profit and loss and, in relation to group accounts, to a consolidated profit and loss account shall be construed accordingly.

(3) References in this Part to "realised profits" and "realised losses", in relation to a company's accounts, are to such profits or losses of the company as fall to be treated as realised in accordance with principles generally accepted, at the time when the accounts are prepared, with respect to the determination for accounting purposes of realised profits or losses.

This is without prejudice to—

(a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or

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(b) any specific provision for the treatment of profits or losses of any description as realised.**]**

Textual Amendments

F348 New ss. 259–262A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 22, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F349 Definition of "address" in s. 262(1) inserted (22.12.2000) by S.I. 2000/3373, **art. 16(1)**

F350 S. 262(1): definition substituted (22.11.2000) by S.I. 2000/1430, **art. 2(3)**

F351 S. 262(1): words in definition of "credit institution" substituted (27.4.2002) by The Electronic Money (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/765), **reg. 2(2)**

F352 S. 262(1): definition omitted (20.10.1997) by virtue of S.I. 1997/2306, **reg. 4(2)**

[F353262AIndex of defined expressions.

The following Table shows the provisions of this Part defining or otherwise explaining expressions used in this Part (other than expressions used only in the same section or paragraph)—

accounting reference date and accounting reference period	section 224
accounting standards and applicable accounting standards	section 256
[F354 "address"	F354section 2 62(1)**]**
annual accounts (generally)	section 262(1)
(includes notes to the accounts)	section 261(2)
annual report	section 262(1)
associated undertaking (in Schedule 4A)	paragraph 20 of that Schedule
balance sheet (includes notes)	section 261(2)
balance sheet date	section 262(1)
F355 . . .	F355 . . .
banking group	**[**F356section 255A(4)**]**
F355 . . .	F355 . . .
capitalisation (in relation to work or costs)	section 262(1)
credit institution	section 262(1)
current assets	section 262(1)
F357 . . . "	F357 . . .
fellow subsidiary undertaking	section 259(4)
[F358financial fixed assets (in Schedule 9)**]**	**[**F358paragraph 82 of Part I of that Schedule**]**

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financial year	section 223
fixed assets	section 262(1)
[F359 "general business" (in Schedule 9A)	paragraph 81 of Part I of that Schedule**]**
group	section 262(1)
group undertaking	section 259(5)
[F360historical cost accounting rules**]**	
[F360- in Schedule 4**]**	**[**F360paragraph 29 of that Schedule**]**
[F361—in Schedule 8	paragraph 29 of that Schedule**]**
[F360-in Schedule 9**]**	**[**F360paragraph 39 of Part I of that Schedule**]**
[F362—in Schedule 9A	paragraph 20(1) of Part I of that Schedule**]**
included in the consolidation and related expressions	section 262(1)
individual accounts	section 262(1)
insurance group	**[**F356section 255A(5)**]**
land of freehold tenure and land of leasehold tenure (in relation to Scotland) — in Schedule 4	paragraph 93 of that Schedule
[F363-in Schedule 9**]**	**[**F363paragraph 86 of Part I of that Schedule**]**
[F364—inSchedule 9A	paragraph 85 of Part I of that Schedule**]**
lease, long lease and short lease— in Schedule 4	paragraph 83 of that Schedule
[F363- in Schedule 9**]**	**[**F363paragraph 82 of Part I of that Schedule**]**
[F365—inSchedule 9A	paragraph 81 of Part I of that Schedule**]**
listed investment—in Schedule 4	paragraph 84 of that Schedule
[F366—in Schedule 8	paragraph 54 of that Schedule**]**
[F367—in Schedule 9A	paragraph 81 of Part I of that Schedule**]**
[F358listed security (in Schedule 9)**]**	**[**F358paragraph 82 of Part I of that Schedule**]**
[F359 "long term business" (in Schedule 9A)	paragraph 81 of Part I of that Schedule**]**
[F359 "long term fund" (in Schedule 9A)	paragraph 81 of Part I of that Schedule**]**
notes to the accounts	section 261(1)
parent undertaking (and parent company)	section 258 and Schedule 10A
participating interest	section 260

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[F368pension costs—in Schedule 4	F368paragraph 94(2) of that Schedule**]**
[F368—in Schedule 8	F368paragraph 59(2) of that Schedule**]**
[F368—in Schedule 9	F368paragraph 87(b) of Part I of that Schedule**]**
[F368—in Schedule 9A	F368paragraph 86(b) of Part I of that Schedule**]**
period allowed for laying and delivering accounts and reports	section 244
[F359 "policy holder" (in Schedule 9A)	paragraph 81 of Part I of that Schedule**]**
profit and loss account(includes notes)	section 261(2)
(in relation to a company not trading for profit)	section 262(2)
[F359 "provision for unexpired risks" (in Schedule 9A)	paragraph 81 of Part I of that Schedule**]**
provision—in Schedule 4	paragraphs 88 and 89 of that Schedule
[F369"—in Schedule 8	paragraphs 57 and 58 of that Schedule**]**
[F363- in Schedule 9**]**	**[**F363paragraph 85 of Part I of that Schedule**]**
[F370—in Schedule 9A	paragraph 84 of Part I of that Schedule**]**
purchase price	section 262(1)
qualified	section 262(1)
realised losses and realised profits	section 262(3)
[F358repayable on demand (in Schedule 9)**]**	**[**F358paragraph 82 of Part I of that Schedule**]**
[F371reporting accountant	section 249C(1)**]**
reserve (in **[**F372Schedule 9A**]**)	paragraph 32 of that Schedule
[F358saleand option to resell transaction (in Schedule 9)**]**	**[**F358paragraph 82 of Part I of that Schedule**]**
[F358sale and repurchase transaction (in Schedule 9)**]**	**[**F358paragraph 82 of Part I of that Schedule**]**
shares	section 259(2)
[F360social security costs**]**	
[F360-in Schedule 4**]**	**[**F360paragraph 94(1) and (3) of that Schedule**]**
[F373—in Schedule 8	paragraph 59(1) and (3) of that Schedule**]**
[F360- in Schedule 9**]**	**[**F360paragraph 87(a) and (c) of Part I of that Schedule**]**
[F374—in Schedule 9A	paragraph 86(a) and (c) of Part I of that Schedule**]**

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special provisions for banking and insurance companies and groups	sections 255 and 255A
subsidiary undertaking	section 258 and Schedule 10A
[[F359] "the 1982 Act" (in Schedule 9A)	paragraph 81 of Part I of that Schedule**]**
true and fair view	section 262(1)
turnover	section 262(1)
undertaking and related expressions	section 259(1) to (3)**]**

Textual Amendments

F353 New ss. 259–262A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 2**) by Companies Act 1989 (c. 40, SIF 27), **ss. 1**, 22, 213(2) as part of the text inserted in place of ss. 221–262 (as mentioned in s. 1(a) of the 1989 Act)

F354 S. 262A: entry inserted (22.12.2000) by S.I. 2000/3373, **art. 16(2)**

F355 Entries in s. 262A repealed (11.2.1994) by S.I. 1994/233, **reg. 4(2)** (with reg. 7)

F356 References in s. 262A substituted (2.12.1991) by S.I. 1991/2705, regs. 6, 9, **Sch. 2 para. 3(a)**.

F357 Entry in s. 262A repealed (20.10.1997) by S.I. 1997/2306, **reg. 4(4)**

F358 S. 262A: entries inserted (2.12.1991) by S.I. 1991/2705, regs. 6, 9, **Sch. 2 para. 3(c)**.

F359 Entries in s. 262A inserted (19.12.1993) by S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 5(a)**

F360 S. 262A: entries substituted (2.12.1991) by S.I. 1991/2705, regs. 6, 9, **Sch. 2 para. 3(d)**.

F361 S. 262A: words in entry relating to "historical cost accounting rules" inserted (1.3.1997) by S.I. 1997/220, **reg. 7(6)(a)**

F362 Entry in s. 262A inserted (19.12.1993) by S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 5(b)**

F363 Words in s. 262A inserted (2.12.1991) by S.I. 1991/2705, regs. 6, 9, **Sch. 2 para. 3(e)**.

F364 Entry in s. 262A substituted (19.12.1993) by virtue of S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 5(c)**

F365 Entry in s. 262A substituted (19.12.1993) by virtue of S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 5(d)**

F366 S. 262A: words in entry relating to "listed investment" inserted (1.3.1997) by S.I. 1997/220, **reg. 7(6)(b)**

F367 Entry in s. 262A substituted (19.12.1993) by virtue of S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 5(e)**

F368 S. 262A: entry substituted (1.3.1997) by S.I. 1997/220, **reg. 7(6)(c)**

F369 S. 262A: words in entry relating to "provision" inserted (1.3.1997) by S.I. 1997/220, **reg. 7(6)(d)**

F370 Entry in s. 262A substituted (19.12.1993) by virtue of S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 5(g)**

F371 Entry in s. 262A inserted (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt. I para. 3**

F372 Words in s. 262A substituted (2.12.1991) by S.I. 1991/2705, regs. 6, 9, **Sch. 2 para. 3(b)**.

F373 S. 262A: words in entry relating to "social security costs" inserted (1.3.1997) by S.I. 1997/220, **reg. 7(6)(e)**

F374 Entry in s. 262A inserted (19.12.1993) by S.I. 1993/3246, regs. 5(1), 6, 7, **Sch. 2 para. 5(h)**

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PART VIII

DISTRIBUTION OF PROFITS AND ASSETS

Limits of company's power of distribution

263 Certain distributions prohibited.

(1) A company shall not make a distribution except out of profits available for the purpose.

(2) In this Part, "distribution" means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of—

(a) an issue of shares as fully or partly paid bonus shares,

(b) the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with Chapter VII of Part V,

(c) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or by paying off paid up share capital, and

(d) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Part, a company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly make.

This is subject to the provision made by sections 265 and 266 for investment and other companies.

(4) A company shall not apply an unrealised profit in paying up debentures, or any amounts unpaid on its issued shares.

(5) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before 22nd December 1980 is realised or unrealised, they may treat the profit as realised; and where after making such enquiries they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

Modifications etc. (not altering text)

C247 S. 263 modified (31.10.1994) by 1994 c. 21, s. 15, **Sch. 3 para.6(1)**; S.I. 1994/2552, art. 2, **Sch. 1**
S. 263 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 6(1)**

C248 S. 263 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 2(a)** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C249 S. 263(1) applied (with modifications) (6.11.2000) by 2000 c. 26, **s. 72(3)-(5)**; S.I. 2000/2957, art. 2(1), **Sch. 1**

264 Restriction on distribution of assets.

(1) A public company may only make a distribution at any time—

(a) if at that time the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and

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(b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

This is subject to the provision made by sections 265 and 266 for investment and other companies.

(2) In subsection (1), "net assets" means the aggregate of the company's assets less the aggregate of its liabilities ("liabilities" to include any provision for liabilities or charges within paragraph 89 of Schedule 4).

(3) A company's undistributable reserves are—

(a) the share premium account,

(b) the capital redemption reserve,

(c) the amount by which the company's accumulated, unrealised profits, so far as not previously utilised by capitalisation of a description to which this paragraph applies, exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made), and

(d) any other reserve which the company is prohibited from distributing by any enactment (other than one contained in this Part) or by its memorandum or articles;

and paragraph (c) applies to every description of capitalisation except a transfer of profits of the company to its capital redemption reserve on or after 22nd December 1980.

(4) A public company shall not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

Modifications etc. (not altering text)

C250 S. 264 applied (with modifications) (6.11.2000) by 2000 c. 26, **s. 72(3)-(5)**; S.I. 2000/2957, art. 2(1), **Sch. 1**

C251 S. 264 modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), **s. 8(4)**; S.I. 1991/2721, **art.2**

C252 S. 264 modified (31.10.1994) by 1994 c. 21, s. 15, **Sch. 3 para. 6(2)**; S.I. 1994/2552, art. 2, **Sch. 1**
S. 264 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 6(2)**
S. 264 modified (24.7.1996) by 1996 c. 55, ss. 134, 149(1)(f), **Sch. 6 para. 3(2)**

C253 S. 264 modified (5.10.2004) by Energy Act 2004 c. 20), ss. 39, 198(2), {Sch. 6 para. 6(3)} (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C254 S. 264(2) extended (21.8.2002) by S.I. 2001/1060, art. 5A(2) (as inserted by S.I. 2002/2157, **art. 8(2)**)
S. 264(2) extended (21.8.2002) by S.I. 2001/1335, art. 8A(2) (as inserted by S.I. 2002/2157, **art. 3(2)**)

C255 S. 264(3)(c) modified by British Steel Act 1988 (c. 35, SIF 70), **s. 7(4)**

C256 S. 264(3)(c) modified by Electricity Act 1989 (c. 29, SIF 44:1), ss. 75(3), 112(3), **Sch. 17 para. 35(1)**

C257 S. 264(3)(c) modified by Broadcasting Act 1990 (c. 42, SIF 96), **ss. 4(6)**, 87(6), 138(3)

C258 S. 264(3)(d) modified by Airports Act 1986 (c. 31, SIF 9) s. 8(3) and British Steel Act 1988 (c.35, SIF 70), **s. 7(4)**

C259 S. 264(3)(d) excluded by Electricity Act 1989 (c. 29, SIF 44:1), ss. 75(3), 112(3), **Sch. 17 para. 35(1)**

C260 S. 264(3)(d) excluded by Broadcasting Act 1990 (c. 42, SIF 96), **ss. 4(6)**, 87(6), 138(3)

C261 S. 264(3)(d) modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), **s. 8(4)**; S.I. 1991/2721, **art.2**

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265 Other distributions by investment companies.

(1) Subject to the following provisions of this section, an investment company (defined in section 266) may also make a distribution at any time out of its accumulated, realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made—

(a) if at that time the amount of its assets is at least equal to one and a half times the aggregate of its liabilities, and

(b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.

(2) In subsection (1)(a), "liabilities" includes any provision for liabilities or charges (within the meaning of paragraph 89 of Schedule 4).

(3) The company shall not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

(4) An investment company may not make a distribution by virtue of subsection (1) unless—

(a) its shares are listed on a **[**F375recognised investment exchange other than an overseas investment exchange F376. . .**]**, and

(b) during the relevant period it has not—

(i) distributed any of its capital profits **[**F377otherwise than by way of the redemption or puchase of any of the compan's own shares in accordance with section 160 or 162 in Chapter VII of Part V**]**, or

(ii) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or amounts unpaid on its issued shares.

[F378(4A) In subsection (4)(a) "recognised investment exchange" and "overseas investment exchange" have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.**]**

(5) The "relevant period" under subsection (4) is the period beginning with—

(a) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or

(b) where the distribution is to be made in the company's first accounting reference period, the first day of that period,

and ending with the date of the distribution.

(6) An investment company may not make a distribution by virtue of subsection (1) unless the company gave to the registrar of companies the requisite notice (that is, notice under section 266(1)) of the company's intention to carry on business as an investment company—

(a) before the beginning of the relevant period under subsection (4), or

(b) in the case of a company incorporated on or after 22nd December 1980, as soon as may have been reasonably practicable after the date of its incorporation.

Textual Amendments

F375 Words substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 19**

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F376 Words in s. 265(4)(a) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 17(1)(2)
F377 Words in s. 265(4)(b)(ii) inserted (8.11.1999) by S.I. 1999/2770, **reg. 2**
F378 S. 265(4A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 17(1)(3)

266 Meaning of "investment company".

(1) In section 265 "investment company" means a public company which has given notice in the prescribed form (which has not been revoked) to the registrar of companies of its intention to carry on business as an investment company, and has since the date of that notice complied with the requirements specified below.

(2) Those requirements are—

(a) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds,

(b) that none of the company's holdings in companies (other than those which are for the time being in investment companies) represents more than 15 per cent. by value of the investing company's investments,

(c) that **[**F379subject to subsection (2A)**]** distribution of the company's capital profits is prohibited by its memorandum or articles of association,

(d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15 per cent. of the income it derives from securities.

[F380(2A) An investment company need not be prohibited by its memorandum or articles from redeeming or purchasing its own shares in accordance with section 160 or 162 in Chapter VII of Part V out of its capital profits.**]**

(3) Notice to the registrar of companies under subsection (1) may be revoked at any time by the company on giving notice in the prescribed form to the registrar that it no longer wishes to be an investment company within the meaning of this section; and, on giving such notice, the company ceases to be such a company.

[F381(4) Subsections (1A) to (3) of section 842 of the Income and Corporation Taxes Act M371988 apply for the purposes of subsection (2)(b) above as for those of subsection (1)(b) of that section.**]**

Textual Amendments
F379 Words in s. 266(2)(c) inserted (8.11.1999) by S.I. 1999/2770, **reg. 3(a)**
F380 S. 266(2A) inserted (8.11.1999) by S.I. 1999/2770, **reg. 3(b)**
F381 S. 266(4) substituted by Finance Act 1988 (c. 39, SIF 63:1), **s. 117(3)(4)**

Marginal Citations
M37 1988 c.1 (**63:1**).

267 Extension of ss. 265, 266 to other companies.

(1) The Secretary of State may by regulations in a statutory instrument extend the provisions of sections 265 and 266 (with or without modifications) to companies whose principal business consists of investing their funds in securities, land or other

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assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets.

(2) Regulations under this section—

(a) may make different provision for different classes of companies and may contain such transitional and supplemental provisions as the Secretary of State considers necessary, and

(b) shall not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House.

268 Realised profits of insurance company with long term business.

(1) Where **[**F382an authorised insurance company**]** carries on long term business—

[F383(a) any amount included in the relevant part of the balance sheet of the company which represents a surplus in the fund or funds maintained by it in respect of that business and which has not been allocated to policy holders **[**F384or, as the case may be, carried forward unappropriated, in accordance with asset identification rules made under section 142(2) of the Financial Services and Markets Act 2000**]**, and**]**

(b) any deficit in that fund or those funds,

are to be (respectively) treated, for purposes of this Part, as a realised profit and a realised loss; and, subject to this, any profit or loss arising in that business is to be left out of account for those purposes.

(2) In subsection (1)—

[F385(aa) the reference to the relevant part of the balance sheet is to that part of the balance sheet which represents Liabilities item A.V (profit and loss account) in the balance sheet format set out in section B of Chapter I of Part I of Schedule 9A,**]**

(a) the reference to a surplus in any fund or funds of an insurance company is to an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long term business, as shown by an actuarial investigation, and

(b) the reference to a deficit in any such fund or funds is to the excess of those liabilities over those assets, as so shown.

(3) In this section—

[F386(a) "actuarial investigation" means—

(i) an investigation made into the financial condition of an authorised insurance company in respect of its long term business, carried out once in every period of twelve months in accordance with rules made under Part 10 of the Financial Services and Markets Act 2000 by an actuary appointed as actuary to that company; or

(ii) an investigation made into the financial condition of an authorised insurance company in respect of its long term business carried out in accordance with a requirement imposed by the Financial Services Authority under section 166 of that Act by an actuary appointed as actuary to that company;**]**

[F387(b) "long term business" means business which consists of effecting or carrying out contracts of long term insurance.**]**

[F388(4) The definition of "long term business" in paragraph (3) must be read with—

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(a) section 22 of the Financial Services and Markets Act 2000;
(b) any relevant order under that section; and
(c) Schedule 2 to that Act.**]**

Textual Amendments

F382 Words in s. 268(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 18(1)(2)(a)
F383 S. 268(1)(a) substituted (2.2.1996) by S.I. 1996/189, **reg. 13(2)**
F384 Words in s. 268(1)(a) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 18(1)(2)(b)
F385 S. 268(2)(aa) inserted (2.2.1996) by S.I. 1996/189, **reg. 13(3)**
F386 S. 268(3)(a) substitued (1.12.2001) by S.I. 2001/3649, **arts. 1**, 18(1)(3)(a)
F387 S. 268(3)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 18(1)(3)(b)
F388 S. 268(4) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 18(1)(4)

269 Treatment of development costs.

(1) Subject as follows, where development costs are shown as an asset in a company's accounts, any amount shown in respect of those costs is to be treated—
(a) under section 263, as a realised loss, and
(b) under section 265, as a realised revenue loss.

(2) This does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs; nor does it apply if—
(a) there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by subsection (1), and
(b) the note to the accounts required by paragraph 20 of Schedule 4 **[**[F389]paragraph 20 of Schedule 8**]** (reasons for showing development costs as an asset) states that the amount is not to be so treated and explains the circumstances relied upon to justify the decision of the directors to that effect.

Textual Amendments

F389 Words in s. 269(2)(b) inserted (1.3.1997) by S.I. 1997/220, **reg. 7(7)**

Relevant accounts

270 Distribution to be justified by reference to company's accounts.

(1) This section and sections 271 to 276 below are for determining the question whether a distribution may be made by a company without contravening sections 263, 264 or 265.

(2) The amount of a distribution which may be made is determined by reference to the following items as stated in the company's accounts—
(a) profits, losses, assets and liabilities,
(b) provisions of any of the kinds mentioned in paragraphs 88 and 89 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.), and

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(c) share capital and reserves (including undistributable reserves).

(3) Except in a case falling within the next subsection, the company's accounts which are relevant for this purpose are its last annual accounts, that is to say those prepared under Part VII which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid; and for this purpose accounts are laid if section 241(1) has been complied with in relation to them.

(4) In the following two cases—

(a) where the distribution would be found to contravene the relevant section if reference were made only to the company's last annual accounts, or

(b) where the distribution is proposed to be declared during the company's first accounting reference period, or before any accounts are laid in respect of that period,

the accounts relevant under this section (called "interim accounts" in the first case, and "initial accounts" in the second) are those necessary to enable a reasonable judgment to be made as to the amounts of the items mentioned in subsection (2) above.

(5) The relevant section is treated as contravened in the case of a distribution unless the statutory requirements about the relevant accounts (that is, the requirements of this and the following three sections, as and where applicable) are complied with in relation to that distribution.

Modifications etc. (not altering text)

C262 Ss. 270-276 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 7** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C263 S. 270 modified by Airports Act 1986 (c. 31, SIF 9), s. 83(4), **Sch. 5 para. 9(1)** and Gas Act 1986 (c. 44, SIF 44:2), s. 67(3), **Sch. 8 Pt. II para. 41(1)**(*a*)

C264 S. 270 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3), Sch. 17 paras. 35(1), **39(1)**

C265 Ss. 270 - 276 applied (with modifications) (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 7(1)**
Ss. 270-276 applied (with modifications) (24.11.1995) by S.I. 1995/3023, **art. 7(1)(2)**

C266 Ss. 270 - 276 modified (6.1.1992) by British Technology Group Act 1991 (c. 66, SIF 64), s. 17(3), **Sch. 3 para. 7(1)**; S.I. 1991/2721, **art.2**
Ss. 270-276 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para.7(1)**
Ss. 270-276 modified (24.7.1996) by 1996 c. 55, ss. 134, 149(1)(f), **Sch. 6 para. 4(1)**

271 Requirements for last annual accounts.

(1) If the company's last annual accounts constitute the only accounts relevant under section 270, the statutory requirements in respect of them are as follows.

(2) The accounts must have been properly prepared in accordance with this Act, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in section 270(2), whether the distribution would contravene the relevant section; and, without prejudice to the foregoing—

(a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and

(b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.

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(3) The auditors must have made their report on the accounts under **[**[F390]section 235**]**; and the following subsection applies if the report is a qualified report, that is to say, it is not a report without qualification to the effect that in the auditors' opinion the accounts have been properly prepared in accordance with this Act.

(4) The auditors must in that case also have stated in writing (either at the time of their report or subsequently) whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in section 270(2), whether the distribution would contravene the relevant section; and a copy of the statement must have been laid before the company in general meeeting.

(5) A statement under subsection (4) suffices for purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which includes that particular distribution, notwithstanding that at the time of the statement it has not been proposed.

Textual Amendments

F390 Words substituted (subject to the transitional and saving provisions mentioned in S.I. 1990/355, **arts. 6–9**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 4**

Modifications etc. (not altering text)

C267 Ss. 270-276 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 7** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C268 S. 271 modified by Airports Act 1986 (c. 31, SIF 9), s. 83(4), **Sch. 5 para. 9(1)**

C269 S. 271 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3), Sch. 17 paras. 35(1), **39(1)**

C270 Ss. 270 - 276 applied (with modifications) (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 7(1)**
Ss. 270-276 applied (with modifications) (24.11.1995) by S.I. 1995/3023, **art. 7(1)(2)**

C271 Ss. 270 - 276 modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), s. 17(3), **Sch. 3 para. 7(1)**; S.I. 1991/2721, **art.2**
Ss. 270-276 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 7(1)**
Ss. 270-276 modified (24.7.1996) by 1996 c. 55, ss. 134, 149(1)(f), **Sch. 6 para. 4(1)**

C272 Ss. 270-276 applied (prosp.) by Horserace Betting and Olympic Lottery Act 2004 (c. 25), **ss. 6(6)**, 40

272 Requirements for interim accounts.

(1) The following are the statutory requirements in respect of interim accounts prepared for a proposed distribution by a public company.

(2) The accounts must have been properly prepared, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in section 270(2), whether the proposed distribution would contravene the relevant section.

(3) "Properly prepared" means that the accounts must comply with **[**[F391]section 226**]** (applying that section and Schedule 4 with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period) and any balance sheet comprised in the accounts must have been signed in accordance with **[**[F392]section 233**]**; and, without prejudice to the foregoing—

(a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and

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(b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.

(4) A copy of the accounts must have been delivered to the registrar of companies.

(5) If the accounts are in a language other than English and **[**F393the second sentence of section 242(1)**]** (translation) does not apply, **[**F394then, subject to section 710B(6) (delivery of certain Welsh documents without a translation),**]** a translation into English of the accounts, certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

Textual Amendments

F391 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 5(a)** (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**)

F392 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 5(b)** (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**)

F393 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 6** (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**)

F394 Words in s. 272(5) inserted (1.2.1994) by 1993 c. 38, **ss. 30(4)(b)**, 36(2); S.I. 1994/115, **art. 2(2)**

Modifications etc. (not altering text)

C273 Ss. 270-276 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 7** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C274 S. 272 modified by Airports Act 1986 (c. 31, SIF 9), s. 83(4), **Sch. 5 para. 9(1)**

C275 S. 272 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3), Sch. 17 paras. 35(1), **39(1)**

C276 Ss. 270 - 276 applied (with modifications) (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 7(1)**
Ss. 270-276 applied (with modifications) (24.11.1995) by 1995/3023, art. 7(1)(2)

C277 Ss. 270 - 276 modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), s. 17(3), **Sch. 3 para. 7(1)**; S.I. 1991/2721, **art. 2**
Ss. 270-276 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 7(1)**
Ss. 270 - 276 modified (24.7.1996) by 1996 c. 55, ss. 134, 149(1)(f), **Sch. 6 para. 4(1)**

273 Requirements for initial accounts.

(1) The following are the statutory requirements in respect of initial accounts prepared for a proposed distribution by a public company.

(2) The accounts must have been properly prepared, or they must have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in section 270(2), whether the proposed distribution would contravene the relevant section.

(3) Section 272(3) applies as respects the meaning of "properly prepared".

(4) The company's auditors must have made a report stating whether, in their opinion, the accounts have been properly prepared; and the following subsection applies if their report is a qualified report, that is to say it is not a report without qualification to the effect that in the auditors' opinion the accounts have been so prepared.

(5) The auditors must in that case also have stated in writing whether, in their opinion, the matter in respect of which their report is qualified is material for determining,

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by reference to items mentioned in section 270(2), whether the distribution would contravene the relevant section.

(6) A copy of the accounts, of the auditors' report under subsection (4) and of the auditors' statement (if any) under subsection (5) must have been delivered to the registrar of companies.

(7) If the accounts are, or the auditors' report under subsection (4) or their statement (if any) under subsection (5) is, in a language other than English and **[**[F395]the second sentence of section 242(1)**]** (translation) does not apply, **[**[F396]then, subject to section 710B(6) (delivery of certain Welsh documents without a translation),**]** a translation into English of the accounts, the report or the statement (as the case may be), certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

Textual Amendments

F395 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 6** (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 3**)

F396 Words in s. 273(7) inserted (1.2.1994) by 1993 c. 38, **ss. 30(4)(b)**, 36(2); S.I. 1994/115, **art. 2(2)**

Modifications etc. (not altering text)

C278 Ss. 270-276 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 7** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C279 S. 273 modified by Airports Act 1986 (c. 31, SIF 9), s. 83(4), **Sch. 5 para. 9(1)** and Gas Act 1986 (c. 44, SIF 44:2), s. 67(3), **Sch. 8 Pt. II para. 41(1)**(*b*)

C280 S. 273 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3), Sch. 17 paras. 35(1), **39(1)**

C281 Ss. 270 - 276 applied (with modifications) (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 7(1)**
Ss. 270-276 applied (with modifications) (24.11.1995) by S.I. 1995/3023, **art. 7(1)(2)**

C282 Ss. 270 - 276 modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), s. 17(3), **Sch. 3 para. 7(1)**; S.I. 1991/2721, **art. 2**
Ss. 270-276 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 7(1)**
Ss. 270-276 modified (24.7.1996) by 1996 c. 55, ss. 134, 149(1)(f), **Sch. 6 para. 4(1)**

274 Method of applying s. 270 to successive distributions.

(1) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a company, section 270 has effect, in a case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made.

(2) Subsection (1) of this section applies (if it would not otherwise do so) to—

(a) financial assistance lawfully given by a public company out of its distributable profits in a case where the assistance is required to be so given by section 154,

(b) financial assistance lawfully given by a private company out of its distributable profits in a case where the assistance is required to be so given by section 155(2),

(c) financial assistance given by a company in contravention of section 151, in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities,

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(d) a payment made by a company in respect of the purchase by it of shares in the company (except a payment lawfully made otherwise than out of distributable profits), and

(e) a payment of any description specified in section 168 (company's purchase of right to acquire its own shares, etc.),

being financial assistance given or payment made since the relevant accounts were prepared, as if any such financial assistance or payment were a distribution already made in pursuance of a determination made by reference to those accounts.

(3) In this section the following definitions apply—

"financial assistance" means the same as in Chapter VI of Part V;

"net assets" has the meaning given by section 154(2)(a); and

"net liabilities", in relation to the giving of financial assistance by a company, means the amount by which the aggregate amount of the company's liabilities (within the meaning of section 154(2)(b)) exceeds the aggregate amount of its assets, taking the amount of the assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given.

(4) Subsections (2) and (3) of this section are deemed to be included in Chapter VII of Part V for purposes of the Secretary of State's power to make regulations under section 179.

Modifications etc. (not altering text)

C283 Ss. 270-276 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 7** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C284 Ss. 274, 275 modified by Airports Act 1986 (c. 31, SIF 9), s. 83(4), **Sch. 5 para. 9(1)**

C285 Ss. 274, 275 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3), Sch. 17 paras. 35(1), **39(1)**

C286 Ss. 270 - 276 applied (with modifications) (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 7(1)**
Ss. 270-276 applied (with modifications) (24.11.1995) by S.I. 1995/3023, **art. 7(1)(2)**

C287 Ss. 270 - 276 modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), s. 17(3), **Sch. 3 para. 7(1)**; S.I. 1991/2721, **art.2**
Ss. 270-276 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 7(1)**
Ss. 270-276 modified (24.7.1996) by 1996 c. 55, ss. 134, 149(1)(f), **Sch. 6 para. 4(1)**

C288 Ss. 270-276 applied (prosp.) by Horserace Betting and Olympic Lottery Act 2004 (c. 25), **ss. 6(6)**, 40

275 Treatment of assets in the relevant accounts.

(1) For purposes of sections 263 and 264, a provision of any kind mentioned in paragraphs 88 and 89 of Schedule 4, other than one in respect of a diminution in value of a fixed asset appearing on a revaluation of all the fixed assets of the company, or of all of its fixed assets other than goodwill, is treated as a realised loss.

(2) If, on the revaluation of a fixed asset, an unrealised profit is shown to have been made and, on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period, then an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for the depreciation of that asset over that period, if that profit had not been made, is treated for purposes of sections 263 and 264 as a realised profit made over that period.

(3) Where there is no record of the original cost of an asset, or a record cannot be obtained without unreasonable expense or delay, then for the purpose of determining whether

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the company has made a profit or loss in respect of that asset, its cost is taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

(4) Subject to subsection (6), any consideration by the directors of the value at a particular time of a fixed asset is treated as a revaluation of the asset for the purposes of determining whether any such revaluation of the company's fixed assets as is required for purposes of the exception from subsection (1) has taken place at that time.

(5) But where any such assets which have not actually been revalued are treated as revalued for those purposes under subsection (4), that exception applies only if the directors are satisfied that their aggregate value at the time in question is not less than the aggregate amount at which they are for the time being stated in the company's accounts.

(6) Where section 271(2), 272(2), or 273(2) applies to the relevant accounts, subsections (4) and (5) above do not apply for the purpose of determining whether a revaluation of the company's fixed assets affecting the amount of the relevant items (that is, the items mentioned in section 270(2)) as stated in those accounts has taken place, unless it is stated in a note to the accounts—

(a) that the directors have considered the value at any time of any fixed assets of the company, without actually revaluing those assets,

(b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's accounts, and

(c) that the relevant items in question are accordingly stated in the relevant accounts on the basis that a revaluation of the company's fixed assets which by virtue of subsections (4) and (5) included the assets in question took place at that time.

Modifications etc. (not altering text)

C289 Ss. 270-276 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 7** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C290 Ss. 274, 275 modified by Airports Act 1986 (c. 31, SIF 9), s. 83(4), **Sch. 5 para. 9(1)**

C291 Ss. 274, 275 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3), Sch. 17 paras. 35(1), **39(1)**

C292 Ss. 270 - 276 applied (with modifications) (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 7(1)**
Ss. 270-276 applied (with modifications) (24.11.1995) by S.I. 1995/3023, **art. 7(1)(2)**

C293 Ss. 270 - 276 modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), s. 17(3), **Sch. 3 para. 7(1)**; S.I. 1991/2721, **art. 2**
Ss. 270-276 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 7(1)**
Ss. 270-276 modified (24.7.1996) by 1996 c. 55, ss. 134, 149(1)(f), **Sch. 6 para. 4(1)**

276 Distributions in kind.

Where a company makes a distribution of or including a non-cash asset, and any part of the amount at which that asset is stated in the accounts relevant for the purposes of the distribution in accordance with sections 270 to 275 represents an unrealised profit, that profit is to be treated as a realised profit—

(a) for the purpose of determining the lawfulness of the distribution in accordance with this Part (whether before or after the distribution takes place), and

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(b) for the purpose of the application of paragraphs 12(a) and **[**F397 34(3)(a)**]** of Schedule 4 **[**F398 or paragraphs 12(a) and 34(3)(a) of Schedule 8**]** (only realised profits to be included in or transferred to the profit and loss account) in relation to anything done with a view to or in connection with the making of that distribution.

Textual Amendments

F397 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 7** (subject to the transitional and saving provisions mentioned in S.I. 1990/355, **arts. 6–9**)

F398 Words in s. 276(b) inserted (1.3.1997) by S.I. 1997/220, **reg. 7(8)**

Modifications etc. (not altering text)

C294 Ss. 270-276 modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 39, 198(2), **Sch. 6 para. 7** (with s. 38(2), Sch. 6 para. 8); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C295 S. 276 modified by Airports Act 1986 (c. 31, SIF 9), s. 83(4), **Sch. 5 para. 9(1)**

C296 S. 276 modified by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3), Sch. 17 paras. 35(1), **39(1)**

C297 Ss. 270 - 276 applied (with modifications) (27. 12. 1991) by S.I. 1991/2908, art. 2, **Sch. para. 7(1)**
Ss. 270 - 276 applied (with modifications) (24.11.1995) by S.I. 1995/3023, **art. 7(1)(2)**

C298 Ss. 270 - 276 modified (6. 1. 1992) by British Technology Group Act 1991 (c. 66, SIF 64), s. 17(3), **Sch. 3 para. 7(1)**; S.I. 1991/2721, **art. 2**
Ss. 270 - 276 modified (8.11.1995) by 1995 c. 37, s. 6, **Sch. 2 para. 7(1)**
Ss. 270 - 276 modified (24.7.1996) by 1996 c. 55, Ss. 134, 149(1), **Sch. 6 para. 4(1)**

C299 Ss. 270-276 applied (prosp.) by Horserace Betting and Olympic Lottery Act 2004 (c. 25), **ss. 6(6)**, 40

Supplementary

277 Consequences of unlawful distribution.

(1) Where a distribution, or part of one, made by a company to one of its members is made in contravention of this Part and, at the time of the distribution, he knows or has reasonable grounds for believing that it is so made, he is liable to repay it (or that part of it, as the case may be) to the company or (in the case of a distribution made otherwise than in cash) to pay the company a sum equal to the value of the distribution (or part) at that time.

(2) The above is without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him; but this section does not apply in relation to—

(a) financial assistance given by a company in contravention of section 151, or

(b) any payment made by a company in respect of the redemption or purchase by the company of shares in itself.

(3) Subsection (2) of this section is deemed included in Chapter VII of Part V for purposes of the Secretary of State's power to make regulations under section 179.

278 Saving for provision in articles operative before Act of 1980.

Where immediately before 22nd December 1980 a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus

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shares, that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.

[F399 279 Distributions by banking or insurance companies.

Where a company's accounts relevant for the purposes of this Part are prepared in accordance with the special provisions of Part VII relating to banking or insurance companies, sections 264 to 275 apply with the modifications shown in Schedule 11.]

Textual Amendments

F399 S. 279 substituted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 8**

280 Definitions for Part VIII.

(1) The following has effect for the interpretation of this Part.

(2) "Capitalisation", in relation to a company's profits, means any of the following operations (whenever carried out)—

(a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares, or

(b) transferring the profits to capital redemption reserve.

(3) References to profits and losses of any description are (respectively) to profits and losses of that description made at any time and, except where the context otherwise requires, are (respectively) to revenue and capital profits and revenue and capital losses.

281 Saving for other restraints on distribution.

The provisions of this Part are without prejudice to any enactment or rule of law, or any provision of a company's memorandum or articles, restricting the sums out of which, or the cases in which, a distribution may be made.

PART IX

A COMPANY'S MANAGEMENT; DIRECTORS AND SECRETARIES; THEIR QUALIFICATIONS, DUTIES AND RESPONSIBILITIES

Officers and registered office

282 Directors.

(1) Every company registered on or after 1st November 1929 (other than a private company) shall have at least two directors.

(2) Every company registered before that date (other than a private company) shall have at least one director.

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(3) Every private company shall have at least one director.

283 Secretary.

(1) Every company shall have a secretary.

(2) A sole director shall not also be secretary.

(3) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

(4) No company shall—

(a) have as secretary to the company a corporation the sole director of which is a sole director of the company;

(b) have as sole director of the company a corporation the sole director of which is secretary to the company.

284 Acts done by person in dual capacity.

A provision requiring or authorising a thing to be done by or to a director and the secretary is not satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

285 Validity of acts of directors.

The acts of a director or manager are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification; and this provision is not excluded by section 292(2) (void resolution to appoint).

286 Qualifications of company secretaries.

(1) It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who—

(a) on 22nd December 1980 held the office of secretary or assistant or deputy secretary of the company; or

(b) for at least 3 of the 5 years immediately preceding his appointment as secretary held the office of secretary of a company other than a private company; or

(c) is a member of any of the bodies specified in the following subsection; or

(d) is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom; or

(e) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

(2) The bodies referred to in subsection (1)(c) are—

(a) the Institute of Chartered Accountants in England and Wales;

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(b) the Institute of Chartered Accountants of Scotland;
(c) the Chartered Association of Certified Accountants;
(d) the Institute of Chartered Accountants in Ireland;
(e) the Institute of Chartered Secretaries and Administrators;
(f) the Institute of Cost and Management Accountants;
(g) the Chartered Institute of Public Finance and Accountancy.

[F400 287 Registered office.

(1) A company shall at all times have a registered office to which all communications and notices may be addressed.

(2) On incorporation the situation of the companys registered office is that specified in the statement sent to the registrar under section 10.

(3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.

(4) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.

(5) For the purposes of any duty of a company—
(a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
(b) to mention the address of its registered office in any document,
a company which has given notice to the registrar of a change in the situation of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

(6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but—
(a) resumes performance of that duty at other premises as soon as practicable, and
(b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,
it shall not be treated as having failed to comply with that duty.

(7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason of the matters referred to in that subsection (6) no offence was committed.**]**

Textual Amendments

F400 S. 287 substituted (subject to the saving and transitional provisions in S.I. 1990/355, **art. 12**) by Companies Act 1989 (c. 40, SIF 27), **ss. 136**, 213(2)

Modifications etc. (not altering text)

C300 S. 287 modified by S.I. 1985/680, arts. 4–6, **Sch.**

C301 S. 287 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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288 Register of directors and secretaries.

(1) Every company shall keep at its registered office a register of its directors and secretaries; and the register shall, with respect to the particulars to be contained in it of those persons, comply with sections 289 and 290 below.

(2) The company shall, within the period of 14 days from the occurrence of—

(a) any change among its directors or in its secretary, or

(b) any change in the particulars contained in the register, send to the registrar of companies a notification in the prescribed form of the change and of the date on which it occurred; and a notification of a person having become a director or secretary, or one of joint secretaries, of the company shall contain a consent, signed by that person, to act in the relevant capacity.

(3) The register shall [F401] . . . be open to the inspection of any member of the company without charge and of any other person on payment of **[**[F402]such fee as may be prescribed**]**.

(4) If an inspection required under this section is refused, or if default is made in complying with subsection (1) or (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

[[F403](5A) Where a confidentiality order made under section 723B is in force in respect of a director or secretary of a company, subsections (3) and (5) shall not apply in relation to that part of the register of the company as contains particulars of the usual residential address of that individual.**]**

(6) For purposes of this and the next section, a shadow director of a company is deemed a director and officer of it.

(7) [F404] . . . . . .

Textual Amendments

F401 Words in s. 288(3) repealed (1.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(6), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

F402 Words in s. 288(3) substituted (1.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(6)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.

F403 S. 288(5A) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 2(2)**

F404 S. 288(7) repealed (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 2(3)**

Modifications etc. (not altering text)

C302 S. 288 applied (with modifications) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C303 S. 288 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(a)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 1 Pt. II)

C304 S. 288 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), arts. 1(2), 17(1), **Sch. para. 1(a)**

C305 S. 288 modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), art. 7, **Sch. 1 para. 1**

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C306 S. 288(2) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 45(8)-(10)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

C307 S. 288(2) excluded (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 46(12)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

C308 S. 288(3) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.

288A

If an individual in respect of whom a confidentiality order under section 723B as applied to limited liability partnerships becomes a member of a limited liability partnership—

(a) the notice to be delivered to the registrar under section 9(1) of the Limited Liability Partnerships Act 2000 shall contain the address for the time being notified by the member to the limited liability partnership under the Limited Liability Partnerships (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 but shall not contain his usual residential address; and

(b) with that notice the limited liability partnership shall deliver to the registrar a notice in the prescribed form containing the usual residential address of that member.

289 Particulars of directors to be registered under s. 288.

(1) Subject to the provisions of this section, the register kept by a company under section 288 shall contain the following particulars with respect to each director—

(a) in the case of an individual—

(i) his present **[**F405name**]**,

(ii) any former **[**F406name**]**,

(iii) his usual residential address,

(iv) his nationality,

(v) his business occupation (if any),

(vi) particulars of any other directorships held by him or which have been held by him, and

[F407(vii) the date of his birth;**]**

(b) in the case of a corporation **[**F408or Scottish firm**]**, its corporate **[**F408or firm**]** name and registered or principal office.

[F409(1A) Where a confidentiality order made under section 723B is in force in respect of a director, the register shall contain, in addition to the particulars specified in subsection (1)(a), such address as is for the time being notified by the director to the company under regulations made under sections 723B to 723F.**]**

[F410(2) In subsection (1)(a)—

(a) "name" means a person's Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and

(b) the reference to a former name does not include—

(i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or

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(ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or

(iii) in the case of a married woman, the name by which she was known previous to the marriage.**]**

(3) It is not necessary for the register to contain on any day particulars of a directorship—

(a) which has not been held by a director at any time during the 5 years preceding that day,

(b) which is held by a director in a company which—

(i) is dormant or grouped with the company keeping the register, and

(ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,

(c) which was held by a director for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the company keeping the register.

(4) For purposes of subsection (3), "company" includes any body corporate incorporated in Great Britain; and—

(a) **[**[F411]section 249AA(3)**]** applies as regards whether and when a company is or has been dormant, and

(b) a company is to be regarded as being, or having been, grouped with another at any time if at that time it is or was a company of which the other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company of which that other is or was a wholly-owned subsidiary.

Textual Amendments

F405 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 2(2)(a)** (subject to the saving and transitional provisions in S.I. 1990/1707, **art. 6**)

F406 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 2(2)(a)** (subject to the saving and transitional provisions in S.I. 1990/1707, **art. 6**)

F407 S. 289(1)(a)(vii) substituted (subject to the saving and transitional provisions in S.I. 1990/1707, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 2(2)(b)**

F408 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 2(3)** (subject to the saving and transitional provisions in S.I. 1990/1707, **art. 6**)

F409 S. 289(1A) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 3(2)**

F410 S. 289(2) substituted (subject to the saving and transitional provisions in S.I. 1990/1707, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 2(4)**

F411 Words in s. 289(4)(a) substituted (26.5.2000) by S.I. 2000/1430, **art. 8(7)**

Modifications etc. (not altering text)

C309 S. 289(2) applied by S.I. 1989/638, **regs. 5(4)**, 21

290 Particulars of secretaries to be registered under s. 288.

(1) The register to be kept by a company under section 288 shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them—

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(a) in the case of an individual, his present **[**F412name**]**, any former **[**F412name**]** and his usual residential address, and

(b) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office.

[F413(1A) Where a confidentiality order made under section 723B is in force in respect of a secretary the register shall contain, in addition to the particulars specified in subsection (1)(a), such address as is for the time being notified by the secretary to the company under regulations made under sections 723B to 723F.**]**

(2) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the particulars specified above.

[F414(3) Section 289(2)(a) and (b) apply for the purposes of the obligation under subsection (1)(a) of this section to state the name or former name of an individual.**]**

Textual Amendments

F412 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 3(2)**

F413 S. 290(1A) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 4(2)**

F414 S. 290(3) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 3(3)**

Provisions governing appointment of directors

291 Share qualification of directors.

(1) It is the duty of every director who is by the company's articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision of the articles requiring a director or manager to hold any specified share qualification, the bearer of a share warrant is not deemed the holder of the shares specified in the warrant.

(3) The office of director of a company is vacated if the director does not within 2 months from the date of his appointment (or within such shorter time as may be fixed by the articles) obtain his qualification, or if after the expiration of that period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section is incapable of being reappointed to be a director of the company until he has obtained his qualification.

(5) If after the expiration of that period or shorter time any unqualified person acts as a director of the company, he is liable to a fine and, for continued contravention, to a daily default fine.

292 Appointment of directors to be voted on individually.

(1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made,

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unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time; but where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies.

(3) For purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is to be treated as a motion for his appointment.

(4) Nothing in this section applies to a resolution altering the company's articles.

293 Age limit for directors.

(1) A company is subject to this section if—

(a) it is a public company, or

(b) being a private company, it is a subsidiary of a public company or of a body corporate registered under the law relating to companies for the time being in force in Northern Ireland as a public company.

(2) No person is capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has attained the age of 70.

(3) A director of such a company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of 70; but acts done by a person as director are valid notwithstanding that it is afterwards discovered that his appointment had terminated under this subsection.

(4) Where a person retires under subsection (3), no provision for the automatic reappointment of retiring directors in default of another appointment applies; and if at the meeting at which he retires the vacancy is not filled, it may be filled as a casual vacancy.

(5) Nothing in subsections (2) to (4) prevents the appointment of a director at any age, or requires a director to retire at any time, if his appointment is or was made or approved by the company in general meeting; but special notice is required of a resolution appointing or approving the appointment of a director for it to have effect under this subsection, and the notice of the resolution given to the company, and by the company to its members, must state, or have stated, the age of the person to whom it relates.

(6) A person reappointed director on retiring under subsection (3), or appointed in place of a director so retiring, is to be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the retiring director was last appointed before his retirement.

Subject to this, the retirement of a director out of turn under subsection (3) is to be disregarded in determining when any other directors are to retire.

(7) In the case of a company first registered after the beginning of 1947, this section has effect subject to the provisions of the company's articles; and in the case of a company first registered before the beginning of that year—

(a) this section has effect subject to any alterations of the company's articles made after the beginning of that year; and

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(b) if at the beginning of that year the company's articles contained provision for retirement of directors under an age limit, or for preventing or restricting appointments of directors over a given age, this section does not apply to directors to whom that provision applies.

Modifications etc. (not altering text)
C310 S. 293 restricted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c.40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 34**

294 Duty of director to disclose his age.

(1) A person who is appointed or to his knowledge proposed to be appointed director of a company subject to section 293 at a time when he has attained any retiring age applicable to him under that section or under the company's articles shall give notice of his age to the company.

(2) For purposes of this section, a company is deemed subject to section 293 notwithstanding that all or any of the section's provisions are excluded or modified by the company's articles.

(3) Subsection (1) does not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.

(4) A person who—
(a) fails to give notice of his age as required by this section; or
(b) acts as director under any appointment which is invalid or has terminated by reason of his age,
is liable to a fine and, for continued contravention, to a daily default fine.

(5) For purposes of subsection (4), a person who has acted as director under an appointment which is invalid or has terminated is deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated (as the case may be), until the last day on which he is shown to have acted thereunder.

Disqualification

F415 295–299 . . . . . .

Textual Amendments
F415 Ss. 295–299 repealed by Company Directors Disqualification Act 1986 (c. 46, SIF 27), s. 23(2), **Sch. 4**

F416 300 . . . . . .

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Textual Amendments

F416 S. 300 repealed by Insolvency Act 1985 (c. 65, SIF 66), s. 235(3), Sch. 10 Pt. II, Insolvency Act 1986 (c. 45, SIF 66), s. 437, Sch. 11 para. 7

F417301, ...
302.

Textual Amendments

F417 Ss. 301, 302 repealed by Company Directors Disqualification Act 1986 (c. 46, SIF 27), s. 23(2), **Sch. 4**

Removal of directors

303 Resolution to remove director.

(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.

(2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(4) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(5) This section is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

Modifications etc. (not altering text)

C311 S. 303(1) restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 14**

304 Director's right to protest removal.

(1) On receipt of notice of an intended resolution to remove a director under section 303, the company shall forthwith send a copy of the notice to the director concerned; and he (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Where notice is given of an intended resolution to remove a director under that section, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).

(3) If a copy of the representations is not sent as required by subsection (2) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(4) But copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(5) The court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

Other provisions about directors and officers

305 Directors' names on company correspondence, etc.

(1) A company to which this section applies shall not state, in any form, the name of any of its directors (otherwise than in the text or as a signatory) on any business letter on which the company's name appears unless it states on the letter in legible characters **[**[F418]the name of every director of the company**]**.

(2) This section applies to—

(a) every company registered under this Act or under the former Companies Acts (except a company registered before 23rd November 1916); and

(b) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before that date.

(3) If a company makes default in complying with this section, every officer of the company who is in default is liable for each offence to a fine; and for this purpose, where a corporation is an officer of the company, any officer of the corporation is deemed an officer of the company.

[[F419](4) For the purposes of the obligation under section (1) to state the name of every director of the company, a person's "name" means—

(a) in the case of an individual, his Christian name (or other forename) and surname; and

(b) in the case of a corporation or Scottish firm, its corporate or firm name.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(5) The initial or a recognised abbreviation of a person's Christian name or other forename may be stated instead of the full Christian name or other forename.

(6) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.

(7) In this section "director" includes a shadow director and the reference in subsection (3) to an "officer" shall be construed accordingly.**]**

Textual Amendments

F418 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 4(2)**

F419 S. 305(4)–(7) substituted for s. 305(4) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 4(3)**

Modifications etc. (not altering text)

C312 S. 305 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(b)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in Sch. 2 Pt. II)

C313 S. 305 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), arts. 1(2), 17(1), **Sch. para. 1(b)**

306 Limited company may have directors with unlimited liability.

(1) In the case of a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In the case of a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes any person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited.

(3) Before the person accepts the office or acts in it, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely—

(a) the promoters of the company,
(b) the directors of the company,
(c) any managers of the company,
(d) the company secretary.

(4) If a director, manager or proposer makes default in adding such a statement, or if a promoter, director, manager or secretary makes default in giving the notice required by subsection (3), then—

(a) he is liable to a fine, and
(b) he is also liable for any damage which the person so elected or appointed may sustain from the default;

but the liability of the person elected or appointed is not affected by the default.

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307 Special resolution making liability of directors unlimited.

(1) A limited company, if so authorised by its articles, may by special resolution alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) When such a special resolution is passed, its provisions are as valid as if they had been originally contained in the memorandum.

308 Assignment of office by directors.

(1) If provision is made by a company's articles, or by any agreement entered into between any person and the company, for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of that provision is (notwithstanding anything to the contrary contained in the provision) of no effect unless and until it is approved by a special resolution of the company.

309 Directors to have regard to interests of employees.

(1) The matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members.

(2) Accordingly, the duty imposed by this section on the directors is owed by them to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(3) This section applies to shadow directors as it does to directors.

VALID FROM 06/04/2005

309A Provisions protecting directors from liability

(1) This section applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.

(2) Any provision which purports to exempt (to any extent) a director of a company from any liability within subsection (1) is void.

(3) Any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—

(a) the company, or

(b) an associated company,

against any liability within subsection (1) is void

This is subject to subsections (4) and (5).

(4) Subsection (3) does not apply to a qualifying third party indemnity provision (see section 309B(1)).

(5) Subsection (3) does not prevent a company from purchasing and maintaining for a director of—

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(a) the company, or
(b) an associated company,

insurance against any liability within subsection (1).

(6) In this section—

"associated company", in relation to a company ("C"), means a company which is C's subsidiary, or C's holding company or a subsidiary of C's holding company;

"provision" means a provision of any nature, whether or not it is contained in a company's articles or in any contract with a company.

VALID FROM 06/04/2005

309B Qualifying third party indemnity provisions

(1) For the purposes of section 309A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in section 309A(3) in relation to which conditions A to C below are satisfied.

(2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—
(a) to the company, or
(b) to any associated company.

(3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—
(a) a fine imposed in criminal proceedings, or
(b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).

(4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—
(a) in defending any criminal proceedings in which he is convicted, or
(b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
(c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
(i) section 144(3) or (4) (acquisition of shares by innocent nominee), or
(ii) section 727 (general power to grant relief in case of honest and reasonable conduct).

(5) In paragraph (a), (b) or (c) of subsection (4)the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.

(6) For the purposes of subsection (5) a conviction, judgment or refusal of relief becomes final—
(a) if not appealed against, at the end of the period for bringing an appeal, or
(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(7) An appeal is disposed of—

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(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect.

(8) In this section "associated company" and "provision" have the same meaning as in section 309A.

VALID FROM 06/04/2005

309C Disclosure of qualifying third party indemnity provisions

(1) Subsections (2) and (3) impose disclosure requirements in relation to a directors' report under section 234 in respect of a financial year.

(2) If —

(a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or

(b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,

the report must state that any such provision is or (as the case may be) was so in force.

(3) If the company has made a qualifying third party indemnity provision and—

(a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or

(b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,

the report must state that any such provision is or (as the case may be) was so in force.

(4) Subsection (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.

(5) Section 318 shall apply to—

(a) the company, and

(b) if the director is a director of an associated company, the associated company,

as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in section 318(1).

(6) In this section—

"associated company" and "provision" have the same meaning as in section 309A; and

"qualifying third party indemnity provision" has the meaning given by section 309B(1).

310 Provisions exempting officers and auditors from liability.

(1) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise, for exempting any officer of the company or any person (whether an officer or not) employed by the company as auditor from,

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or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

(2) Except as provided by the following subsection, any such provision is void.

[F420(3) This section does not prevent a company—

(a) from purchasing and maintaining for any such officer or auditor insurance against any such liability, or

(b) from indemnifying any such officer or auditor against any liability incurred by him—

(i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or

(ii) in connection with any application under section 144(3) or (4) (acquisition of shares by innocent nominee) or section 727 (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.**]**

Textual Amendments

F420 S. 310(3) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 137(1)**, 213(2)

PART X

ENFORCEMENT OF FAIR DEALING BY DIRECTORS

Restrictions on directors taking financial advantage

311 Prohibition on tax-free payments to directors.

(1) It is not lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.

(2) Any provision contained in a company's articles, or in any contract, or in any resolution of a company or a company's directors, for payment to a director of remuneration as above mentioned has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

Modifications etc. (not altering text)

C314 S. 311(1)(2) excluded by Companies Consolidation (Consequential Provisions) Act 1985 (c.9, SIF 27), **s. 15**

312 Payment to director for loss of office etc.

It is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its

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amount) being disclosed to members of the company and the proposal being approved by the company.

Modifications etc. (not altering text)

C315 S. 312 modified (13.1.1993 for limited purposes as specified in S.I. 1993/16, art. 2, **Sch. 1** and 1.1.1994 so far as not already in force) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 8(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2(1), **Sch.5**
S. 312 restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), **s. 30BA(2)(a)** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s.41**; S.I. 1992/1900, art. 4, **Sch.3**).
S. 312 restricted (E.W.) (1.8.1993) by 1993 c. 10, **ss. 66(1)(2)(a)**, 99(1)

313 Company approval for property transfer.

(1) It is not lawful, in connection with the transfer of the whole or any part of the undertaking or property of a company, for any payment to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars of the proposed payment (including its amount) have been disclosed to members of the company and the proposal approved by the company.

(2) Where a payment unlawful under this section is made to a director, the amount received is deemed to be received by him in trust for the company.

Modifications etc. (not altering text)

C316 S. 313(1) restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), **s. 30BA(2)(b)** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s.41**; S.I. 1992/1900, art. 4, **Sch.3**).
S. 313(1) restricted (E.W.) (1.8.1993) by 1993 c. 10, **ss. 66(1)(2)(b)**, 99(1)

314 Director's duty of disclosure on takeover, etc.

(1) This section applies where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

(a) an offer made to the general body of shareholders; or

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or

(c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or

(d) any other offer which is conditional on acceptance to a given extent,

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(2) It is in those circumstances the director's duty to take all reasonable steps to secure that particulars of the proposed payment (including its amount) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(3) If—

(a) the director fails to take those steps, or

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(b) any person who has been properly required by the director to include those particulars in or send them with the notice required by subsection (2) fails to do so,

he is liable to a fine.

315 Consequences of non-compliance with s. 314.

(1) If in the case of any such payment to a director as is mentioned in section 314(1)—

(a) his duty under that section is not complied with, or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting (summoned for the purpose) of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,

any sum received by the director on account of the payment is deemed to have been received by him in trust for persons who have sold their shares as a result of the offer made; and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(2) Where—

(a) the shareholders referred to in subsection (1)(b) are not all the members of the company, and

(b) no provision is made by the articles for summoning or regulating the meeting referred to in that paragraph,

the provisions of this Act and of the company's articles relating to general meetings of the company apply (for that purpose) to the meeting either without modification or with such modifications as the Secretary of State on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(3) If at a meeting summoned for the purpose of approving any payment as required by subsection (1)(b) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment is deemed for the purposes of that subsection to have been approved.

316 Provisions supplementing ss. 312 to 315.

(1) Where in proceedings for the recovery of any payment as having, by virtue of section 313(2) or 315(1), been received by any person in trust, it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading to it; and

(b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment is deemed, except in so far as the contrary is shown, to be one to which the provisions mentioned above in this subsection apply.

(2) If in connection with any such transfer as is mentioned in any of sections 313 to 315—

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

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(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration (as the case may be) is deemed for the purposes of that section to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) References in sections 312 to 315 to payments made to a director by way of compensation for loss of office or as consideration for or in connection with his retirement from office, do not include any bone fide payment by way of damages for breach of contract or by way of pension in respect of past services.

"Pension" here includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 313 to 315 prejudices the operation of any rule of law requiring disclosure to be made with respect to such payments as are there mentioned, or with respect to any other like payments made or to be made to a company's directors.

Modifications etc. (not altering text)

C317 S. 316(3) modified (13.1.1993 for limited purpose as specified in S.I. 1993/16, art. 2, **Sch. 1** and 1.1.1994 to the extent not already in force) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 8(1)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2(1), **Sch.5**

317 Directors to disclose interest in contracts.

(1) It is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration shall be made—

(a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or

(b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested;

and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes so interested.

(3) For purposes of this section, a general notice given to the directors of a company by a director to the effect that—

(a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or

(b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of section 346 below),

is deemed a sufficient declaration of interest in relation to any such contract.

(4) However, no such notice is of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

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(5) A reference in this section to a contract includes any transaction or arrangement (whether or not constituting a contract) made or entered into on or after 22nd December 1980.

(6) For purposes of this section, a transaction or arrangement of a kind described in section 330 (prohibition of loans, quasi-loans etc. to directors) made by a company for a director of the company or a person connected with such a director is treated (if it would not otherwise be so treated, and whether or not it is prohibited by that section) as a transaction or arrangement in which that director is interested.

(7) A director who fails to comply with this section is liable to a fine.

(8) This section applies to a shadow director as it applies to a director, except that a shadow director shall declare his interest, not at a meeting of the directors, but by a notice in writing to the directors which is either—

(a) a specific notice given before the date of the meeting at which, if he had been a director, the declaration would be required by subsection (2) to be made; or

(b) a notice which under subsection (3) falls to be treated as a sufficient declaration of that interest (or would fall to be so treated apart from subsection (4)).

(9) Nothing in this section prejudices the operation of any rule of law restricting directors of a company from having an interest in contracts with the company.

Modifications etc. (not altering text)

C318 S. 317 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(c)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in Sch. 2 Pt. II)

318 Directors' service contracts to be open to inspection.

(1) Subject to the following provisions, every company shall keep at an appropriate place—

(a) in the case of each director whose contract of service with the company is in writing, a copy of that contract;

(b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms; and

(c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out its terms.

(2) All copies and memoranda kept by a company in pursuance of subsection (1) shall be kept at the same place.

(3) The following are appropriate places for the purposes of subsection (1)—

(a) the company's registered office;

(b) the place where its register of members is kept (if other than its registered office);

(c) its principal place of business, provided that is situated in that part of Great Britain in which the company is registered.

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(4) Every company shall send notice in the prescribed form to the registrar of companies of the place where copies and memoranda are kept in compliance with subsection (1), and of any change in that place, save in a case in which they have at all times been kept at the company's registered office.

(5) Subsection (1) does not apply to a director's contract of service with the company or with a subsidiary of it if that contract required him to work wholly or mainly outside the United Kingdom; but the company shall keep a memorandum—

(a) in the case of a contract of service with the company, giving the director's name and setting out the provisions of the contract relating to its duration;

(b) in the case of a contract of service with a subsidiary, giving the director's name and the name and place of incorporation of the subsidiary, and setting out the provisions of the contract relating to its duration,

at the same place as copies and memoranda are kept by the company in pursuance of subsection (1).

(6) A shadow director is treated for purposes of this section as a director.

(7) Every copy and memorandum required by subsection (1) or (5) to be kept shall [F421] . . ., be open to inspection of any member of the company without charge.

(8) If—

(a) default is made in complying with subsection (1) or (5), or

(b) an inspection required under subsection (7) is refused, or

(c) default is made for 14 days in complying with subsection (4),

the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(9) In the case of a refusal of an inspection required under subsection (7) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(10) Subsections (1) and (5) apply to a variation of a director's contract of service as they apply to the contract.

(11) This section does not require that there be kept a copy of, or memorandum setting out the terms of, a contract (or its variation) at a time when the unexpired portion of the term for which the contract is to be in force is less than 12 months, or at a time at which the contract can, within the next ensuring 12 months, be terminated by the company without payment of compensation.

Textual Amendments

F421 Words in s. 318(7) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(7), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

Modifications etc. (not altering text)

C319 S. 318(7) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.

319 Director's contract of employment for more than 5 years.

(1) This section applies in respect of any term of an agreement whereby a director's employment with the company of which he is a director or, where he is the director

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of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), for a period of more than 5 years during which the employment—

(a) cannot be terminated by the company by notice; or

(b) can be so terminated only in specified circumstances.

(2) In any case where—

(a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and

(b) more than 6 months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it) under which he is to be employed with the company or, where he is a director of a holding company, within the group,

this section applies as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(3) A company shall not incorporate in an agreement such a term as is mentioned in subsection (1), unless the term is first approved by a resolution of the company in general meeting and, in the case of a director of a holding company, by a resolution of that company in general meeting.

(4) No approval is required to be given under this section by any body corporate unless it is a company within the meaning of this Act, or is registered under section 680, or if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

(5) A resolution of a company approving such a term as is mentioned in subsection (1) shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both—

(a) at the company's registered office for not less than 15 days ending with the date of the meeting;

and

(b) at the meeting itself.

(6) A term incorporated in an agreement in contravention of this section is, to the extent that it contravenes the section, void; and that agreement and, in a case where subsection (2) applies, the original agreement are deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this section—

(a) "employment" includes employment under a contract for services; and

(b) "group", in relation to a director of a holding company, means the group which consists of that company and its subsidiaries;

and for purposes of this section a shadow director is treated as a director.

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Modifications etc. (not altering text)

C320 S. 319(3) restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), **s. 30BA(2)(c)** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s.41**; S.I. 1992/1900, art. 4, **Sch. 3**).
S. 319(3) restricted (E.W.) (1.8.1993) by 1993 c. 10, **ss. 66(1)(2)(c)**, 99(1)

320 Substantial property transactions involving directors, etc.

(1) With the exceptions provided by the section next following, a company shall not enter into an arrangement—

(a) whereby a director of the company or its holding company, or a person connected with such a director, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or

(b) whereby the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or a person so connected,

unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than **[**F422£2,000**]** but (subject to that) exceeds **[**F423£100,000**]** or 10 per cent. of the company's asset value, that is—

(a) except in a case falling within paragraph (b) below, the value of the company's net assets determined by reference to the accounts prepared and laid under Part VII in respect of the last preceding financial year in respect of which such accounts were so laid; and

(b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.

(3) For purposes of this section and sections 321 and 322, a shadow director is treated as a director.

Textual Amendments

F422 "£2,000" substituted by S.I. 1990/1393, **art. 2(a)**

F423 "£100,000" substituted by S.I. 1990/1393, **art. 2(a)**

Modifications etc. (not altering text)

C321 S. 320 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(d)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in Sch. 2 Pt. II)

C322 S. 320(1) restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), **s. 30BA(2)(d)** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s.41**; S.I. 1992/1900, art. 4, **Sch.3**).
S. 320(1) restricted (E.W.) (1.8.1993) by 1993 c. 10, **ss. 66(1)(2)(d)**, 99(1)

321 Exceptions from s. 320.

(1) No approval is required to be given under section 320 by any body corporate unless it is a company within the meaning of this Act or registered under section 680 or, if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

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(2) Section 320(1) does not apply to an arrangement for the acquistion of a non-cash asset—

(a) if the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiaries, or by one wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company, or

(b) if the arrangement is entered into by a company which is being wound up, unless the winding up is a members' voluntary winding up.

(3) Section 320(1)(a) does not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

[F424(4) Section 320(1) does not apply to a transaction on a recognised investment exchange which is effected by a director, or a person connected with him, through the agency of a person who in relation to the transaction acts as an independent broker.

For this purpose an "independent broker" means—

(a) in relation to a transaction on behalf of a director, a person who independently of the director selects the person with whom the transaction is to be effected, and

(b) in relation to a transaction on behalf of a person connected with a director, a person who independently of that person or the director selects the person with whom the transaction is to be effected;

and "recognised", in relation to an investment exchange, means recognised under the **[**F425Financial Services and Markets Act 2000**].]**

Textual Amendments

F424 S. 321(4) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 8**

F425 Words in s. 321(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 19

322 Liabilities arising from contravention of s. 320.

(1) An arrangement entered into by a company in contravention of section 320, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) is voidable at the instance of the company unless one or more of the conditions specified in the next subsection is satisfied.

(2) Those conditions are that—

(a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it; or

(b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or

(c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such

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a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.

(3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of section 320, that director and the person so connected, and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, is liable—

(a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction, and

(b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) Subsection (3) is without prejudice to any liability imposed otherwise than by that subsection, and is subject to the following two subsections; and the liability under subsection (3) arises whether or not the arrangement or transaction entered into has been avoided in pursuance of subsection (1).

(5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 320, that director is not liable under subsection (3) if he shows that he took all reasonable steps to secure the company's compliance with that section.

(6) In any case, a person so connected and any such other director as is mentioned in subsection (3) is not so liable if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

[F426 322A Invalidity of certain transactions involving directors, etc.

(1) This section applies where a company enters into a transaction to which the parties include—

(a) a director of the company or of its holding company, or

(b) a person connected with such a director or a company with whom such a director is associated,

and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company's constitution.

(2) The transaction is voidable at the instance of the company.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b), and any director of the company who authorised the transaction, is liable—

(a) to account to the company for any gain which he has made directly or indirectly by the transaction, and

(b) to indemnify the company for any loss or damage resulting from the transaction.

(4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

(5) The transaction ceases to be voidable if—

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(a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or

(b) the company is indemnified for any loss or damage resulting from the transaction, or

(c) rights acquired bona fide for value and without actual notice of the directors exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or

(d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.

(6) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(7) This section does not affect the operation of section 35A in relation to any party to the transaction not within subsection (1)(a) or (b).

But where a transaction is voidable by virtue of this section and valid by virtue of that section in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) In this section "transaction" includes any act; and the reference in subsection (1) to limitations under the company's constitution includes limitations deriving—

(a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or

(b) from any agreement between the members of the company or of any class of shareholders.**]**

Textual Amendments

F426 S. 322A inserted (4.2.1991) (subject to the saving and transitional provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c. 40, SIF 27), **ss. 109(1)**, 213(2)

Modifications etc. (not altering text)

C323 S. 322A modified (4.2.1991) by Charities Act 1960 (c. 58, SIF 19), **s. 30B(4)** as inserted (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 111(1)**, 213(2)

C324 S. 322A excluded by S.I. 1990/2569, **art. 7(3)**

C325 S. 322A applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** as amended (4.2.1991) by S.I. 1990/2571, **art. 2(c)**

[F427322BContracts with sole members who are directors

(1) Subject to subsection (2), where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Subsection (1) shall not apply to contracts entered into in the ordinary course of the company's business.

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(3) For the purposes of this section a sole member who is a shadow director is treated as a director.

(4) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine.

(5) Subject to subsection (6), nothing in this section shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(6) Failure to comply with subsection (1) with respect to a contract shall not affect the validity of that contract.**]**

Textual Amendments

F427 S. 322B inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 3(1)**.

Share dealings by directors and their families

323 Prohibition on directors dealing in share options.

(1) It is an offence for a director of a company to buy—

(a) a right to call for delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or

(c) a right (as he may elect) to call for delivery at a specified price and within a specified time or to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures.

(2) A person guilty of an offence under subsection (1) is liable to imprisonment or a fine, or both.

(3) In subsection (1)—

(a) "relevant shares", in relation to a director of a company, means shares in the company or in any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, being shares as respects which there has been granted a listing on a stock exchange (whether in Great Britain or elsewhere);

(b) "relevant debentures", in relation to a director of a company, means debentures of the company or of any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, being debentures as respects which there has been granted such a listing; and

(c) "price" includes any consideration other than money.

(4) This section applies to a shadow director as to a director.

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(5) This section is not to be taken as penalising a person who buys a right to subscribe for shares in, or debentures of, a body corporate or buys debentures of a body corporate that confer upon the holder of them a right to subscribe for, or to convert the debentures (in whole or in part) into, shares of that body.

Modifications etc. (not altering text)

C326 S. 323 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(e)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in Sch. 2 Pt. II)

324 Duty of director to disclose shareholdings in own company.

(1) A person who becomes a director of a company and at the time when he does so is interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, is under obligation to notify the company in writing—

(a) of the subsistence of his interests at that time; and

(b) of the number of shares of each class in, and the amount of debentures of each class of, the company or other such body corporate in which each interest of his subsists at that time.

(2) A director of a company is under obligation to notify the company in writing of the occurrence, while he is a director, of any of the following events—

(a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;

(b) the entering into by him of a contract to see any such shares or debentures;

(c) the assignment by him of a right granted to him by the company to subscribe for shares in, or debentures of, the company; and

(d) the grant to him by another body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for shares in, or debentures of, that other body corporate, the exercise of such a right granted to him and the assignment by him of such a right so granted;

and notification to the company must state the number or amount, and class, of shares or debentures involved.

(3) Schedule 13 has effect in connection with subsections (1) and (2) above; and of that Schedule—

(a) Part I contains rules for the interpretation of, and otherwise in relation to, those subsections and applies in determining, for purposes of those subsections, whether a person has an interest in shares or debentures;

(b) Part II applies with respect to the periods within which obligations imposed by the subsections must be fulfilled; and

(c) Part III specifies certain circumstances in which obligations arising from subsection (2) are to be treated as not discharged;

and subsections (1) and (2) are subject to any exceptions for which provision may be made by regulations made by the Secretary of State by statutory instrument.

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(4) Subsection (2) does not require the notification by a person of the occurrence of an event whose occurrence comes to his knowledge after he has ceased to be a director.

(5) An obligation imposed by this section is treated as not discharged unless the notice by means of which it purports to be discharged is expressed to be given in fulfilment of that obligation.

(6) This section applies to shadow directors as to directors; but nothing in it operates so as to impose an obligation with respect to shares in a body corporate which is the wholly-owned subsidiary of another body corporate.

(7) A person who—

(a) fails to discharge, within the proper period, an obligation to which he is subject under subsection (1) or (2), or

(b) in purported discharge of an obligation to which he is so subject, makes to the company a statement which he knows to be false, or recklessly makes to it a statement which is false,

is guilty of an offence and liable to imprisonment or a fine, or both.

(8) Section 732 (restriction on prosecutions) applies to an offence under this section.

Modifications etc. (not altering text)

C327 S. 324 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(f)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in Sch. 2 Pt. II)

C328 S. 324 excluded (12.2.1992) by S.I. 1992/225, **reg. 23(1)(b)**.
S. 324 modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 1(b)**.

325 Register of directors' interests notified under s. 324.

(1) Every company shall keep a register for the purposes of section 324.

(2) Whenever a company receives information from a director given in fulfilment of an obligation imposed on him by that section, it is under obligation to enter in the register, against the director's name, the information received and the date of the entry.

(3) The company is also under obligation, whenever it grants to a director a right to subscribe for shares in, or debentures of, the company to enter in the register against his name—

(a) the date on which the right is granted,

(b) the period during which, or time at which, it is exercisable,

(c) the consideration for the grant (or, if there is no consideration, that fact), and

(d) the description or shares or debentures involved and the number or amount of them, and the price to be paid for them (or the consideration, if otherwise than in money).

(4) Whenever such a right as is mentioned above is exercised by a director, the company is under obligation to enter in the register against his name that fact (identifying the right), the number or amount of shares or debentures in respect of which it is exercised and, if they were registered in his name, that fact and, if not, the name or names of the person or persons in whose name or names they were registered, together (if they

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were registered in the names of two persons or more) with the number or amount of the shares or debentures registered in the name of each of them.

(5) Part IV of Schedule 13 has effect with respect to the register to be kept under this section, to the way in which entries in it are to be made, to the right of inspection, and generally.

(6) For purposes of this section, a shadow director is deemed a director.

Modifications etc. (not altering text)

C329 S. 325 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(g)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in Sch. 2 Pt. II)

C330 S. 325 explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.
S. 325 excluded (12.2.1992) by S.I. 1992/225, **reg. 23(1)(b)**.
S. 325 modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 1(b)**.

326 Sanctions for non-compliance.

(1) The following applies with respect to defaults in complying with, and to contraventions of, section 325 and Part IV of Schedule 13.

(2) If default is made in complying with any of the following provisions—

(a) section 325(1), (2), (3) or (4), or

(b) Schedule 13, paragraph 21, 22 or 28,

the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(3) If an inspection of the register required under paragraph 25 of the Schedule is refused, or a copy required under paragraph 26 is not sent within the proper period, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) If default is made for 14 days in complying with paragraph 27 of the Schedule (notice to registrar of where register is kept), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) If default is made in complying with paragraph 29 of the Schedule (register to be produced at annual general meeting), the company and every officer of it who is in default is liable to a fine.

(6) In the case of a refusal of an inspection of the register required under paragraph 25 of the Schedule, the court may by order compel an immediate inspection of it; and in the case of failure to send within the proper period a copy required under paragraph 26, the court may by order direct that the copy be sent to the person requiring it.

Modifications etc. (not altering text)

C331 S. 326 excluded (12.2.1992) by S.I. 1992/225, **reg. 23(1)(b)**.
S. 326 modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 1(b)**.

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327 Extension of s. 323 to spouses and children.

(1) Section 323 applies to—

(a) the wife or husband of a director of a company (not being herself or himself a director of it), and

(b) an infant son or infant daughter of a director (not being himself or herself a director of the company),

as it applies to the director; but it is a defence for a person charged by virtue of this section with an offence under section 323 to prove that he (she) had no reason to believe that his (her) spouse or, as the case may be, parent was a director of the company in question.

(2) For purposes of this section—

(a) "son" includes step-son, and "daughter" includes step-daughter ("parent" being construed accordingly),

(b) "infant" means, in relation to Scotland, **[**F428person under the age of 18 years**]**, and

(c) a shadow director of a company is deemed a director of it.

Textual Amendments

F428 Words in s. 327(2)(b) substituted (S.) (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), **Sch. 1 para.39** (with s. 1(3))

328 Extension of s. 324 to spouses and children.

(1) For the purposes of section 324—

(a) an interest of the wife or husband of a director of a company (not being herself or himself a director of it) in shares or debentures is to be treated as the director's interest; and

(b) the same applies to an interest of an infant son or infant daughter of a director of a company (not being himself or herself a director of it) in shares or debentures.

(2) For those purposes—

(a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the wife or husband of a director of a company (not being herself or himself a director of it) is to be treated as having been entered into, exercised or made by, or (as the case may be) as having been made to, the director; and

(b) the same applies to a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director of it).

(3) A director of a company is under obligation to notify the company in writing of the occurrence while he or she is a director, of either of the following events, namely—

(a) the grant by the company to his (her) spouse, or to his or her infant son or infant daughter, of a right to subscribe for shares in, or debentures of, the company; and

(b) the exercise by his (her) spouse or by his or her infant son or infant daughter of such a right granted by the company to the wife, husband, son or daughter.

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(4) In a notice given to the company under subsection (3) there shall be stated—

(a) in the case of the grant of a right, the like information as is required by section 324 to be stated by the director on the grant to him by another body corporate of a right to subscribe for shares in, or debentures of, that other body corporate; and

(b) in the case of the exercise of a right, the like information as is required by that section to be stated by the director on the exercise of a right granted to him by another body corporate to subscribe for shares in, or debentures of, that other body corporate.

(5) An obligation imposed by subsection (3) on a director must be fulfilled by him before the end of 5 days beginning with the day following that on which the occurrence of the event giving rise to it comes to his knowledge; but in reckoning that period of days there is disregarded any Saturday or Sunday, and any day which is a bank holiday in any part of Great Britain.

(6) A person who—

(a) fails to fulfil, within the proper period, an obligation to which he is subject under subsection (3), or

(b) in purported fulfilment of such an obligation, makes to a company a statement which he knows to be false, or recklessly makes to a company a statement which is false,

is guilty of an offence and liable to imprisonment or a fine, or both.

(7) The rules set out in Part I of Schedule 13 have effect for the interpretation of, and otherwise in relation to, subsections (1) and (2); and subsections (5), (6) and (8) of section 324 apply with any requisite modification.

(8) In this section, "son" includes step-son, "daughter" includes step-daughter, and "infant" means, in relation to Scotland, **[**F429 person under the age of 18 years**]**.

(9) For purposes of section 325, an obligation imposed on a director by this section is to be treated as if imposed by section 324.

Textual Amendments

F429 Words in s. 328(8) substituted (S.) (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), **Sch. 1 para.39** (with s. 1(3))

Modifications etc. (not altering text)

C332 S. 328 excluded (12.2.1992) by S.I. 1992/225, **reg. 23(1)(b)**.
S. 328 modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 1(b)**.

329 Duty to notify stock exchange of matters notified under preceding sections.

(1) Whenever a company whose shares or debentures are listed on a **[**F430recognised investment exchange other than an overseas investment exchange F431. . .**]** is notified of any matter by a director in consequence of the fulfilment of an obligation imposed by section 324 or 328, and that matter relates to shares or debentures so listed, the company is under obligation to notify **[**F430that investment exchange**]** of that matter; and **[**F430the investment exchange**]** may publish, in such manner as it may determine, any information received by it under this subsection.

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(2) An obligation imposed by subsection (1) must be fulfilled before the end of the day next following that on which it arises; but there is disregarded for this purpose a day which is a Saturday or a Sunday or a bank holiday in any part of Great Britain.

(3) If default is made in complying with this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

Section 732 (restriction on prosecutions) applies to an offence under this section.

[F432(4) In subsection (1) "recognised investment exchange" and "overseas investment exchange" have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.**]**

Textual Amendments

F430 Words substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 20**

F431 Words in s. 329(1) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 20(1)(2)

F432 S. 329(4) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 20(1)(3)

Restrictions on a company's power to make loans, etc., to directors and persons connected with them

330 General restriction on loans etc. to directors and persons connected with them.

(1) The prohibitions listed below in this section are subject to the exceptions in sections 332 to 338.

(2) A company shall not—

(a) make a loan to a director of the company or of its holding company;

(b) enter into any guarantee or provide any security in connection with a loan made by any person to such a director.

(3) A relevant company shall not—

(a) make a quasi-loan to a director of the company or of its holding company;

(b) make a loan or a quasi-loan to a person connected with such a director;

(c) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any other person for such a director or a person so connected.

(4) A relevant company shall not—

(a) enter into a credit transaction as creditor for such a director or a person so connected;

(b) enter into any guarantee or provide any security in connection with a credit transaction made by any other person for such a director or a person so connected.

(5) For purposes of sections 330 to 346, a shadow director is treated as a director.

(6) A company shall not arrange for the assignment to it, or the assumption by it, of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have contravened subsection (2), (3) or (4); but for the purposes

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of sections 330 to 347 the transaction is to be treated as having been entered into on the date of the arrangement.

(7) A company shall not take part in any arrangement whereby—

(a) another person enters into a transaction which, if it had been entered into by the company, would have contravened any of subsections (2), (3), (4) or (6); and

(b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

Modifications etc. (not altering text)

C333 S. 330 modified (1.2.2001) by 2000 c. 38, **s. 56(4)(5)(h)(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in Sch. 2 Pt. II)

331 Definitions for ss. 330 ff.

(1) The following subsections apply for the interpretation of sections 330 to 346.

(2) "Guarantee" includes indemnity, and cognate expressions are to be construed accordingly.

(3) A quasi-loan is a transaction under which one party ("the creditor") agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another ("the borrower") or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another ("the borrower")—

(a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or

(b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.

(4) Any reference to the person to whom a quasi-loan is made is a reference to the borrower; and the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(5) F433

(6) "Relevant company" means a company which—

(a) is a public company, or

(b) is a subsidiary of a public company, or

(c) is a subsidiary of a company which has as another subsidiary a public company, or

(d) has a subsidiary which is a public company.

(7) A credit transaction is a transaction under which one party ("the creditor")—

(a) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement;

(b) leases or hires any land or goods in return for periodical payments;

(c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.

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(8) "Services" means anything other than goods or land.

(9) A transaction or arrangement is made "for" a person if—

(a) in the case of a loan or quasi-loan, it is made to him;

(b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;

(c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or a credit transaction made for him;

(d) in the case of an arrangement within subsection (6) or (7) of section 330, the transaction to which the arrangement relates was made for him; and

(e) in the case of any other transaction or arrangement for the supply or transfer of, or of any interest in, goods, land or services, he is the person to whom the goods, land or services (or the interest) are supplied or transferred.

(10) "Conditional sale agreement" means the same as in the [M38]Consumer Credit Act 1974.

Textual Amendments

F433 S. 331(5) repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(2), **Sch. 7 Pt. I**

Marginal Citations

M38 1974 c. 39.

332 Short-term quasi-loans.

(1) Subsection (3) of section 330 does not prohibit a company ("the creditor") from making a quasi-loan to one of its directors or to a director of its holding company if—

(a) the quasi-loan contains a term requiring the director or a person on his behalf to reimburse the creditor his expenditure within 2 months of its being incurred; and

(b) the aggregate of the amount of that quasi-loan and of the amount outstanding under each relevant quasi-loan does not exceed **[**[F434]£5,000**]**.

(2) A quasi-loan is relevant for this purpose if it was made to the director by virtue of this section by the creditor or its subsidiary or, where the director is a director of the creditor's holding company, any other subsidiary of that company; and "the amount outstanding" is the amount of the outstanding liabilities of the person to whom the quasi-loan was made.

Textual Amendments

F434 "£5,000" substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 138(a)**, 213(2) (subject to the saving provision in S.I. 1990/1392, **art. 5**)

333 Inter-company loans in same group.

In the case of a relevant company which is a member of a group of companies (meaning a holding company and its subsidiaries), paragraphs (b) and (c) of section 330(3) do not prohibit the company from—

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(a) making a loan or quasi-loan to another member of that group; or

(b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to another member of the group,

by reason only that a director of one member of the group is associated with another.

334 Loans of small amounts.

Without prejudice to any other provision of sections 332 to 338, paragraph (a) of section 330(2) does not prohibit a company from making a loan to a director of the company or of its holding company if the aggregate of the relevant amounts does not exceed **[**[F435]£5,000**]**.

Textual Amendments

F435 "£5,000" substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 138(b)**, 213(2) (subject to the saving provision in S.I. 1990/1392, **art. 5**)

335 Minor and business transactions.

(1) Section 330(4) does not prohibit a company from entering into a transaction for a person if the aggregate of the relevant amounts does not exceed **[**[F436]£10,000**]**.

(2) Section 330(4) does not prohibit a company from entering into a transaction for a person if—

(a) the transaction is entered into by the company in the ordinary course of its business; and

(b) the value of the transaction is not greater, and the terms on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which it is reasonable to expect the company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

Textual Amendments

F436 "£10,000" substituted by S.I. 1990/1393, **art. 2(b)**

336 Transactions at behest of holding company.

The following transactions are excepted from the prohibitions of section 330—

(a) a loan or quasi-loan by a company to its holding company, or a company entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to its holding company;

(b) a company entering into a credit transaction as creditor for its holding company, or entering into a guarantee or providing any security in connection with a credit transaction made by any other person for its holding company.

337 Funding of director's expenditure on duty to company.

(1) A company is not prohibited by section 330 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of

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the company or for the purpose of enabling him properly to perform his duties as an officer of the company.

(2) Nor does the section prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

(3) Subsections (1) and (2) apply only if one of the following conditions is satisfied—

(a) the thing in question is done with prior approval of the company given at a general meeting at which there are disclosed all the matters mentioned in the next subsection;

(b) that thing is done on condition that, if the approval of the company is not so given at or before the next annual general meeting, the loan is to be repaid, or any other liability arising under any such transaction discharged, within 6 months from the conclusion of that meeting;

but those subsections do not authorise a relevant company to enter into any transaction if the aggregate of the relevant amounts exceeds **[**F437£20,000**]**.

(4) The matters to be disclosed under subsection (3)(a) are—

(a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director,

(b) the amount of the funds to be provided by the company, and

(c) the extent of the company's liability under any transaction which is or is connected with the thing in question.

Textual Amendments

F437 "£20,000" substituted by S.I. 1990/1393, **art. 2(c)**

Modifications etc. (not altering text)

C334 S. 337(3)(a) restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), **s. 30BA(2)(e)** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s.41**; S.I. 1992/1900, art. 4, **Sch.3**).
S. 337(3)(a) restricted (E.W.) (1.8.1993) by 1993 c. 10, **ss. 66(1)(2)(e)**, 99(1)

VALID FROM 06/04/2004

337A Funding of director's expenditure on defending proceedings

(1) A company is not prohibited by section 330 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him—

(a) in defending any criminal or civil proceedings, or

(b) in connection with any application under any of the provisions mentioned in subsection (2).

(2) The provisions are—

section 144(3) and (4) (acquisition of shares by innocent nominee), and

section 727 (general power to grant relief in case of honest and reasonable conduct).

(3) Nor does section 330 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

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(4) Subsections (1) and (3) only apply to a loan or other thing done as mentioned in those subsections if the terms on which it is made or done will result in the loan falling to be repaid, or any liability of the company under any transaction connected with the thing in question falling to be discharged, not later than—

(a) in the event of the director being convicted in the proceedings, the date when the conviction becomes final,

(b) in the event of judgment being given against him in the proceedings, the date when the judgment becomes final, or

(c) in the event of the court refusing to grant him relief on the application, the date when the refusal of relief becomes final.

(5) For the purposes of subsection (4) a conviction, judgment or refusal of relief becomes final—

(a) if not appealed against, at the end of the period for bringing an appeal, or

(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(6) An appeal is disposed of—

(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect.

338 Loan or quasi-loan by money-lending company.

(1) There is excepted from the prohibitions in section 330—

(a) a loan or quasi-loan made by a money-lending company to any person; or

(b) a money-lending company entering into a guarantee in connection with any other loan or quasi-loan.

(2) "Money-lending company" means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees in connection with loans or quasi-loans.

(3) Subsection (1) applies only if both the following conditions are satisfied—

(a) the loan or quasi-loan in question is made by the company, or it enters into the guarantee, in the ordinary course of the company's business; and

(b) the amount of the loan or quasi-loan, or the amount guaranteed, is not greater, and the terms of the loan, quasi-loan or guarantee are not more favourable, in the case of the person to whom the loan or quasi-loan is made or in respect of whom the guarantee is entered into, than that or those which it is reasonable to expect that company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

(4) But subsection (1) does not authorise a relevant company (unless it is **[**F438a banking company**]**) to enter into any transaction if the aggregate of the relevant amounts exceeds £50,000.

(5) In determining that aggregate, a company which a director does not control is deemed not to be connected with him.

(6) The condition specified in subsection (3)(b) does not of itself prevent a company from making a loan to one of its directors or a director of its holding company—

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(a) for the purposes of facilitating the purchase, for use as that director's only or main residence, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it;

(b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it;

(c) in substitution for any loan made by any person and falling within paragraph (a) or (b) of this subsection, if loans of that description are ordinarily made by the company to its employees and on terms no less favourable than those on which the transaction in question is made, and the aggregate of the relevant amounts does not exceed **[**F439£100,000**]**.

Textual Amendments

F438 Words substituted by virtue of Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 18(6)** and Companies Act 1989 (c.40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 10** (subject to the transitional and saving provisions mentioned in S.I. 1990/355, **arts. 6–9**)

F439 "£100,000" substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 138(c)**, 213(2) (subject to the saving provision in S.I. 1990/1392, **art. 5**)

339 "Relevant amounts" for purposes of ss. 334 ff.

(1) This section has effect for defining the "relevant amounts" to be aggregated under sections 334, 335(1), 337(3) and 338(4); and in relation to any proposed transaction or arrangement and the question whether it falls within one or other of the exceptions provided by those sections, "the relevant exception" is that exception; but where the relevant exception is the one provided by section 334 (loan of small amount), references in this section to a person connected with a director are to be disregarded.

(2) Subject as follows, the relevant amounts in relation to a proposed transaction or arrangement are—

(a) the value of the proposed transaction or arrangement,

(b) the value of any existing arrangement which—

(i) falls within subsection (6) or (7) of section 330, and

(ii) also falls within subsection (3) of this section, and

(iii) was entered into by virtue of the relevant exception by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries;

(c) the amount outstanding under any other transaction—

(i) falling within subsection (3) below, and

(ii) made by virtue of the relevant exception, and

(iii) made by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries.

(3) A transaction falls within this subsection if it was made—

(a) for the director for whom the proposed transaction or arrangement is to be made, or for any person connected with that director; or

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(b) where the proposed transaction or arrangement is to be made for a person connected with a director of a company, for that director or any person connected with him;

and an arrangement also falls within this subsection if it relates to a transaction which does so.

(4) But where the proposed transaction falls within section 338 and is one which **[**F440a banking company**]** proposes to enter into under subsection (6) of that section (housing loans, etc.), any other transaction or arrangement which apart from this subsection would fall within subsection (3) of this section does not do so unless it was entered into in pursuance of section 338(6).

(5) A transaction entered into by a company which is (at the time of that transaction being entered into) a subsidiary of the company which is to make the proposed transaction, or is a subsidiary of that company's holding company, does not fall within subsection (3) if at the time when the question arises (that is to say, the question whether the proposed transaction or arrangement falls within any relevant exception), it no longer is such a subsidiary.

(6) Values for purposes of subsection (2) of this section are to be determined in accordance with the section next following; and "the amount outstanding" for purposes of subsection (2)(c) above is the value of the transaction less any amount by which that value has been reduced.

Textual Amendments

F440 Words substituted by virtue of Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 18(6)** and Companies Act 1989 (c.40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 10** (subject to the transitional and saving provisions mentioned in S.I. 1990/355, **arts. 6–9**)

340 "Value" of transactions and arrangements.

(1) This section has effect for determining the value of a transaction or arrangement for purposes of sections 330 to 339.

(2) The value of a loan is the amount of its principal.

(3) The value of a quasi-loan is the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor.

(4) The value of a guarantee or security is the amount guaranteed or secured.

(5) The value of an arrangement to which section 330(6) or (7) applies is the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.

(6) The value of a transaction or arrangement not falling within subsections (2) to (5) above is the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied (at the time the transaction or arrangement is entered into) in the ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied, under the transaction or arrangement in question.

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(7) For purposes of this section, the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason), whether or not any liability under the transaction or arrangement has been reduced, is deemed to exceed **[**[F441]£100,000**]**.

Textual Amendments

F441 "£100,000" substituted by S.I. 1990/1393, **art. 2(d)**

341 Civil remedies for breach of s. 330.

(1) If a company enters into a transaction or arrangement in contravention of section 330, the transaction or arrangement is voidable at the instance of the company unless—

(a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of subsection (2)(b) below for the loss or damage suffered by it, or

(b) any rights acquired bona fide for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

(2) Where an arrangement or transaction is made by a company for a director of the company or its holding company or a person connected with such a director in contravention of section 330, that director and the person so connected and any other director of the company who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of subsection (1)) is liable—

(a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and

(b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) Subsection (2) is without prejudice to any liability imposed otherwise than by that subsection, but is subject to the next two subsections.

(4) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 330, that director is not liable under subsection (2) of this section if he shows that he took all reasonable steps to secure the company's compliance with that section.

(5) In any case, a person so connected and any such other director as is mentioned in subsection (2) is not so liable if he shows that, at the time the arrangement or transaction was entered into, he did not know the relevant circumstances constituting the contravention.

342 Criminal penalties for breach of s. 330.

(1) A director of a relevant company who authorises or permits the company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 330 is guilty of an offence.

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(2) A relevant company which enters into a transaction or arrangement for one of its directors or for a director of its holding company in contravention of section 330 is guilty of an offence.

(3) A person who procures a relevant company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 330 is guilty of an offence.

(4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

(5) A relevant company is not guilty of an offence under subsection (2) if it shows that, at the time the transaction or arrangement was entered into, it did not know the relevant circumstances.

343 Record of transactions not disclosed in company accounts.

(1) The following provisions of this section—

(a) apply in the case of a company which is **[**F442a banking company, or is the holding company of a credit institution,**]**and

(b) are subject to the exceptions provided by section 344.

[F443(2) Where such a company takes advantage of the provisions of paragraph 2 of Part IV of Schedule 9 in relation to a financial year, that company shall keep a register containing a copy of every transaction, arrangement or agreement of which particulars would, but for that paragraph, be required to be disclosed in the company's accounts or group accounts for that financial year and for each financial year in the preceding 10 in relation to which the company has taken advantage of the provisions of that paragraph.**]**

(3) In the case of a transaction, arrangement or agreement which is not in writing, there shall be contained in the register a written memorandum setting out its terms.

[F444(4) Where such a company takes advantage of the provisions of paragraph 2 of Part IV of Schedule 9 in relation to the last complete financial year preceding its annual general meeting, that company shall before that meeting make available at its registered office for not less than 15 days ending with the date of the meeting a statement containing the particulars of transactions, arrangements and agreements which the company would, but for that paragraph, be required to disclose in its accounts or group accounts for that financial year.**]**

(5) The statement shall be so made available for inspection by members of the company; and such a statement shall also be made available for their inspection at the annual general meeting.

(6) It is the duty of the company's auditors to examine the statement before it is made available to members of the company and to make a report to the members on it; and the report shall be annexed to the statement before it is made so available.

(7) The auditors' report shall state whether in their opinion the statement contains the particulars required by subsection (4); and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.

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(8) If a company fails to comply with any provision of subsections (2) to (5), every person who at the time of the failure is a director of it is guilty of an offence and liable to a fine; but—

(a) it is a defence in proceedings against a person for this offence to prove that he took all reasonable steps for securing compliance with the subsection concerned, and

(b) a person is not guilty of the offence by virtue only of being a shadow director of the company.

(9) For purposes of the application of this section to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

Textual Amendments

F442 Words in s. 343(1)(a) substituted (28.2.1994) by S.I. 1994/233, **reg. 6(2)**

F443 S. 343(2) substituted (28.2.1994) by S.I. 1994/233, **reg. 6(3)**

F444 S. 343(4) substituted (28.2.1994) by S.I. 1994/233, **reg. 6(4)**

Modifications etc. (not altering text)

C335 S. 343 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C336 S. 343(2) modified (28.2.1994) by S.I. 1994/233, **reg. 8**

344 Exceptions from s. 343.

(1) Section 343 does not apply in relation to—

(a) transactions or arrangements made or subsisting during a financial year by a company or by a subsidiary of a company for a person who was at any time during that year a director of the company or of its holding company or was connected with such a director, or

(b) an agreement made or subsisting during that year to enter into such a transaction or arrangement,

if the aggregate of the values of each transaction or arrangement made for that person, and of each agreement for such a transaction or arrangement, less the amount (if any) by which the value of those transactions, arrangements and agreements has been reduced, did not exceed **[**F445£2,000**]** at any time during the financial year.

For purposes of this subsection, values are to be determined as under section 340.

(2) Section 343(4) and (5) do not apply to **[**F446a banking company**]** which is the wholly-owned subsidiary of a company incorporated in the United Kingdom.

Textual Amendments

F445 "£2,000" substituted by S.I. 1990/1393, **art. 2(e)**

F446 Words substituted by virtue of Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 18(6)** and (subject to the transitional and saving provisions in S.I. 1990/355, **arts. 6–9**) Companies Act 1989 (c.40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 10**

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Modifications etc. (not altering text)
C337 S. 344 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

Supplementary

345 Power to increase financial limits.

(1) The Secretary of State may by order in a statutory instrument substitute for any sum of money specified in this Part a larger sum specified in the order.

(2) An order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Such an order does not have effect in relation to anything done or not done before its coming into force; and accordingly, proceedings in respect of any liability (whether civil or criminal) incurred before that time may be continued or instituted as if the order had not been made.

Modifications etc. (not altering text)
C338 S. 345 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**
C339 S. 345(3) applied by S.I. 1990/1392, **art. 5**

346 "Connected persons", etc.

(1) This section has effect with respect to references in this Part to a person being "connected" with a director of a company, and to a director being "associated with" or "controlling" a body corporate.

(2) A person is connected with a director of a company if, but only if, he (not being himself a director of it) is—

(a) that director's spouse, child or step-child; or

(b) except where the context otherwise requires, a body corporate with which the director is associated; or

(c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—

(i) the director, his spouse or any children or step-children of his, or

(ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse, or any children or step-children of his, or any such body corporate; or

(d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraph (a), (b) or (c) of this subsection, is connected with that director; or

(e) a Scottish firm in which—

(i) that director is a partner,

(ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) above, is connected with that director, or

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(iii) a partner is a Scottish firm in which that director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c) above, is connected with that director.

(3) In subsection (2)—

(a) a reference to the child or step-child of any person includes an illegitimate child of his, but does not include any person who has attained the age of 18; and

(b) paragraph (c) does not apply to a person acting in his capacity as trustee under an employees' share scheme or a pension scheme.

(4) A director of a company is associated with a body corporate if, but only if, he and the persons connected with him, together—

(a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least one-fifth of that share capital; or

(b) are entitled to exercise or control the exercise of more than one-fifth of the voting power at any general meeting of that body.

(5) A director of a company is deemed to control a body corporate if, but only if—

(a) he or any person connected with him is interested in any part of the equity share capital of that body or is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body; and

(b) that director, the persons connected with him and the other directors of that company, together, are interested in more than one-half of that share capital or are entitled to exercise or control the exercise of more than one-half of that voting power.

(6) For purposes of subsections (4) and (5)—

(a) a body corporate with which a director is associated is not to be treated as connected with that director unless it is also connected with him by virtue of subsection (2)(c) or (d); and

(b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is associated is not to be treated as connected with a director by reason only of that fact.

(7) The rules set out in Part I of Schedule 13 apply for the purposes of subsections (4) and (5).

(8) References in those subsections to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him; but this is without prejudice to other provisions of subsections (4) and (5).

Modifications etc. (not altering text)

C340 Ss. 346, 347 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C341 S. 346 excluded (12.2.1992) by S.I. 1992/225, **reg. 23(1)(b)**.
S. 346 modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 1(b)**.

C342 S. 346(2) applied (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 12, **Sch. 2 para. 14(5)** (with s. 30(2)); S.I. 1992/817, art. 3(2), **Sch.1**.

C343 S. 346(2) applied (18.9.1996) by 1996 c. 43, s. 1, **Sch. 1 para. 11(6)**; S.I. 1996/2250, **art. 2**
S. 346(2) applied (18.9.1996) by 1988 c. 47, **s. 5A(4)** (as inserted (18.9.1996) by 1996 c. 43, **s. 30**); S.I. 1996/2250, **art. 2**

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S. 346(2) applied (18.9.1996) by 1988 c. 47, **Sch. 2 para. 5A(3)** (as inserted (18.9.1996) by 1996 c. 43, s. 31, **Sch. 4 para. 9(d)**); S.I. 1996/2250, **art. 2**

347 Transactions under foreign law.

For purposes of sections 319 to 322 and 330 to 343, it is immaterial whether the law which (apart from this Act) governs any arrangement or transaction is the law of the United Kingdom, or of a part of it, or not.

Modifications etc. (not altering text)
C344 Ss. 346, 347 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

PART XA

CONTROL OF POLITICAL DONATIONS

Modifications etc. (not altering text)
C345 Pt. XA (ss. 347A-347K) applied (16.2.2001) by S.I. 1985/680, **Sch.** (as inserted (16.2.2001) by S.I. 2001/86, **reg. 2**)

F447 347A Introductory provisions.

(1) This Part has effect for controlling—

(a) contributions and other donations made by companies to registered parties and other EU political organisations; and

(b) EU political expenditure incurred by companies.

(2) The following provisions have effect for the purposes of this Part, but subsections (4) and (7) have effect subject to section 347B.

(3) "Director" includes shadow director.

(4) "Donation", in relation to an organisation, means anything that would constitute a donation for the purposes of Part IV of the Political Parties, Elections and Referendums Act 2000 in accordance with sections 50 to 52 of that Act (references in those sections to a registered party being read as applying equally to an organisation which is not such a party); and—

(a) subsections (3) to (8) of section 50 of that Act shall apply, with any necessary modifications, for the purpose of determining whether something is a donation to an organisation for the purposes of this Part as they apply for the purpose of determining whether something is a donation to a registered party for the purposes of Part IV of that Act; and

(b) section 53 of that Act shall similarly apply for the purpose of determining, for the purposes of this Part, the value of any donation.

(5) "EU political expenditure", in relation to a company, means any expenditure incurred by the company—

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(a) in respect of the preparation, publication or dissemination of any advertising or any other promotional or publicity material—

(i) of whatever nature, and

(ii) however published or otherwise disseminated,

which, at the time of publication or dissemination, is capable of being reasonably regarded as intended to affect public support for any EU political organisation, or

(b) in respect of any activities on the part of the company such as are mentioned in subsection (7)(b) or (c).

(6) "EU political organisation" means—

(a) a registered party; or

(b) any other organisation to which subsection (7) applies.

(7) This subsection applies to an organisation if—

(a) it is a political party which carries on, or proposes to carry on, activities for the purpose of or in connection with the participation of the party in any election or elections to public office held in a member State other than the United Kingdom;

(b) it carries on, or proposes to carry on, activities which are capable of being reasonably regarded as intended to affect public support for—

(i) any registered party,

(ii) any other political party within paragraph (a), or

(iii) independent candidates at any election or elections of the kind mentioned in that paragraph; or

(c) it carries on, or proposes to carry on, activities which are capable of being reasonably regarded as intended to influence voters in relation to any national or regional referendum held under the law of any member State.

(8) "Organisation" includes any body corporate and any combination of persons or other unincorporated association.

(9) "Registered party" means a party registered under Part II of the Political Parties, Elections and Referendums Act 2000.

(10) "The relevant time", in relation to any donation or expenditure made or incurred by a company or subsidiary undertaking, means—

(a) the time when the donation or expenditure is made or incurred; or

(b) if earlier, the time when any contract is entered into by the company or undertaking in pursuance of which the donation or expenditure is made or incurred.

(11) "Subsidiary undertaking" has the same meaning as in Part VII.

Textual Amendments

F447 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

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[F448]347B Exemptions.

(1) Section 347A(4) does not extend to a subscription paid to an EU trade association for membership of the association, and accordingly such a payment is not a donation to the association for the purposes of this Part.

(2) In subsection (1)—

"EU trade association" means any organisation formed for the purpose of furthering the trade interests—

(a) of its members, or

(b) of persons represented by its members,

which carries on its activities wholly or mainly in one or more of the member States;

"subscription", in relation to a trade association, does not include any payment to the association to the extent that it is made for the purpose of financing any particular activity of the association.

(3) Section 347A(7) does not apply to any all-party parliamentary group composed of members of one or both of the Houses of Parliament (or of such members and other persons), and accordingly any such group is not an EU political organisation for the purposes of this Part.

(4) For the purposes of this Part—

(a) a company does not need to be authorised as mentioned in section 347C(1) or section 347D(2) or (3), and

(b) a subsidiary undertaking does not need to be authorised as mentioned in section 347E(2),

in connection with any donation or donations to any EU political organisation or organisations made in a particular qualifying period, except to the extent (if any) that the amount or aggregate amount of any such donation or donations made in that period exceeds £5,000.

(5) The restrictions imposed by sections 347C(1), 347D(2) and (3) and 347E(2) accordingly have effect subject to subsection (4); and, where a resolution is passed for the purposes of any of those provisions, any amount of donations in relation to which, by virtue of subsection (4), no authorisation is needed shall accordingly not count towards the sum specified in the resolution.

(6) In subsection (4) "qualifying period" means—

(a) the period of 12 months beginning with the relevant date for the company or (in the case of a subsidiary undertaking) the parent company; and

(b) each succeeding period of twelve months.

(7) For the purposes of subsection (6) the relevant date for a company is—

(a) if an annual general meeting of the company is held within the period of 12 months beginning with the date of the coming into force of this section, the date of that meeting; and

(b) otherwise, the date immediately following the end of that period.

(8) For the purposes of this Part—

(a) a company does not need to be authorised as mentioned in section 347C(1) or section 347D(2) or (3), and

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(b) a subsidiary undertaking does not need to be authorised as mentioned in section 347E(2),

in connection with any EU political expenditure in relation to which an exemption is conferred on the company or (as the case may be) subsidiary undertaking by virtue of an order made by the Secretary of State by statutory instrument.

(9) The restrictions imposed by sections 347C(1), 347D(2) and (3) and 347E(2) accordingly have effect subject to subsection (8); and, where a resolution is passed for the purposes of any of those provisions, any amount of EU political expenditure in relation to which, by virtue of subsection (8), no authorisation is needed shall accordingly not count towards the sum specified in the resolution.

(10) An order under subsection (8) may confer an exemption for the purposes of that subsection in relation to—

(a) companies or subsidiary undertakings of any description or category specified in the order, or

(b) expenditure of any description or category so specified (whether framed by reference to goods, services or other matters in respect of which such expenditure is incurred or otherwise),

or both.

(11) An order shall not be made under subsection (8) unless a draft of the statutory instrument containing the order has been laid before and approved by each House of Parliament.

Textual Amendments

F448 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

F449 347C Prohibition on donations and political expenditure by companies.

(1) A company must not—

(a) make any donation to any registered party or to any other EU political organisation, or

(b) incur any EU political expenditure,

unless the donation or expenditure is authorised by virtue of an approval resolution passed by the company in general meeting before the relevant time.

This subsection has effect subject to section 347D(3).

(2) For the purposes of this section an approval resolution is a qualifying resolution which authorises the company to do either (or both) of the following, namely—

(a) make donations to EU political organisations not exceeding in total a sum specified in the resolution, or

(b) incur EU political expenditure not exceeding in total a sum so specified,

during the requisite period beginning with the date of the resolution.

(3) In subsection (2)—

(a) "qualifying resolution" means an ordinary resolution or, if the directors so determine or the articles so require—

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(i) a special resolution, or

(ii) a resolution passed by any percentage of the members greater than that required for an ordinary resolution;

(b) "the requisite period" means four years or such shorter period as the directors may determine or the articles may require;

and the directors may make a determination for the purposes of paragraph (a) or (b) above except where any provision of the articles operates to prevent them from doing so.

(4) The resolution must be expressed in general terms conforming with subsection (2), and accordingly may not purport to authorise particular donations or expenditure.

(5) Where a company makes any donation or incurs any expenditure in contravention of subsection (1), no ratification or other approval made or given by the company or its members after the relevant time is capable of operating to nullify that contravention.

(6) Nothing in this section enables a company to be authorised to do anything that it could not lawfully do apart from this section.

Textual Amendments

F449 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

Modifications etc. (not altering text)

C346 S. 347C(1) restricted (16.2.2001) by S.I. 2001/445, **art. 2**

F450 347D Special rules for subsidiaries.

(1) This section applies where a company is a subsidiary of another company ("the holding company").

(2) Where the subsidiary is not a wholly-owned subsidiary of the holding company—

(a) it must not make any donation or incur any expenditure to which subsection (1) of section 347C applies unless the donation or expenditure is authorised by virtue of a subsidiary approval resolution passed by the holding company in general meeting before the relevant time; and

(b) this requirement applies in addition to that imposed by that subsection.

(3) Where the subsidiary is a wholly-owned subsidiary of the holding company—

(a) it must not make any donation or incur any expenditure to which subsection (1) of section 347C applies unless the donation or expenditure is authorised by virtue of a subsidiary approval resolution passed by the holding company in general meeting before the relevant time; and

(b) this requirement applies in place of that imposed by that subsection.

(4) For the purposes of this section a subsidiary approval resolution is a qualifying resolution of the holding company which authorises the subsidiary to do either (or both) of the following, namely—

(a) make donations to EU political organisations not exceeding in total a sum specified in the resolution, or

(b) incur EU political expenditure not exceeding in total a sum so specified,

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during the requisite period beginning with the date of the resolution.

(5) Subsection (3) of section 347C shall apply for the purposes of subsection (4) above as it applies for the purposes of subsection (2) of that section.

(6) The resolution must be expressed in general terms conforming with subsection (4), and accordingly may not purport to authorise particular donations or expenditure.

(7) The resolution may not relate to donations or expenditure by more than one subsidiary.

(8) Where a subsidiary makes any donation or incurs any expenditure in contravention of subsection (2) or (3), no ratification or other approval made or given by the holding company or its members after the relevant time is capable of operating to nullify that contravention.

(9) Nothing in this section enables a company to be authorised to do anything that it could not lawfully do apart from this section.

Textual Amendments

F450 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

Modifications etc. (not altering text)

C347 S. 347D(2)(3) restricted (16.2.2001) by S.I. 2001/445, **art. 2**

F451 347E Special rule for parent company of non-GB subsidiary undertaking.

(1) This section applies where a company ("the parent company") has a subsidiary undertaking which is incorporated or otherwise established outside Great Britain.

(2) The parent company shall take all such steps as are reasonably open to it to secure that the subsidiary undertaking does not make any donation or incur any expenditure to which subsection (1) of section 347C applies except to the extent that the donation or expenditure is authorised by virtue of a subsidiary approval resolution passed by the parent company in general meeting before the relevant time.

(3) For the purposes of this section a subsidiary approval resolution is a qualifying resolution of the parent company which authorises the subsidiary undertaking to do either (or both) of the following, namely—

(a) make donations to EU political organisations not exceeding in total a sum specified in the resolution, or

(b) incur EU political expenditure not exceeding in total a sum so specified,

during the requisite period beginning with the date of the resolution.

(4) Subsection (3) of section 347C shall apply for the purposes of subsection (3) above as it applies for the purposes of subsection (2) of that section.

(5) The resolution must be expressed in general terms conforming with subsection (3), and accordingly may not purport to authorise particular donations or expenditure.

(6) The resolution may not relate to donations or expenditure by more than one subsidiary undertaking.

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(7) Where a subsidiary undertaking makes any donation or incurs any expenditure which (to any extent) is not authorised as mentioned in subsection (2), no ratification or other approval made or given by the parent company or its members after the relevant time is capable of operating to authorise that donation or expenditure.

Textual Amendments

F451 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

Modifications etc. (not altering text)

C348 S. 347E(2) restricted (16.2.2001) by S.I. 2001/445, **art. 2**

F452 347F Remedies for breach of prohibitions on company donations etc.

(1) This section applies where a company has made any donation or incurred any expenditure in contravention of any of the provisions of sections 347C and 347D.

(2) Every person who was a director of the company at the relevant time is liable to pay the company—

(a) the amount of the donation or expenditure made or incurred in contravention of the provisions in question; and

(b) damages in respect of any loss or damage sustained by the company as a result of the donation or expenditure having been made or incurred in contravention of those provisions.

(3) Every such person is also liable to pay the company interest on the amount mentioned in subsection (2)(a) in respect of the period—

(a) beginning with the date when the donation or expenditure was made or incurred, and

(b) ending with the date when that amount is paid to the company by any such person;

and such interest shall be payable at such rate as the Secretary of State may prescribe by regulations.

(4) Where two or more persons are subject to a particular liability arising by virtue of any provision of this section, each of those persons is jointly and severally liable.

(5) Where only part of any donation or expenditure was made or incurred in contravention of any of the provisions of sections 347C and 347D, this section applies only to so much of it as was so made or incurred.

(6) Where—

(a) this section applies as mentioned in subsection (1), and

(b) the company in question is a subsidiary of another company ("the holding company"),

then (subject to subsection (7)) subsections (2) to (5) shall, in connection with the donation or expenditure made or incurred by the subsidiary, apply in relation to the holding company as they apply in relation to the subsidiary.

(7) Those subsections do not apply in relation to the holding company if—

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(a) the subsidiary is not a wholly-owned subsidiary of the holding company; and

(b) the donation or expenditure was authorised by such a resolution of the holding company as is mentioned in section 347D(2)(a).

(8) Nothing in section 727 shall apply in relation to any liability of any person arising under this section.

Textual Amendments

F452 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

F453 347G Remedy for unauthorised donation or expenditure by non-GB subsidiary.

(1) This section applies where—

(a) a company ("the parent company") has a subsidiary undertaking falling within subsection (1) of section 347E;

(b) the subsidiary undertaking has made any donation or incurred any expenditure to which subsection (1) of section 347C applies; and

(c) the parent company has, in relation to that donation or expenditure, failed to discharge its duty under subsection (2) of section 347E to take all such steps as are mentioned in that subsection.

(2) Subsections (2) to (4) of section 347F shall, in connection with the donation or expenditure made or incurred by the subsidiary undertaking, apply in relation to the holding company as if—

(a) it were a company falling within subsection (1) of that section, and

(b) the donation or expenditure had been made or incurred by it in contravention of section 347C or 347D.

(3) Where only part of the donation or expenditure was not authorised as mentioned in section 347E(2), those subsections shall so apply only to that part of it.

(4) Section 347F(8) applies to any liability of any person arising under section 347F by virtue of this section.

Textual Amendments

F453 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

F454 347H Exemption of directors from liability in respect of unauthorised donation or expenditure.

(1) Where proceedings are brought against a director or former director of a company in respect of any liability arising under section 347F(2)(a) in connection with a donation or expenditure made or incurred by the company, it shall be a defence for that person to show that—

(a) the unauthorised amount has been repaid to the company, together with any interest on that amount due under section 347F(3);

(b) that repayment has been approved by the company in general meeting; and

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(c) in the notice of the relevant resolution submitted to that meeting full disclosure was made—

(i) of the circumstances in which the donation or expenditure was made or incurred in contravention of section 347C or 347D, and

(ii) of the circumstances in which, and the person or persons by whom, the repayment was made.

(2) Where proceedings are brought against a director or former director of a holding company in respect of any liability arising under section 347F(2)(a) in connection with a donation or expenditure made or incurred by a subsidiary of the company, it shall be a defence for that person to show that—

(a) the unauthorised amount has been repaid either to the subsidiary or to the holding company, together with any interest on that amount due under section 347F(3);

(b) that repayment has been approved—

(i) (if made to the subsidiary) by both the subsidiary and the holding company in general meeting, or

(ii) (if made to the holding company) by the holding company in general meeting; and

(c) in the notice of the relevant resolution submitted to each of those meetings or (as the case may be) to that meeting, full disclosure was made—

(i) of the circumstances in which the donation or expenditure was made in contravention of section 347D, and

(ii) of the circumstances in which, and the person or persons by whom, the repayment was made.

(3) If the subsidiary is a wholly-owned subsidiary of the holding company, it is not necessary for the purposes of subsection (2) to show (where the repayment was made to the subsidiary) that the repayment has been approved by the subsidiary, and paragraphs (b) and (c) of that subsection shall apply accordingly.

(4) Where proceedings are brought against a director or former director of a holding company in respect of any liability arising under section 347F(2)(a) in connection with a donation or expenditure made or incurred by a subsidiary of the company which is not a wholly-owned subsidiary, then (subject to subsection (5)) it shall be a defence for that person to show that—

(a) proceedings have been instituted by the subsidiary against all or any of its directors in respect of the unauthorised amount; and

(b) those proceedings are being pursued with due diligence by the subsidiary.

(5) A person may not avail himself of the defence provided by subsection (4) except with the leave of the court; and on an application for leave under this subsection the court may make such order as it thinks fit, including an order adjourning, or sanctioning the continuation of, the proceedings against the applicant on such terms and conditions as it thinks fit.

(6) Where proceedings are brought against a director or former director of a company in respect of any liability arising under section 347F(2)(a) (as applied by virtue of section 347G) in connection with a donation or expenditure made or incurred by a subsidiary undertaking of the company, it shall be a defence for that person to show that—

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(a) the unauthorised amount has been repaid to the subsidiary undertaking, together with any interest on that amount due under section 347F(3) (as so applied);

(b) that repayment has been approved by the company in general meeting; and

(c) in the notice of the relevant resolution submitted to that meeting full disclosure was made—

(i) of the circumstances in which the donation or expenditure was made without having been authorised as mentioned in section 347E(2), and

(ii) of the circumstances in which, and the person or persons by whom, the repayment was made.

(7) In this section "the unauthorised amount", in relation to any donation or expenditure, means the amount of the donation or expenditure—

(a) which was made or incurred in contravention of section 347C or 347D, or

(b) which was not authorised as mentioned in section 347E(2),

as the case may be.

Textual Amendments

F454 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

F455 347I Enforcement of directors' liabilities by shareholder action.

(1) Any liability of any person under section 347F or 347G as a director or former director of a company is (in addition to being enforceable by proceedings brought by the company) enforceable by proceedings brought under this section in the name of the company by an authorised group of members of the company.

(2) For the purposes of this section "authorised group", in relation to the members of a company, means any such combination of members as is specified in section 54(2)(a), (b) or (c).

(3) An authorised group of members of a company may not bring proceedings under this section unless—

(a) the group has given written notice to the company stating—

(i) the cause of action and a summary of the facts on which the proceedings are to be based,

(ii) the names and addresses of the members of the company comprising the group, and

(iii) the grounds on which it is alleged that those members constitute an authorised group; and

(b) not less than 28 days have elapsed between the date of the giving of the notice to the company and the institution of the proceedings.

(4) Where such a notice is given to a company, any director may apply to the court within the period of 28 days beginning with the date of the giving of the notice for an order directing that the proposed proceedings are not to be instituted.

(5) An application under subsection (4) may be made on one or more of the following grounds—

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(a) that the unauthorised amount within the meaning of section 347H has been repaid to the company or subsidiary undertaking as mentioned in subsection (1), (2), (4) or (6) of that section (as the case may be) and the other conditions mentioned in that subsection were satisfied with respect to that repayment;

(b) that proceedings to enforce the liability have been instituted by the company and are being pursued with due diligence by the company;

(c) that the members proposing to institute proceedings under this section do not constitute an authorised group.

(6) Where such an application is made on the ground mentioned in subsection (5)(b), the court may make such order as it thinks fit; and such an order may, as an alternative to directing that the proposed proceedings under this section are not to be instituted, direct—

(a) that those proceedings may be instituted on such terms and conditions as the court thinks fit;

(b) that the proceedings instituted by the company are to be discontinued;

(c) that the proceedings instituted by the company may be continued on such terms and conditions as the court thinks fit.

(7) If proceedings are brought under this section by an authorised group of members of a company, the group shall owe the same duties to the company in relation to the bringing of those proceedings on behalf of the company as would be owed by the directors of the company if the proceedings were being brought by the company itself; but no proceedings to enforce any duty owed by virtue of this subsection shall be brought by the company except with the leave of the court.

(8) Proceedings brought under this section may not be discontinued or settled by the group except with the leave of the court; and the court may grant leave under this subsection on such terms as it thinks fit.

Textual Amendments

F455 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

F456 347J Costs of shareholder action.

(1) This section applies in relation to proceedings brought under section 347I by an authorised group of members of a company ("the group").

(2) The group may apply to the court for an order directing the company to indemnify the group in respect of costs incurred or to be incurred by the group in connection with the proceedings; and on such an application the court may make such an order on such terms as it thinks fit.

(3) The group shall not be entitled to be paid any such costs out of the assets of the company except by virtue of such an order.

(4) If—

(a) the company is awarded costs in connection with the proceedings or it is agreed that costs incurred by the company in connection with the proceedings should be paid by any defendant, and

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(b) no order has been made with respect to the proceedings under subsection (2),

the costs shall be paid to the group.

(5) If—

(a) any defendant is awarded costs in connection with the proceedings or it is agreed that any defendant should be paid costs incurred by him in connection with the proceedings, and

(b) no order has been made with respect to the proceedings under subsection (2),

the costs shall be paid by the group.

(6) In the application of this section to Scotland references to costs are to expenses and references to any defendant are to any defender.

Textual Amendments

F456 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

[F457]347K Information for purposes of shareholder action.

(1) Where any proceedings have been instituted under section 347I by an authorised group within the meaning of that section, the group is entitled to require the company to provide the group with all information relating to the subject matter of the proceedings which is in the company's possession or under its control or which is reasonably obtainable by it.

(2) If the company, having been required by the group to provide the information referred to in subsection (1), refuses to provide the group with all or any of the information, the court may, on an application made by the group, make an order directing—

(a) the company, and

(b) any of its officers or employees specified in the application,

to provide the group with the information in question in such form and by such means as the court may direct.

Textual Amendments

F457 Pt. XA (ss. 347A-347K) inserted (16.2.2001) by 2000 c. 41, s. 139, **Sch. 19** (with s. 156(6), Sch. 3 para. 12); S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in Sch. 1 Pt. II)

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PART XI

COMPANY ADMINISTRATION AND PROCEDURE

CHAPTER I

COMPANY IDENTIFICATION

348 Company name to appear outside place of business.

(1) Every company shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.

(2) If a company does not paint or affix its name as required above, the company and every officer of it who is in default is liable to a fine; and if a company does not keep its name painted or affixed as so required, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C349 S. 348 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

349 Company's name to appear in its correspondence, etc.

(1) Every company shall have its name mentioned in legible characters—
- (a) in all business letters of the company,
- (b) in all its notices and other official publications,
- (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and
- (d) in all its bills of parcels, invoices, receipts and letters of credit.

(2) If a company fails to comply with subsection (1) it is liable to a fine.

(3) If an officer of a company or a person on its behalf—
- (a) issues or authorises the issue of any business letter of the company, or any notice or other official publication of the company, in which the company's name is not mentioned as required by subsection (1), or
- (b) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company in which its name is not so mentioned,

he is liable to a fine.

(4) If an officer of a company or a person on its behalf signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned as required by subsection (1), he is liable to a fine; and he is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

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Modifications etc. (not altering text)
C350 S. 349 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
C351 S. 349(2)–(4) applied (S.) (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 112(8)**, 213(2)
S. 349(2)-(4) applied (with modifications) (E.W.) (1.8.1993) by 1993 c. 10, **ss. 68(3)**, 99(1)

350 Company seal.

[F458(1) A company which has a common seal shall have its name engraved in legible characters on the seal; and if it fails to comply with this subsection it is liable to a fine.**]**

(2) If an officer of a company or a person on its behalf uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved as required by subsection (1), he is liable to a fine.

Textual Amendments
F458 S. 350(1) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 7**

Modifications etc. (not altering text)
C352 S. 350 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

351 Particulars in correspondence, etc.

(1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company, that is to say—

(a) the company's place of registration and the number with which it is registered,

(b) the address of its registered office,

(c) in the case of an investment company (as defined in section 266), the fact that it is such a company, and

(d) in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact that it is a limited company.

(2) If in the case of a company having a share capital there is on the stationery used for any such letters, or on the company's order forms, a reference to the amount of share capital, the reference must be to paid-up share capital.

F459(3) . . . . . .

F459(4) . . . . . .

(5) As to contraventions of this section, the following applies—

(a) if a company fails to comply with subsection (1) or (2), it is liable to a fine,

(b) if an officer of a company or a person on its behalf issues or authorises the issue of any business letter or order form not complying with those subsections, he is liable to a fine, F460. . .

F460(c) . . . . . .

Textual Amendments
F459 S. 351(3)(4) repealed (1.2.1994) by 1993 c. 38, s. 31, **Sch. 2**; S.I. 1994/115, **art. 2(2)**

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F460 S. 351(5)(c) and the word "and" immediately preceding it repealed (1.2.1994) by 1993 c. 38, ss. 35(1), **Sch.2**

Modifications etc. (not altering text)
C353 S. 351 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
C354 S. 351(1)(2)(5)(*a*) applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

CHAPTER II

REGISTER OF MEMBERS

352 Obligation to keep and enter up register.

(1) Every company shall keep a register of its members and enter in it the particulars required by this section.

(2) There shall be entered in the register—
- (a) the names and addresses of the members;
- (b) the date on which each person was registered as a member; and
- (c) the date at which any person ceased to be a member.

(3) The following applies in the case of a company having a share capital—
- (a) with the names and addresses of the members there shall be entered a statement—
  - (i) of the shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class, and
  - (ii) of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(4) In the case of a company which does not have a share capital but has more than one class of members, there shall be entered in the register, with the names and addresses of the members, the class to which each member belongs.

(5) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) An entry relating to a former member of the company may be removed from the register after the expiration of 20 years from the date on which he ceased to be a member.

(7) Liability incurred by a company from the making or deletion of an entry in its register of members, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

This is without prejudice to any lesser period of limitation.

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Modifications etc. (not altering text)

C355 S. 352 applied (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 19(1)** (with regs. 39, 45)

C356 S. 352 restricted (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 2(4)(5)** (with regs. 39, 45)

C357 S. 352 modified (12.2.1992) by S.I. 1992/225, reg. 16, **Sch. 2 para. 1(1)**.

C358 S. 352 extended (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 14(4)** (with s. 63); S.I. 2004/1832, **art. 2**

C359 S. 352(5) applied (26.11.2001) S.I. 2001/3755, **reg. 20(7)** (with regs. 39, 45)
S. 352(5) applied (26.11.2001) by S.I. 2001/3755, **reg. 21(4)** (with regs. 39, 45)
S. 352(5) applied (26.11.2001) by S.I. 2001/3755, **reg. 22(4)** (with regs. 39, 45)

C360 S. 352(5) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 56(5)**.
S. 352(5) applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 5(4)** (with regs. 39, 45)

C361 S. 352(5) modified (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 14(4)** (with s. 63); S.I. 2004/1832, **art. 2**

[F461 352A Statement that company has only one member

(1) If the number of members of a private company limited by shares or by guarantee falls to one there shall upon the occurrence of that event be entered in the company's register of members with the name and address of the sole member—

(i) a statement that the company has only one member, and

(ii) the date on which the company became a company having only one member.

(2) If the membership of a private company limited by shares or by guarantee increases from one to two or more members there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member together with the date on which that event occurred.

(3) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.**]**

Textual Amendments

F461 S. 352A inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 4(1)**.

Modifications etc. (not altering text)

C362 S. 352A applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 3** (with regs. 39, 45)

353 Location of register.

(1) A company's register of members shall be kept at its registered office, except that—

(a) if the work of making it up is done at another office of the company, it may be kept there; and

(b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other, it may be kept at the office of the other at which the work is done;

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but it must not be kept, in the case of a company registered in England and Wales, at any place elsewhere than in England and Wales or, in the case of a company registered in Scotland, at any place elsewhere than in Scotland.

(2) Subject as follows, every company shall send notice in the prescribed form to the registrar of companies of the place where its register of members is kept, and of any change in that place.

(3) The notice need not be sent if the register has, at all times since it came into existence (or, in the case of a register in existence on 1st July 1948, at all times since then) been kept at the company's registered office.

(4) If a company makes default for 14 days in complying with subsection (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C363 S. 353 excluded (26.11.2001) by reg. 23(4), Sch. 4 para. 6(5)(6) (with regs. 39, 45)
C364 S. 353(1)(2)(4) applied (12.2.1992) by S.I. 1992/225, **reg. 26(1)**.
C365 S. 353(4) extended by S.I. 1985/724, **reg. 3(5)**
S. 353(4) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 26(1)**.

354 Index of members.

(1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C366 S. 354 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 7(4)(5)** (with regs. 39, 45)

355 Entries in register in relation to share warrants.

(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered in it as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—

(a) the fact of the issue of the warrant;

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(b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and

(c) the date of the issue of the warrant.

(2) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares specified in it without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) are deemed to be those required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered.

(5) Except as provided by section 291(2) (director's share qualification), the bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

Modifications etc. (not altering text)

C367 S. 355 applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 8** (with regs. 39, 45)

356 Inspection of register and index.

(1) Except when the register of members is closed under the provisions of this Act, the register and the index of members' names shall [F462] . . . be open to the inspection of any member of the company without charge, and of any other person on payment of **[**[F463]such fee as may be prescribed**]**.

[F464](2) . . . . . .

(3) Any member of the company or other person may require a copy of the register, or of any part of it, on payment of **[**[F465]such fee as may be prescribed**]**; and the company shall cause any copy so required by a person to be sent to him within 10 days beginning with the day next following that on which the requirement is received by the company.

[F466](4) . . . . . .

(5) If an inspection required under this section is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default is liable in respect of each offence to a fine.

(6) In the case of such refusal or default, the court may by order compel an immediate inspection of the register and index, or direct that the copies required be sent to the persons requiring them.

Textual Amendments

F462 Words in s. 356(1) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(8)(a), 212, **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F463 Words in s. 356(1) substituted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(8)(a)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.
F464 S. 356(2) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(8)(b), 212, **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.
F465 Words in s. 356(3) substituted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(8)(c)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.
F466 S. 356(4) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(8)(d), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

Modifications etc. (not altering text)
C368 S. 356 applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 9** (with regs. 39, 45)
C369 S. 356 applied (12.2.1992) by S.I. 1992/225, **reg. 26(2)**.
C370 S. 356(1) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.
S. 356(1) amended (1.11.1991) by S.I. 1991/1998, **reg. 4(2)(a)**.
C371 S. 356(3) amended (1.11.1991) by S.I. 1991/1998, **reg. 4(3)(a)**.
C372 S. 356(6) extended (12.2.1992) by S.I. 1992/225, **reg. 26(3)**.
S. 356(6) extended (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 10** (with regs. 39, 45)

357 Non-compliance with ss. 353, 354, 356; agent's default.

Where under section 353(1)(b), the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

section 353(2) (notice to registrar),

section 354(3) (index to be kept with register), or

section 356 (inspection),

or with any requirement of this Act as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under section 356(6) extends to the making of orders against that other and his officers and servants.

Modifications etc. (not altering text)
C373 S. 357 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 6(5)(6)** (with regs. 39, 45)
C374 S. 357 applied (12.2.1992) by S.I. 1992/225, **reg. 26(3)**.

358 Power to close register.

A company may, on giving notice by advertisement in a newspaper circulating in the district in which the company's registered office is situated, close the register of members for any time or times not exceeding in the whole 30 days in each year.

Modifications etc. (not altering text)
C375 S. 358 excluded (12.2.1992) by S.I. 1992/225, reg. 16, **Sch. 2 para. 1(3)**.
S. 358 excluded (19.12.1995) by S.I. 1995/3272, **reg. 22**
S. 258 excluded (26.11.2001) by S.I. 2001/3755, **reg. 26** (with regs. 39, 45)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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359 Power of court to rectify register.

(1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Modifications etc. (not altering text)
C376 S. 359 restricted (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 11** (with regs. 39, 45)
C377 S. 359 excluded (12.2.1992) by S.I. 1992/225, **reg. 73(2)**.
C378 S. 359(1)(a) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 73(1)**.
C379 S. 359(2)-(4) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 73(1)**.

360 Trusts not to be entered on register in England and Wales.

No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England and Wales.

Modifications etc. (not altering text)
C380 S. 360 amended (12.2.1992) by S.I. 1992/225, **reg. 67(2)**.

361 Register to be evidence.

The register of members is prima facie evidence of any matters which are by this Act directed or authorised to be inserted in it.

Modifications etc. (not altering text)
C381 S. 361 excluded (26.11.2001) by S.I. 2001/3755, **reg. 24(4)** (with regs. 39, 45)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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362 Overseas branch registers.

(1) A company having a share capital whose objects comprise the transaction of business in any of the countries or territories specified in Part I of Schedule 14 to this Act may cause to be kept in any such country or territory in which it transacts business a branch register of members resident in that country or territory.

(2) Such a branch register is to be known as an "overseas branch register"; and—

(a) any dominion register kept by a company under section 119 of the [M39]Companies Act 1948 is to become known as an overseas branch register of the company;

(b) where any Act or instrument (including in particular a company's articles) refers to a company's dominion register, that reference is to be read (unless the context otherwise requires) as being to an overseas branch register kept under this section; and

(c) references to a colonial register occurring in articles registered before 1st November 1929 are to be read as referring to an overseas branch register.

(3) Part II of Schedule 14 has effect with respect to overseas branch registers kept under this section; and Part III of the Schedule enables corresponding facilities in Great Britain to be accorded to companies incorporated in other parts of the world.

(4) The [M40]Foreign Jurisdiction Act 1890 has effect as if subsection (1) of this section, and Part II of Schedule 14, were included among the enactments which by virtue of section 5 of that Act may be applied by Order in Council to foreign countries in which for the time being Her Majesty has jurisdiction.

(5) Her Majesty may by Order in Council direct that subsection (1) above and Part II of Schedule 14 shall extend, with such exceptions, modifications or adaptations (if any) as may be specified in the Order, to any territories under Her Majesty's protection to which those provisions cannot be extended under the Foreign Jurisdiction Act 1890.

Marginal Citations

M39 1948 c. 38.

M40 1890 c. 37.

[F467CHAPTER III

ANNUAL RETURN]

Textual Amendments

F467 Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, **arts. 4**, 5) by Companies Act 1989 (c. 40, SIF 27), **ss. 139(1)**, 213(2)

Modifications etc. (not altering text)

C382 Chapter III (ss. 363–365) excluded by S.I. 1990/1707, **art. 5(4)(7)**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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363 Duty to deliver annual returns.

(1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's "return date", that is—

(a) the anniversary of the company's incorporation, or

(b) if the company's last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.

(2) Each return shall—

(a) be in the prescribed form,

(b) contain the information required by or under the following provisions of this Chapter, and

(c) be signed by a director or the secretary of the company;

and it shall be delivered to the registrar within 28 days after the date to which it is made up.

(3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of subsection (2) (except as to date of delivery) is delivered by the company to the registrar.

(4) Where a company is guilty of an offence under subsection (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.

(5) The references in this section to a return being delivered "in accordance with this Chapter" are—

(a) in relation to a return made **[**F468on or after 1st October 1990**]**, to a return with respect to which all the requirements of subsection (2) are complied with;

(b) in relation to a return made before **[**F469 1st October 1990**]**, to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

Textual Amendments

F468 Words substituted by S.I. 1990/1707, **art. 7(a)**

F469 Words substituted by S.I. 1990/1707, **art. 7(b)**

Modifications etc. (not altering text)

C383 S. 363 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C384 S. 363 excluded by S.I. 1985/724, **reg. 4(4)**

C385 S. 363 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F470**364 Contents of annual return: general.**

(1) Every annual return shall state the date to which it is made up and shall contain the following information—

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(a) the address of the company's registered office;

(b) the type of company it is and its principal business activities;

(c) the name and address of the company secretary;

(d) the name and address of every director of the company;

(e) in the case of each individual director—

(i) his nationality, date of birth and business occupation, [F471]. . .

[F471](ii) . . . . . .

[F472](f) . . . . . .

(g) if the register of members is not kept at the company's registered office, the address of the place where it is kept;

(h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company's registered office, the address of the place where it is kept;

[F473](i) . . . . . .

(2) The information as to the company's type shall be given by reference to the classification scheme prescribed for the purposes of this section.

(3) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.

(4) A person's "name" and "address" mean, respectively—

(a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and its registered or principal office.

(5) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.

(6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.**]**

Textual Amendments

F470 Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, **arts. 4**, 5) by Companies Act 1989 (c. 40, SIF 27), **ss. 139(1)**, 213(2)

F471 S. 364(1)(e)(ii) and preceding word repealed (13.9.1999) by S.I. 1999/2322, **reg. 2(a)**

F472 S. 364(1)(f) repealed (13.9.1999) by S.I. 1999/2322, **reg. 2(b)**

F473 S. 364(1)(i) repealed (13.9.1999) by S.I. 1999/2322, **reg. 2(c)**

Modifications etc. (not altering text)

C386 S. 364 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C387 S. 364 excluded by S.I. 1985/724, **reg. 4(4)**

C388 S. 364 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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[F474 364A Contents of annual return: particulars of share capital and shareholders.

(1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.

(2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.

(3) The return shall state with respect to each class of shares in the company—

(a) the nature of the class, and

(b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.

(4) The return shall contain a list of the names and addresses of every person who—

(a) is a member of the company on the date to which the return is made up, or

(b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);

and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(5) The return shall also state—

(a) the number of shares of each class held by each member of the company at the date to which the return is made up, and

(b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.

(6) The return may, if either of the two immediately preceding returns has given the full particulars required by subsections (4) and (5), give only such particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.

(7) Subsections (4) and (5) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.

Those particulars shall be included in the company's next annual return after they are received.

(8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.**]**

Textual Amendments

F474 Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, **arts. 4**, 5) by Companies Act 1989 (c. 40, SIF 27), **ss. 139(1)**, 213(2)

Modifications etc. (not altering text)

C389 S. 364A modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para.3**.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/10/2008

364B Contents of annual return: information about shareholders: non-traded companies

(1) The annual return of a company that was a non-traded company throughout the return period must also contain the following information.

(2) The return must contain a list of the names of every person who was a member of the company at any time during the return period. If the names are not arranged in alphabetical order the return must have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(3) The return must also state—

(a) the number of shares of each class held at the end of the date to which the return is made up by each person who was a member of the company at that time,

(b) the number of shares of each class transferred during the return period by or to each person who was a member of the company at any time during that period, and

(c) the dates of registration of those transfers.

(4) If either of the two immediately preceding returns has given the full particulars required by subsections (2) and (3), the return need only give such particulars as relate—

(a) to persons who became, or ceased to be, members during the return period, and

(b) to shares transferred during that period.

(5) Subsections (2) and (3) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up. Those particulars must be included in the company's next annual return after they are received.

VALID FROM 01/10/2008

364C Contents of annual return: information about shareholders: traded companies

(1) The annual return of a company that was a traded company at any time during the return period must also contain the following information.

(2) The return must contain a list of the names and addresses of every person who held at least 5% of the issued shares of any class of the company at any time during the return period. If the names are not arranged in alphabetical order the return must have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(3) The return must also state—

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(a) the number of shares of each class held at the end of the date to which the return is made up by each person who held at least 5% of the issued shares of any class of the company at that time,

(b) the number of shares of each class transferred during the return period by or to each person who held at least 5% of the issued shares of any class of the company at any time during the return period, and

(c) the dates of registration of those transfers.

(4) If either of the two immediately preceding returns has given the full particulars required by subsections (2) and (3), the return need only give such particulars as relate—

(a) to persons who came to hold, or ceased to hold, at least 5% of the issued shares of any class of the company during the return period, and

(b) to shares transferred during that period.

(5) Subsections (2) and (3) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up. Those particulars must be included in the company's next annual return after they are received.

VALID FROM 01/10/2008

364D Contents of annual return: information about shareholders: supplementary

(1) In sections 364, 364B and 364C—

"non-traded company" means a company none of whose shares are shares admitted to trading on a regulated market (so that "traded company" means a company any of whose shares are shares admitted to trading on a regulated market);

"regulated market" means a market which appears on the list drawn up by an EEA State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [F475]; and

"return period", in relation to an annual return, means the period beginning immediately after the date to which the last return was made up (or, in the case of the first return, with the incorporation of the company) and ending with the date to which the return is made up.

(2) Where a company has converted any of its shares into stock, the return must give information in relation to that stock corresponding to that required by section 364B or 364C (as the case may be) in relation to shares of the company, stating the amount of stock instead of the number of shares.

Textual Amendments

F475 OJ No. L145, 30.4.2004, p.1.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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[F476 365 Supplementary provisions: regulations and interpretation.

(1) The Secretary of State may by regulations make further provision as to the information to be given in a company's annual return, which may amend or repeal the provisions of sections 364 and 364A.

(2) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliamant.

(3) For the purposes of this Chapter, except section 363(2)(c) (signature of annual return), a shadow director shall be deemed to be a director.**]**

Textual Amendments

F476 Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, **arts. 4**, 5) by Companies Act 1989 (c. 40, SIF 27), **ss. 139(1)**, 213(2)

Modifications etc. (not altering text)

C390 S. 365 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C391 S. 365 modified by S.I. 1990/355, art. 10, **Sch. 4 para. 2** (as amended by 1990/1707 art. 8(1))

CHAPTER IV

MEETINGS AND RESOLUTIONS

Meetings

366 Annual general meeting.

(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.

(2) However, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) Not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.

(4) If default is made in holding a meeting in accordance with this section, the company and every officer of it who is in default is liable to a fine.

[F477 366A Election by private company to dispense with annual general meetings.

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the holding of annual general meetings.

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

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(3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

[F478(3A) The power of a member under subsection (3) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.**]**

(4) If such a notice is given **[**F479or electronic commmunication is transmitted**]**, the provisions of section 366(1) and (4) apply with respect to the calling of the meeting and the consequences of default.

(5) If the election ceases to have effect, the company is not obliged under section 366 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given **[**F480or electronic communication transmitted**]** under subsection (3).**]**

[F481(5A) In this section, "address" includes any number or address used for the purposes of electronic communications.**]**

Textual Amendments

F477 S. 366A inserted (subject to the transitional and savings provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(2)**, 213(2)

F478 S. 366A(3A) inserted (22.12.2000) by S.I. 2000/3373, **art. 17(1)(2)**

F479 Words in s. 366A(4) inserted (22.12.2000) by S.I. 2000/3373, **art. 17(1)(3)**

F480 Words in s. 366A(5) inserted (22.12.2000) by S.I. 2000/3373, **art. 17(1)(4)**

F481 S. 366(5A) inserted (22.12.2000) by S.I. 2000/3373, **art. 17(1)(5)**

367 Secretary of State's power to call meeting in default.

(1) If default is made in holding a meeting in accordance with section 366, the Secretary of State may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as he thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles.

(2) The directions that may be given under subsection (1) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) If default is made in complying with directions of the Secretary of State under subsection (1), the company and every officer of it who is in default is liable to a fine.

(4) A general meeting held under this section shall, subject to any directions of the Secretary of State, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the

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company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it be so treated.

(5) Where a company so resolves, a copy of the resolution shall, within 15 days after its passing, be forwarded to the registrar of companies and recorded by him; and if default is made in complying with this subsection, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

368 Extraordinary general meeting on members' requisition.

(1) The directors of a company shall, on a members' requisition, forthwith proceed duly to convene an extraordinary general meeting of the company.

This applies notwithstanding anything in the company's articles.

(2) A member's requisition is a requisition of —

(a) members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting at general meetings of the company; or

(b) in the case of a company not having a share capital, members of it representing not less than one-tenth of the total voting rights of all the members having at the date of deposit of the requisition a right to vote at general meetings.

(3) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the cocmpany, and may consist of several documents in like form each signed by one or more requisitionists.

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.

(5) A meeting convened under this section by requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(7) In the case of a meeting at which a resolution is to be proposed as a special resolution, the directors are deemed not to have duly convened the meeting if they do not give the notice required for special resolutions by section 378(2).

[[F482](8) The directors are deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening the meeting.**]**

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Textual Amendments

F482 S. 368(8) added by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 9**

369 Length of notice for calling meetings.

(1) A provision of a company's articles is void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

(a) in the case of the annual general meeting, 21 days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—

(i) 7 days' notice in writing in the case of an unlimited company, and

(ii) otherwise, 14 days' notice in writing.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)), a meeting of the company (other than an adjourned meeting) may be called—

(a) in the case of the annual general meeting, by 21 days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—

(i) by 7 days' notice in writing in the case of an unlimited company, and

(ii) otherwise, 14 days' notice in writing.

(3) Notwithstanding that a meeting is called by shorter notice than that specified in subsection (2) or in the company's articles (as the case may be), it is deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote at it; and

(b) otherwise, by the requisite majority.

(4) The requisite majority for this purpose is a majority in number of the members having a right to attend and vote at the meeting, being a majority—

(a) together holding not less than 95 per cent. in nominal value of the shares given a right to attend and vote at the meeting; or

(b) in the case of a company not having a share capital, together representing not less than 95 per cent. of the total voting rights at that meeting of all the members.

[F483A private company may elect (by elective resolution in accordance with section 379A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent. as may be specified in the resolution or subsequently determined by the company in general meeting.**]**

[F484(4A) For the purposes of this section the cases in which notice in writing of a meeting is to be taken as given to a person include any case in which notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

F484(4B) For the purposes of this section a notice in writing of a meeting is also to be treated as given to a person where—

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(a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;

(b) the meeting is a meeting to which that agreement applies;

(c) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of—

(i) the publication of the notice on a web site;

(ii) the address of that web site; and

(iii) the place on that web site where the notice may be accessed, and how it may be accessed;

and

(d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this section a notice treated in accordance with this subsection as given to any person is to be treated as so given at the time of the notification mentioned in paragraph (c).

F484(4C) A notification given for the purposes of subsection (4B)(c) must—

(a) state that it concerns a notice of a company meeting served in accordance with this Act,

(b) specify the place, date and time of the meeting, and

(c) state whether the meeting is to be an annual or extraordinary general meeting.

F484(4D) Nothing in subsection (4B) shall invalidate the proceedings of a meeting where—

(a) any notice that is required to be published as mentioned in paragraph (d) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

F484(4E) A company may, notwithstanding any provision to the contrary in a company's articles, take advantage of any of subsections (4A) to (4D).

F484(4F) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in force) as to such service shall apply.

F484(4G) In this section, "address" includes any number or address used for the purposes of electronic communi4cations.**]**

Textual Amendments

F483 Paragraph inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(3)**, 213(2)

F484 S. 369(4A)-(4G) inserted (22.12.2000) by S.I. 2000/3373, **art. 18**

370 General provisions as to meetings and votes.

(1) The following provisions have effect in so far as the articles of the company do not make other provision in that behalf.

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(2) Notice of the meeting of a company shall be served on every member of it in the manner in which notices are required to be served by Table A (as for the time being in force).

(3) Two or more members holding not less than one-tenth of the issued share capital or, if the company does not have a share capital, not less than 5 per cent. in number of the members of the company may call a meeting.

(4) Two members personally present are a quorum.

(5) Any member elected by the members present at a meeting may be chairman of it.

(6) In the case of a company originally having a share capital, every member has one vote in respect of each share or each £10 of stock held by him; and in any other case every member has one vote.

[F485 370A Quorum at meetings of the sole member

Notwithstanding any provision to the contrary in the articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy shall be a quorum.**]**

Textual Amendments

F485 S. 370A inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.5**.

371 Power of court to order meeting.

(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application—

(a) of any director of the company, or

(b) of any member of the company who would be entitled to vote at the meeting,

order a meeting to be called, held and conducted in any manner the court thinks fit.

(2) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.

(3) A meeting called, held and conducted in accordance with an order under subsection (1) is deemed for all purposes a meeting of the company duly called, held and conducted.

372 Proxies.

(1) Any member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him; and in the case of a private company a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at the meeting.

(2) But, unless the articles otherwise provide—

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(a) subsection (1) does not apply in the case of a company not having a share capital; and

(b) a member of a private company is not entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy is not entitled to vote except on a poll.

[F486(2A) The appointment of a proxy may, notwithstanding any provision to the contrary in a company's articles, be contained in an electronic communication sent to such address as may be notified by or on behalf of the company for that purpose.

F486(2B) In so far as the articles of the company do not make other provision in that behalf, the appointment of a proxy may be contained in an electronic communication in accordance with the provisions of Table A (as for the time being in force).**]**

(3) In the case of a company having a share capital, in every notice calling a meeting of the company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member.

(4) If default is made in complying with subsection (3) as respects any meeeting, every officer of the company who is in default is liable to a fine.

(5) A provision contained in a company's articles is void in so far as it would have the effect of requiring **[**F487the appointment of a proxy or any**]** document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective.

(6) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at it by proxy, then every officer of the company who knowingly and wilfully authorises or permits their issue in that manner is liable to a fine.

However, an officer is not so liable by reason only of the issue to a member at his request F488. . . of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request F488. . . to every member entitled to vote at the meeting by proxy.

[F489(6A) In this section, "address" includes any number or address used for the purposes of electronic communications.**]**

(7) This section applies to meetings of any class of members of a company as it applies to general meetings of the company.

Textual Amendments

F486 S. 372(2A)(2B) inserted (22.12.2000) by S.I. 2000/3373, **art. 19(1)(2)**

F487 Words in s. 372(5) substituted (22.12.2000) by S.I. 2000/3373, **art. 19(1)(3)**

F488 Words in s. 272(6) deleted (22.12.2000) by virtue of S.I. 2000/3373, **art. 19(1)(4)**

F489 S. 372(6A) inserted (22.12.2000) by S.I. 2000/3373, **art. 19(1)(5)**

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373 Right to demand a poll.

(1) A provision contained in a company's articles is void in so far as it would have the effect either—

(a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made either—

(i) by not less than 5 members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) **[**[F490]The appointment of**]** a proxy to vote at a meeting of a company is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of subsection (1) a demand by a person as proxy for a member is the same as a demand by the member.

Textual Amendments

F490 Words in s. 373(2) substituted (22.12.2000) by S.I. 2000/3373, **art. 20**

374 Voting on a poll.

On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

375 Representation of corporations at meetings.

(1) A corporation, whether or not a company within the meaning of this Act, may—

(a) if it is a member of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of creditors of the company held in pursuance of this Act or of rules made under it, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or debenture-holder of the other company.

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Resolutions

376 Circulation of members' resolutions.

(1) Subject to the section next following, it is the duty of a company, on the requisition in writing of such number of members as is specified below and (unless the company otherwise resolves) at the expense of the requisitionists—

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) is—

(a) any number representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than £100.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting.

(4) Notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.

(5) For compliance with subsections (3) and (4), the copy must be served, or notice of the effect of the resolution be given (as the case may be), in the same manner and (so far as practicable) at the same time as notice of the meeting; and, where it is not practicable for it to be served or given at the same time, it must be served or given as soon as practicable thereafter.

(6) The business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section; and for purposes of this subsection notice is deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members. This has effect notwithstanding anything in the company's articles.

(7) In the event of default in complying with this section, every officer of the company who is in default is liable to a fine.

Modifications etc. (not altering text)
C392 S. 376(7) applied (26.11.2001) by S.I. 2001/3755, **reg. 16(7)** (with regs. 39, 45)

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377 In certain cases, compliance with s. 376 not required.

(1) A company is not bound under section 376 to give notice of a resolution or to circulate a statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain for signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting, and

(ii) otherwise, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to it.

(2) But it, after a copy of a requisition requiring notice of a resolution has been deposited at the company's registered office, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy (though not deposited within the time required by subsection (1)) is deemed properly deposited for the purposes of that subsection.

(3) The company is also not bound under section 376 to circulate a statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by that section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

378 Extraordinary and special resolutions.

(1) A resolution is an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution is a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at such a meeting, being a majority—

(a) together holding not less than 95 per cent. in nominal value of the shares giving that right; or

(b) in the case of a company not having a share capital, together representing not less than 95 per cent. of the total voting rights at that meeting of all the members,

a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

[[F491]A private company may elect (by elective resolution in accordance with section 379A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser

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percentage, but not less than 90 per cent. as may be specified in the resolution or subsequently determined by the company in general meeting.**]**

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration by the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(5) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference is to be had to the number of votes cast for and against the resolution.

(6) For purposes of this section, notice of a meeting is deemed duly given, and the meeting duly held, when the notice is given and the meeting held in the manner provided by this Act or the company's articles.

Textual Amendments

F491 Paragraph inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(3)**, 213(2)

Modifications etc. (not altering text)

C393 S. 378(3) excluded (1.12.2001) by 2000 c. 8, **s. 366(4)(a)**; S.I. 2001/3538, **art. 2(1)**

379 Resolution requiring special notice.

(1) Where by any provision of this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.

(2) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the company's articles, at least 21 days before the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed properly given, though not given within the time required.

[F492**379A Elective resolution of private company.**

(1) An election by a private company for the purposes of—

(a) section 80A (election as to duration of authority to allot shares),

(b) section 252 (election to dispense with laying of accounts and reports before general meeting),

(c) section 366A (election to dispense with holding of annual general meeting),

(d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or

(e) section 386 (election to dispense with appointment of auditors annually),

shall be made by resolution of the company in general meeting in accordance with this section.

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Such a resolution is referred to in this Act as an "elective resolution".

(2) An elective resolution is not effective unless—

(a) at least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and

(b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

[F493(2A) An elective resolution is effective notwithstanding the fact that less than 21 days' notice in writing of the meeting is given if all the members entitled to attend and vote at the meeting so agree.**]**

[F494(2B) For the purposes of this section, notice in writing of the meeting is to be taken as given to a person where notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

F494(2C) For the purposes of this section a notice in writing of the meeting is also to be treated as given to a person where—

(a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;

(b) the meeting is a meeting to which that agreement applies;

(c) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of—

(i) the publication of the notice on a web site;

(ii) the address of that web site; and

(iii) the place on that web site where the notice may be accessed, and how it may be accessed; and

(d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this section a notice treated in accordance with this subsection as given to any person is to be treated as so given at the time of the notification mentioned in paragraph (c).

F494(2D) A notification given for the purposes of subsection (2C)(c) must—

(a) state that it concerns a notice of a company meeting at which an elective resolution is to be proposed, and

(b) specify the place, date and time of the meeting.

F494(2E) Nothing in subsection (2C) shall invalidate the proceedings of a meeting where—

(a) any notice that is required to be published as mentioned in paragraph (d) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

F494(2F) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in force) as to such service shall apply.**]**

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(3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(4) An elective resolution shall cease to have effect if the company is re-registered as a public company.

(5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in **[**F495subsections (1) and (2B) to (2E)**]** have effect, notwithstanding any contrary provision in the company's articles of association.**]**

[F496(5A) In this section, "address" includes any number or address used for the purposes of electronic communications.**]**

Textual Amendments

F492 S. 379A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 116(2)**, 213(2)

F493 S. 379A(2A) inserted (19.6.1996) by S.I. 1996/1471, **art. 2**

F494 S. 379A(2B)-(2F) inserted (22.12.2000) by S.I. 2000/3373, **art. 21(1)(2)**

F495 Words in s. 379A(5) substituted (22.12.2000) by S.I. 2000/3373, **art. 21(1)(3)**

F496 S. 379A(5A) inserted (22.12.2000) by S.I. 2000/3373, **art. 21(1)(4)**

380 Registration, etc. of resolutions and agreements.

(1) A copy of every resolution or agreement to which this section applies shall, within 15 days after it is passed or made, be forwarded to the registrar of companies and recorded by him; and it must be either a printed copy or else a copy in some other form approved by the registrar.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of 5 pence or such less sum as the company may direct.

(4) This section applies to—

(a) special resolutions;

(b) extraordinary resolutions;

[F497(bb) an elective resolution or a resolution revoking such a resolution;**]**

(c) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless (as the case may be) they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

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(e) a resolution passed by the directors of a company in compliance with a direction under section 31(2) (change of name on Secretary of State's direction);

(f) a resolution of a company to give, vary, revoke or renew an authority to the directors for the purposes of section 80 (allotment of relevant securities);

(g) a resolution of the directors passed under section 147(2) (alteration of memorandum on company ceasing to be a public company, following acquisition of its own shares);

(h) a resolution conferring, varying, revoking or renewing authority under section 166 (market purchase of company's own shares);

(j) a resolution for voluntary winding up, passed under **[**F498section 84(1)(*a*) of the Insolvency Act**]**;

(k) a resolution passed by the directors of an old public company, under section 2(1) of the Consequential Provisions Act, that the company should be re-registered as a public company.

[F499(l) a resolution of the directors passed by virtue of regulation 16(2) of the Uncertificated Securities Regulations 2001 (which allows title to a company's shares to be evidenced and transferred without written instrument); and

F499(m) a resolution of a company passed by virtue of regulation 16(6) of the Uncertificated Securities Regulations 2001 (which prevents or reverses a resolution of the directors under regulation 16(2) of those Regulations).**]**

(5) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) If a company fails to comply with subsection (2) or (3), the company and every officer of it who is in default is liable to a fine.

(7) For purposes of subsections (5) and (6), a liquidator of a company is deemed an officer of it.

Textual Amendments

F497 S. 380(4)(bb) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 116(3)**, 213(2)

F498 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F499 S. 380(4)(l)(m) added (26.11.2001) by S.I. 2001/3755, reg. 51, **Sch. 7 para. 10** (with regs. 39, 45)

Modifications etc. (not altering text)

C394 S. 380 applied (E.W.) (1.9.1992) by Charities Act 1992 (c. 41), **s. 5(2)**; S.I. 1992/1900, art. 2(1), **Sch. 1**.
S. 380 applied (E.W.) (1.8.1993) by 1993 c. 10, **ss. 7(2)**, 99(1)

C395 S. 380(6) extended (12.2.1992) by S.I. 1992/225, **regs. 77(2)**, 89(4).

381 Resolution passed at adjourned meeting.

Where a resolution is passed at an adjourned meeting of—

(a) a company;

(b) the holders of any class of shares in a company;

(c) the directors of a company;

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the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Written resolutions of private companies

381A Written resolutions of private companies.

(1) Anything which in the case of a private company may be done—

(a) by resolution of the company in general meeting, or

(b) by resolution of a meeting of any class of members of the company,

may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting.

(2) The signatures need not be on a single document provided each is on a document which accurately states the terms of the resolution.

(3) The date of the resolution means when the resolution is signed by or on behalf of the last member to sign.

(4) A resolution agreed to in accordance with this section has effect as if passed—

(a) by the company in general meeting, or

(b) by a meeting of the relevant class of members of the company,

as the case may be; and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(5) Any reference in any enactment to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this section, a reference to the date of the resolution.. . .

(6) A resolution may be agreed to in accordance with this section which would otherwise be req [F500]uired to be passed as a special, extraordinary or elective resolution; and any reference in any enactment to a special, extraordinary or elective resolution includes such a resolution.

(7) This section has effect subject to the exceptions specified in Part I of Schedule 15A; and in relation to certain descriptions of resolution under this section the procedural requirements of this Act have effect with the adaptations specified in Part II of that Schedule.

Textual Amendments

F500 Words at the end of S. 381A(5) repealed (19.6.1996 with effect as mentioned in art. 3(3) of the amending S.I.) by S.I. 1996/1471, **art. 2(2)(a)(3)**

Modifications etc. (not altering text)

C396 S. 381A excluded (1.12.2001) by 2000 c. 8, **s. 366(4)(a)**; S.I. 2001/3538, **art. 2(1)**

[F501381B Duty to notify auditors of proposed written resolution

(1) If a director or secretary of a company—

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(a) knows that it is proposed to seek agreement to a resolution in accordance with section 381A, and

(b) knows the terms of the resolution,

he shall, if the company has auditors, secure that a copy of the resolution is sent to them, or that they are otherwise notified of its contents, at or before the time the resolution is supplied to a member for signature.

(2) A person who fails to comply with subsection (1) is liable to a fine.

(3) In any proceedings for an offence under this section it is a defence for the accused to prove—

(a) that the circumstances were such that it was not practicable for him to comply with subsection (1), or

(b) that he believed on reasonable grounds that a copy of the resolution had been sent to the company's auditors or that they had otherwise been informed of its contents.

(4) Nothing in this section affects the validity of any resolution.**]**

Textual Amendments

F501 S. 381B substituted (19.6.1996 with effect as mentioned in art.3(3) of the amending S.I.) by S.I. 1996/1471, **art. 3(1)(3)**

[F502 381C Written resolutions: supplementary provisions.

(1) Sections 381A and 381B have effect notwithstanding any provision of the company's memorandum or articles **[**F503, but do not prejudice any power conferred by any such provision**]**.

(2) Nothing in those sections affects any enactment or rule of law as to—

(a) things done otherwise than by passing a resolution, or

(b) cases in which a resolution is treated as having been passed, or a person is precluded from alleging that a resolution has not been duly passed.**]**

Textual Amendments

F502 Ss. 381A–381C inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 113(2)**, 213(2)

F503 Words in s. 381C(1) inserted (19.6.1996) by S.I. 1996/1471, **art. 4**

Records of proceedings

382 Minutes of meetings.

(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, is evidence of the proceedings.

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(3) Where a shadow director by means of a notice required by section 317(8) declares an interest in a contract or proposed contract, this section applies—

(a) if it is a specific notice under paragraph (a) of that subsection, as if the declaration had been made at the meeting there referred to, and

(b) otherwise, as if it had been made at the meeting of the directors next following the giving of the notice;

and the making of the declaration is in either case deemed to form part of the proceedings at the meeting.

(4) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings had at the meeting to have been duly had; and all appointments of directors, managers or liquidators are deemed valid.

(5) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

[F504 382A Recording of written resolutions.

(1) Where a written resolution is agreed to in accordance with section 381A which has effect as if agreed by the company in general meeting, the company shall cause a record of the resolution (and of the signatures) to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

(2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution; and where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to be complied with.

(3) Section 382(5) (penalties) applies in relation to a failure to comply with subsection (1) above as it applies in relation to a failure to comply with subsection (1) of that section; and section 383 (inspection of minute books) applies in relation to a record made in accordance with this section as it applies in relation to the minutes of a general meeting.**]**

Textual Amendments

F504 S. 382A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 113(3)**, 213(2)

[F505 382B Recording of decisions by the sole member

(1) Where a private company limited by shares or by guarantee has only one member and he takes any decision which may be taken by the company in general meeting and which has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(2) If the sole member fails to comply with subsection (1) he shall be liable to a fine.

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(3) Failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.**]**

Textual Amendments

F505 S. 382B inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 6(1)**.

383 Inspection of minute books.

(1) The books containing the minutes of proceedings of any general meeting of a company held on or after 1st November 1929 shall be kept at the company's registered office, and shall [F506] . . . be open to the inspection of any member without charge.

[F507](2) . . . . . .

(3) Any member shall be entitled **[**[F508]on payment of such fee as may be prescribed**]** to be furnished, within 7 days after he has made a request in that behalf to the company, with a copy of any such minutes as are referred to above, [F509] . . ..

(4) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company and every officer of it who is in default is liable in respect of each offence to a fine.

(5) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required be sent to the persons requiring them.

Textual Amendments

F506 Words in s. 383(1) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(9)(a), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

F507 S. 383(2) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(9)(b), 212, 213(2), **Sch. 24**; 1991/1996, art. 2(2)(b)(c).

F508 Words in s. 383(3) inserted (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(9)(c)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**.

F509 Words in s. 383(3) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(9)(c), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

Modifications etc. (not altering text)

C397 S. 383(1) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.

[F510 Appointment of auditors]

Textual Amendments

F510 New ss. 384–388A inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 119(1), 213(2), (as part of the text inserted to replace Chapter V as mentioned in s. 118 of the 1989 Act)

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384 Duty to appoint auditors.

(1) Every company shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to section 388A (**[**F511certain companies**]** exempt from obligation to appoint auditors).

(2) Auditors shall be appointed in accordance with section 385 (appointment at general meeting at which accounts are laid), except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with section 385A.

(3) References in this Chapter to the end of the time for appointing auditors are to the end of the time within which an appointment must be made under section 385(2) or 385A(2), according to whichever of those sections applies.

(4) Sections 385 and 385A have effect subject to section 386 under which a private company may elect to dispense with the obligation to appoint auditors annually.

Textual Amendments

F511 Words in s. 384(1) substituted (11.8.1994) by S.I. 1994/1935, reg. 4, **Sch. 1 Pt.I para. 4**

Modifications etc. (not altering text)

C398 S. 384 applied with modifications by S.I. 1985/680, regs. 4, 6, **Sch.**

C399 S. 384 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F512385 Appointment at general meeting at which accounts laid.

(1) This section applies to every public company and to a private company which has not elected to dispense with the laying of accounts.

(2) The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.

(3) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.**]**

Textual Amendments

F512 New ss. 384–388A inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 119(1), 213(2), (as part of the text inserted to replace Chapter V as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C400 S. 385 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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[F513 385A Appointment by private company which is not obliged to lay accounts.

(1) This section applies to a private company which has elected in accordance with section 252 to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the previous financial year are sent to members under section 238 or, if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditors of the company may be appointed by the directors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under section 238, or

(b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

(5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.**]**

Textual Amendments

F513 New ss. 384–388A inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 119(1), 213(2), (as part of the text inserted to replace Chapter V as mentioned in s. 118 of the 1989 Act)

[F514 386 Election by private company to dispense with annual appointment.

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless-

[F515(a) the directors of the company have taken advantage of the exemption conferred by section 249A or 249AA, or**]**

(b) a resolution has been passed under section 393 to the effect that their appointment should be brought to an end.

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(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office-

(a) where section 385 then applies, until the conclusion of the next general meeting of the company at which accounts are laid;

(b) where section 385A then applies, until the end of the time for appointing auditors for the next financial year under that section.

(4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.**]**

Textual Amendments

F514 New ss. 384–388A inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 119(1), 213(2), (as part of the text inserted to replace Chapter V as mentioned in s. 118 of the 1989 Act)

F515 S. 386(2)(a) substituted (26.5.2000 with application as mentioned in art. 1(2) of the amending S.I.) by S.I. 2000/1430, **regs. 1(2)**, 8(8)

[F516387 Appointment by Secretary of State in default of appointment by company.

(1) If in any case no auditors are appointed, re-appointed or deemed to be re-appointed before the end of the time for appointing auditors, the Secretary of State may appoint a person to fill the vacancy.

(2) In such a case the company shall within one week of the end of the time for appointing auditors give notice to the Secretary of State of his power having become exercisable.

If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.**]**

Textual Amendments

F516 New ss. 384–388A inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 119(1), 213(2), (as part of the text inserted to replace Chapter V as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C401 S. 387 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F517388 Filling of casual vacancies.

(1) The directors, or the company in general meeting, may fill a casual vacancy in the office of auditor.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

(3) Special notice is required for a resolution at a general meeting of a company—

(a) filling a casual vacancy in the office of auditor, or

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(b) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy.

(4) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it—

(a) to the person proposed to be appointed, and

(b) if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.**]**

Textual Amendments

F517 New ss. 384–388A inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 119(1), 213(2), (as part of the text inserted to replace Chapter V as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C402 S. 388 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F518388A Certain companies exempt from obligation to appoint auditors

(1) A company which by virtue of section 249A (certain categories of small company) or **[F519**section 249AA**]** (dormant companies) is exempt from the provisions of Part VII relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if a company which has been exempt from those provisions ceases to be so exempt.

(3) Where section 385 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where section 385A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the companys annual accounts are next sent to members under section 238,or

(b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.**]**

Textual Amendments

F518 S. 388A substituted (11.8.1994) by S.I. 1994/1935, **reg. 3**

F519 Words in s. 388A(1) substituted (26.5.2000 with application as mentioned in art. 1(2) of the amending Act) by S.I. 2000/1430, **reg. 1(2)**, 8(9)

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Modifications etc. (not altering text)
C403 S. 388A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

F520389 . . . . . .

Textual Amendments
F520 S. 389 repealed (01.10.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(1)(c)(i)**.

[F521 Rights of auditors]

Textual Amendments
F521 New ss. 389A–390 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 120(1) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

389A Rights to information.

(1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers, and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which—

(a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company, and

(b) is misleading, false or deceptive in a material particular.

A person guilty of an offence under this subsection is liable to imprisonment or a fine, or both.

(3) A subsidiary undertaking which is a body corporate incorporated in Great Britain, and the auditors of such an undertaking, shall give to the auditors of any parent company of the undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a subsidiary undertaking fails to comply with this subsection, the undertaking and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with this subsection he is guilty of an offence and liable to a fine.

(4) A parent company having a subsidiary undertaking which is not a body corporate incorporated in Great Britain shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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If a parent company fails to comply with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Section 734 (criminal proceedings against unincorporated bodies) applies to an offence under subsection (3).

Modifications etc. (not altering text)
C404 S. 389A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
C405 S. 389A(1) applied (with modifications) (23.12.1996) by S.I. 1996/943, **reg. 29(2)(a)**
C406 S.389A(3)(4) applied (with modifications) (23.12.1996) by S.I. 1996/943, **reg. 29(2)(b)**

VALID FROM 06/04/2005

389B Offences relating to the provision of information to auditors

(1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—

(a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 389A(1)(b), and

(b) is misleading, false or deceptive in a material particular,

the person is guilty of an offence and liable to imprisonment or a fine, or both.

(2) A person who fails to comply with a requirement under section 389A(1)(b) without delay is guilty of an offence and is liable to a fine.

(3) However, it is a defence for a person charged with an offence under subsection (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.

(4) If a company fails to comply with section 389A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Nothing in this section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 389A.

Modifications etc. (not altering text)
C407 Ss. 389A, 389B applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 43(3)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

[F522 390 Right to attend company meetings, &c.

(1) A company's auditors are entitled—

(a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;

(b) to attend any general meeting of the company; and

(c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

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[F523(1A) Subsections (4A) to (4G) of section 369 (electronic communication of notices of meetings) apply for the purpose of determining whether notice of a meeting is received by the company's auditors as they apply in determining whether such a notice is given to any person.**]**

(2) In relation to a written resolution proposed to be agreed to by a private company in accordance with section 381A, the company's auditors are entitled—

(a) to receive all such communications relating to the resolution as, by virtue of any provision of Schedule 15A, are required to be supplied to a member of the company,

F524(b) . . . . . .

(c) . . . . . .

(d) . . . . . .

(3) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.**]**

Textual Amendments

F522 New ss. 389A–390 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 120(1) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

F523 S. 390(1A) inserted (22.12.2000) by S.I. 2000/3373, **art. 31(3)**

F524 S. 390(2)(b)-(d) repealed (19.6.1996 with effect as mentioned in art. 3(3) of the amending S.I.) by S.I. 1996/1471, **art. 3(2)(b)(3)**

Modifications etc. (not altering text)

C408 S. 390 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C409 S. 390 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Remuneration of auditors

390A Remuneration of auditors.

(1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) The remuneration of auditors appointed by the directors or the Secretary of State shall be fixed by the directors or the Secretary of State, as the case may be.

(3) There shall be stated in a note to the company's annual accounts the amount of the remuneration of the company's auditors in their capacity as such.

(4) For the purposes of this section "remuneration" includes sums paid in respect of expenses.

(5) This section applies in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value.

The nature of any such benefit shall also be disclosed.

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Modifications etc. (not altering text)
C410 S. 390A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F525 390B Remuneration of auditors or their associates for non-audit work.

(1) The Secretary of State may make provision by regulations for securing the disclosure of the amount of any remuneration received or receivable by a company's auditors or their associates in respect of services other than those of auditors in their capacity as such.

(2) The regulations may—

(a) provide that "remuneration" includes sums paid in respect of expenses,

(b) apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit require disclosure of its nature and its estimated money value,

(c) define "associate" in relation to an auditor,

(d) require the disclosure of remuneration in respect of services rendered to associated undertakings of the company, and

(e) define "associated undertaking" for that purpose.

(3) The regulations may require the auditors to disclose the relevant information in their report or require the relevant information to be disclosed in a note to the company's accounts and require the auditors to supply the directors of the company with such information as is necessary to enable that disclosure to be made.

(4) The regulations may make different provision for different cases.

(5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments
F525 New ss. 390A and 390B inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 121 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)
C411 S. 390B applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
C412 S. 390B extended (with modifications) (6.1.1997) by S.I. 1996/2827, reg. 63, **Sch. 6 para. 11**

Removal, resignation, &c. of auditors

391 Removal of auditors.

(1) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar.

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If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

(4) An auditor of a company who has been removed has, notwithstanding his removal, the rights conferred by section 390 in relation to any general meeting of the company—

(a) at which his term of office would otherwise have expired, or

(b) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

Modifications etc. (not altering text)

C413 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C414 S. 391 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F526 391A Rights of auditors who are removed or not re-appointed.

(1) Special notice is required for a resolution at a general meeting of a company—

(a) removing an auditor before the expiration of his term of office, or

(b) appointing as auditor a person other than a retiring auditor.

(2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) The company shall (unless the representations are received by it too late for it to do so)—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.]

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Textual Amendments

F526 New ss. 391–393 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C415 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C416 S. 391A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F527 392 Resignation of auditors.

(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

The notice is not effective unless it is accompanied by the statement required by section 394.

(2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.

If default is made in complying with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, a daily default fine.**]**

Textual Amendments

F527 New ss. 391–393 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C417 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C418 S. 392 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F528 392A Rights of resigning auditors.

(1) This section applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) He may request the company to circulate to its members—

(a) before the meeting convened on his requisition, or

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(b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company shall (unless the statement is received too late for it to comply)—

(a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and

(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.

(6) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 390 in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b).

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.**]**

Textual Amendments

F528 New ss. 391–393 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C419 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C420 S. 392A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F529 393 Termination of appointment of auditors not appointed annually.

(1) When an election is in force under section 386 (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

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No member may deposit more than one such notice in any financial year of the company.

(2) If such a notice is deposited it is the duty of the directors—

(a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and

(b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed reappointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under section 238 and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this section.**]**

Textual Amendments

F529 New ss. 391–393 inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C421 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

[F530 394 Statement by person ceasing to hold office as auditor.

(1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to

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hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—

(a) send a copy of it to every person who under section 238 is entitled to be sent copies of the accounts, or

(b) apply to the court.

(4) The company shall if it applies to the court notify the auditor of the application.

(5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—

(a) it shall direct that copies of the statement need not be sent out, and

(b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;

and the company shall within 14 days of the court's decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within 14 days of the court's decision—

(a) send copies of the statement to the persons mentioned in subsection (3)(a), and

(b) notify the auditor of the court's decision;

and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.**]**

Textual Amendments

F530 New ss. 394, 394A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 123(1), 213(2) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C422 S. 394 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F531 394A Offences of failing to comply with s. 394.

(1) If a person ceasing to hold office as auditor fails to comply with section 394 he is guilty of an offence and liable to a fine.

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(2) In proceedings for an offence under subsection (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) Sections 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under subsection (1).

(4) If a company makes default in complying with section 394, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.**]**

Textual Amendments

F531 New ss. 394, 394A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 123(1), 213(2) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C423 S. 394A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

PART XII

REGISTRATION OF CHARGES

Modifications etc. (not altering text)

C424 Pt. XII (ss. 395 - 424) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 4**

C425 Pt. XII (ss. 395-424) excluded (21.2.2009) by Banking Act 2009 (c. 1), ss. {252(2)(a)}, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, **3**, Sch. para. 11

CHAPTER I

REGISTRATION OF CHARGES (ENGLAND AND WALES)

[X1]395 Certain charges void if not registered.

(1) Subject to the provisions of this Chapter, a charge created by a company registered in England and Wales and being a charge to which this section applies is, so far as any security on the company's property or undertaking is conferred by the charge, void against the liquidator **[**[F532]or administrator**]**and any creditor of the company, unless the prescribed particulars of the charge together with the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in the manner required by this Chapter within 21 days after the date of the charge's creation.

(2) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.

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Editorial Information

X1 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Textual Amendments

F532 Words inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 10**

Modifications etc. (not altering text)

C426 S. 395 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C427 S. 395 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 4(4)**

[X2]396 Charges which have to be registered.

(1) Section 395 applies to the following charges—

(a) a charge for the purpose of securing any issue of debentures,

(b) a charge on uncalled share capital of the company,

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,

(d) a charge on land (wherever situated) or any interest in it, but not including a charge for any rent or other periodical sum issuing out of the land,

(e) a charge on book debts of the company,

(f) a floating charge on the company's undertaking or property,

(g) a charge on calls made but not paid,

(h) a charge on a ship or aircraft, or any share in a ship,

(j) a charge on goodwill, **[**[F533]or on any intellectual property**]**.

(2) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company is not, for purposes of section 395, to be treated as a charge on those book debts.

(3) The holding of debentures entitling the holder to a charge on land is not for purposes of this section deemed to be an interest in land.

[[F534](3A) The following are 'intellectual property' for the purposes of this section—

(a) any patent, trade mark, [F535]. . . registered design, copyright or design right;

(b) any licence under or in respect of any such right.**]**

(4) In this Chapter, "charge" includes mortgage.

Editorial Information

X2 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here.

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Textual Amendments

F533 Words substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 303(1), **Sch. 7 para. 31(2)**

F534 S. 396(3A) inserted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 303(1), **Sch. 7 para. 31(2)**

F535 Words in s. 396(3A)(a) repealed (31.10.1994) by 1994 c. 26, s. 106(2), **Sch. 5**; S.I. 1994/2550, **art. 2**

Modifications etc. (not altering text)

C428 S. 396 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C429 S. 396(1)(*j*) extended by Patents, Designs and Marks Act 1986 (c. 39, SIF 67A), s. 2, **Sch. 2 Pt. I para. 1**(*k*)(i)

C430 S. 396(3A)(a) amended (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 1(2)**; S.I. 1994/2550, **art. 2**

[X3]397 Formalities of registration (debentures).

(1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it is for purposes of section 395 sufficient if there are delivered to or received by the registrar, within 21 days after the execution of the deed containing the charge (or, if there is no such deed, after the execution of any debentures of the series), the following particulars in the prescribed form—

(a) the total amount secured by the whole series, and

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and

(c) a general description of the property charged, and

(d) the names of the trustees (if any) for the debenture holders,

together with the deed containing the charge or, if there is no such deed, one of the debentures of the series:

Provided that there shall be sent to the registrar of companies, for entry in the register, particulars in the prescribed form of the date and amount of each issue of debentures of the series, but any omission to do this does not affect the validity of any of those debentures.

(2) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of his—

(a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures of the company, or

(b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,

the particulars required to be sent for registration under section 395 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but omission to do this does not affect the validity of the debentures issued.

(3) The deposit of debentures as security for a debt of the company is not, for the purposes of subsection (2), treated as the issue of the debentures at a discount.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Editorial Information

X3 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C431 S. 397 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X4]398 Verification of charge on property outside United Kingdom.

(1) In the case of a charge created out of the United Kingdom comprising property situated outside the United Kingdom, the delivery to and the receipt by the registrar of companies of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced has the same effect for purposes of sections 395 to 398 as the delivery and receipt of the instrument itself.

(2) In that case, 21 days after the date on which the instrument or copy could, in due course of post (and if despatched with due diligence), have been received in the United Kingdom are substituted for the 21 days mentioned in section 395(1) (or as the case may be, section 397(1)) as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(3) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under section 395 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(4) Where a charge comprises property situated in Scotland or Northern Ireland and registration in the country where the property is situated is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland (as the case may be) on the date on which it was so presented has, for purposes of sections 395 to 398, the same effect as the delivery and receipt of the instrument itself.

Editorial Information

X4 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C432 S. 398 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[X5]399 Company's duty to register charges it creates.

(1) It is a company's duty to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under sections 395 to 398; but registration of any such charge may be effected on the application of any person interested in it.

(2) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) If a company fails to comply with subsection (1), then, unless the registration has been effected on the application of some other person, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Editorial Information

X5 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C433 S. 399 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X6]400 Charges existing on property acquired.

(1) This section applies where a company is registered in England and Wales acquires property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Chapter.

(2) The company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Chapter within 21 days after the date on which the acquisition is completed.

(3) However, if the property is situated and the charge was created outside Great Britain, 21 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the United Kingdom is substituted for the 21 days above-mentioned as the time within which the particulars and copy of the instrument are to be delivered to the registrar.

(4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Editorial Information

X6 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

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Modifications etc. (not altering text)
C434 S. 400 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X7]401 Register of charges to be kept by registrar of companies.

(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Chapter; and he shall enter in the register with respect to such charges the following particulars—

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, the particulars specified in section 397(1),

(b) in the case of any other charge—

(i) if it is a charge created by the company, the date of its creation, and if it is a charge which was existing on property acquired by the company, the date of the acquisition of the property, and

(ii) the amount secured by the charge, and

(iii) short particulars of the property charged, and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Chapter, stating the amount secured by the charge.

The certificate—

(a) shall be either signed by the registrar, or authenticated by his official seal, and

(b) is conclusive evidence that the requirements of this Chapter as to registration have been satisfied.

(3) The register kept in pursuance of this section shall be open to inspection by any person.

Editorial Information
X7 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)
C435 S. 401 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X8]402 Endorsement of certificate on debentures.

(1) The company shall cause a copy of every certificate of registration given under section 401 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered.

(2) But this does not require a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(3) If a person knowingly and wilfully authorises or permits the delivery of a debenture or certificate of debenture stock which under this section is required to have endorsed

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on it a copy of a certificate of registration, without the copy being so endorsed upon it, he is liable (without prejudice to any other liability) to a fine.

Editorial Information

X8 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C436 S. 402 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C437 S. 402 excluded (12.2.1992) by S.I. 1992/225, **reg. 91(1)**.

[X9]403 Entries of satisfaction and release.

(1) **[**[F536]Subject to subsection (1A), the registrar**]** of companies, on receipt of a statutory declaration in the prescribed form verifying, with respect to a registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be).

[[F537](1A) The registrar of companies may make any such entry as is mentioned in subsection (1) where, instead of receiving such a statutory declaration as is mentioned in that subsection, he receives a statement by a director, secretary, administrator or administrative receiver of the company which is contained in an electronic communication and that statement—

(a) verifies the matters set out in paragraph (a) or (b) of that subsection,

(b) contains a description of the charge,

(c) states the date of creation of the charge and the date of its registration under this Chapter,

(d) states the name and address of the chargee or, in the case of a debenture, trustee, and

(e) where paragraph (b) of subsection (1) applies, contains short particulars of the property or undertaking which has been released from the charge, or which has ceased to form part of the company's property or undertaking (as the case may be).**]**

(2) Where the registrar enters a memorandum of satisfaction in whole, he shall if required furnish the company with a copy of it.

[[F538](2A) Any person who makes a false statement under subsection (1A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

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Editorial Information

X9 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Textual Amendments

F536 Words in s. 403(1) substituted (22.12.2000) by S.I. 2000/3373, **art. 22(1)(2)**

F537 S. 403(1A) inserted (22.12.2000) by S.I. 2000/3373, **art. 22(1)(3)**

F538 S. 403(2A) inserted (22.12.2000) by S.I. 2000/3373, **art. 22(1)(4)**

Modifications etc. (not altering text)

C438 S. 403 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X10]404 Rectification of register of charges.

(1) The following applies if the court is satisfied that the omission to register a charge within the time required by this Chapter or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief.

(2) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

Editorial Information

X10 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C439 S. 404 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X11]405 Registration of enforcement of security.

(1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar of companies; and the registrar shall enter the fact in the register of charges.

(2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect, and the registrar shall enter the fact in the register of charges.

(3) A notice under this section shall be in the prescribed form.

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(4) If a person makes default in complying with the requirements of this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Editorial Information

X11 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C440 S. 405 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X12]406 Companies to keep copies of instruments creating charges.

(1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Chapter to be kept at its registered office.

(2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

Editorial Information

X12 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C441 S. 406 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X13]407 Company's register of charges.

(1) Every limited company shall keep at its registered office a register of charges and enter in it all charges specifically affecting property of the company and all floating charges on the company's undertaking or any of its property.

(2) The entry shall in each case give a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to it.

(3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he is liable to a fine.

Editorial Information

X13 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C442 S. 407 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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[X14]408 Right to inspect instruments which create charges, etc.

(1) The copies of instruments creating any charge requiring registration under this Chapter with the registrar of companies, and the register of charges kept in pursuance of section 407, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) to the inspection of any creditor or member of the company without fee.

(2) The register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding 5 pence, for each inspection, as the company may prescribe.

(3) If inspection of the copies referred to, or of the register, is refused, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) If such a refusal occurs in relation to a company registered in England and Wales, the court may by order compel an immediate inspection of the copies or register.

Editorial Information

X14 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C443 S. 408 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X15]409 Charges on property in England and Wales created by oversea company.

(1) This Chapter extends to charges on property in England and Wales which are created, and to charges on property in England and Wales which is acquired, by a company (whether a company within the meaning of this Act or not) incorporated outside Great Britain which has an established place of business in England and Wales.

(2) In relation to such a company, sections 406 and 407 apply with the substitution, for the reference to the company's registered office, of a reference to its principal place of business in England and Wales.

Editorial Information

X15 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

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CHAPTER II

REGISTRATION OF CHARGES (SCOTLAND)

[X16]410 Charges void unless registered.

(1) The following provisions of this Chapter have effect for the purpose of securing the registration in Scotland of charges created by companies.

(2) Every charge created by a company, being a charge to which this section applies, is, so far as any security on the company's property or any part of it is conferred by the charge, void against the liquidator **[**[F539]or administrator**]** and any creditor of the company unless the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in the manner required by this Chapter within 21 days after the date of the creation of the charge.

(3) Subsection (2) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section the money secured by it immediately becomes payable.

(4) This section applies to the following charges—

(a) a charge on land wherever situated, or any interest in such land (not including a charge for any rent, ground annual or other periodical sum payable in respect of the land, but including a charge created by a heritable security within the meaning of section 9(8) of the [M41]Conveyancing and Feudal Reform (Scotland) Act 1970),

(b) a security over the uncalled share capital of the company,

(c) a security over incorporeal moveable property of any of the following categories—

(i) the book debts of the company,

(ii) calls made but not paid,

(iii) goodwill,

(iv) a patent or a licence under a patent,

(v) a trademark,

(vi) a copyright or a licence under a copyright,

[[F540](vii) a registered design or a licence in respect of such a design,

(viii) a design right or a licence under a design right,**]**

(d) a security over a ship or aircraft or any share in a ship, and

(e) a floating charge.

(5) In this Chapter "company" (except in section 424) means an incorporated company registered in Scotland; "registrar of companies" means the registrar or other officer performing under this Act the duty of registration of companies in Scotland; and references to the date of creation of a charge are—

(a) in the case of a floating charge, the date on which the instrument creating the floating charge was executed by the company creating the charge, and

(b) in any other case, the date on which the right of the person entitled to the benefit of the charge was constituted as a real right.

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Editorial Information

X16 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Textual Amendments

F539 Words inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 10**

F540 S. 410(4)(*c*)(vii)(viii) inserted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 303(1), **Sch. 7 para. 31(3)**

Modifications etc. (not altering text)

C444 S. 410 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C445 S. 410 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 5**

C446 S. 410(4)(*c*) extended by Patents, Designs and Marks Act 1986 (c. 39, SIF 67A), s. 2, **Sch. 2 Pt. I para. 1**(*k*)(i)

C447 S. 410(4)(c)(v) amended (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 1(2)**; S.I. 1994/2550, **art. 2**

Marginal Citations

M41 1970 c. 35.

X17411 Charges on property outside United Kingdom.

(1) In the case of a charge created out of the United Kingdom comprising property situated outside the United Kingdom, the period of 21 days after the date on which the copy of the instrument creating it could (in due course of post, and if despatched with due diligence) have been received in the United Kingdom is substituted for the period of 21 days after the date of the creation of the charge as the time within which, under section 410(2), the particulars and copy are to be delivered to the registrar.

(2) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the copy of the instrument creating or purporting to create the charge may be sent for registration under section 410 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

Editorial Information

X17 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C448 S. 411 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

X18412 Negotiable instrument to secure book debts.

Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance

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to the company is not, for purposes of section 410, to be treated as a charge on those book debts.

Editorial Information

X18 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C449 S. 412 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X19]413 Charges associated with debentures.

(1) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 410, deemed to be an interest in land.

(2) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled pari passu, is created by a company, it is sufficient for purposes of section 410 if there are delivered to or received by the registrar of companies within 21 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars in the prescribed form—

(a) the total amount secured by the whole series,

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined,

(c) a general description of the property charged,

(d) the names of the trustees (if any) for the debenture holders, and

(e) in the case of a floating charge, a statement of any provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the power of the company to grant further securities ranking in priority to, or pari passu with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities,

together with a copy of the deed containing the charge or, if there is no such deed, of one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar of companies for entry in the register particulars (in the prescribed form) of the date and amount of each issue of debentures of the series, but any omission to do this does not affect the validity of any of those debentures.

(3) Where any commission, allowance or discount has been paid or made, either directly or indirectly, by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any such debentures, the particulars required to be sent for registration under section 410 include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made; but any omission to do this does not affect the validity of the debentures issued.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The deposit of any debentures as security for any debt of the company is not, for purposes of this subsection, treated as the issue of the debentures at a discount.

Editorial Information

X19 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C450 S. 413 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X20]414 Charge by way of ex facie absolute disposition, etc.

(1) For the avoidance of doubt, it is hereby declared that, in the case of a charge created by way of an ex facie absolute disposition or assignation qualified by a back letter or other agreement, or by a standard security qualified by an agreement, compliance with section 410(2) does not of itself render the charge unavailable as security for indebtedness incurred after the date of compliance.

(2) Where the amount secured by a charge so created is purported to be increased by a further back letter or agreement, a further charge is held to have been created by the ex facie absolute disposition or assignation or (as the case may be) by the standard security, as qualified by the further back letter or agreement; and the provisions of this Chapter apply to the further charge as if—

(a) references in this Chapter (other than in this section) to the charge were references to the further charge, and

(b) references to the date of the creation of the charge were references to the date on which the further back letter or agreement was executed.

Editorial Information

X20 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C451 S. 414 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X21]415 Company's duty to register charges created by it.

(1) It is a company's duty to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under sections 410 to 414; but registration of any such charge may be effected on the application of any person interested in it.

(2) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

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(3) If a company makes default in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as above mentioned, then, unless the registration has been effected on the application of some other person, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Editorial Information

X21 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C452 S. 415 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X22]416 Duty to register charges existing on property acquired.

(1) Where a company acquires any property which is subject to a charge of any kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Chapter, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in the manner required by this Chapter within 21 days after the date on which the transaction was settled.

(2) If, however, the property is situated and the charge was created outside Great Britain, 21 days after the date on which the copy of the instrument could (in due course of post, and if despatched with due diligence) have been received in the United Kingdom are substituted for 21 days after the settlement of the transaction as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(3) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Editorial Information

X22 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C453 S. 416 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X23]417 Register of charges to be kept by registrar of companies.

(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Chapter, and shall enter in the register with respect to such charges the particulars specified below.

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(2) In the case of a charge to the benefit of which the holders of a series of debentures are entitled, there shall be entered in the register the particulars specified in section 413(2).

(3) In the case of any other charge, there shall be entered—

(a) if it is a charge created by the company, the date of its creation, and if it was a charge existing on property acquired by the company, the date of the acquisition of the property,

(b) the amount secured by the charge,

(c) short particulars of the property charged,

(d) the persons entitled to the charge, and

(e) in the case of a floating charge, a statement of any of the provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the company's power to grant further securities ranking in priority to, or pari passu with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.

(4) The register kept in pursuance of this section shall be open to inspection by any person.

Editorial Information

X23 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C454 S. 417 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X24]418 Certificate of registration to be issued.

(1) The registrar of companies shall give a certificate of the registration of any charge registered in pursuance of this Chapter.

(2) The certificate—

(a) shall be either signed by the registrar, or authenticated by his official seal,

(b) shall state the name of the company and the person first-named in the charge among those entitled to the benefit of the charge (or, in the case of a series of debentures, the name of the holder of the first such debenture to be issued) and the amount secured by the charge, and

(c) is conclusive evidence that the requirements of this Chapter as to registration have been complied with.

Editorial Information

X24 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C455 S. 418 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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[X25]419 Entries of satisfaction and relief.

(1) **[**[F541]Subject to subsections (1A) and (1B), the registrar**]** of companies, on application being made to him in the prescribed form, and on receipt of a statutory declaration in the prescribed form verifying, with respect to any registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or

(b) that part of the property charged has been released from the charge or has ceased to form part of the company's property,

may enter on the register a memorandum of satisfaction (in whole or in part) regarding that fact.

[[F542](1A) On an application being made to him in the prescribed form, the registrar of companies may make any such entry as is mentioned in subsection (1) where, instead of receiving such a statutory declaration as is mentioned in that subsection, he receives a statement by a director, secretary, liquidator, receiver or administrator of the company which is contained in an electronic communication and that statement—

(a) verifies the matters set out in paragraph (a) or (b) of that subsection,

(b) contains a description of the charge,

(c) states the date of creation of the charge and the date of its registration under this Chapter,

(d) states the name and address of the chargee or, in the case of a debenture, trustee, and

(e) where paragraph (b) of subsection (1) applies, contains short particulars of the property which has been released from the charge, or which has ceased to form part of the company's property (as the case may be).

[F542](1B) Where the statement under subsection (1A) concerns the satisfaction of a floating charge, then there shall be delivered to the registrar a further statement which—

(a) is made by the creditor entitled to the benefit of the floating charge or a person authorised to act on his behalf;

(b) is incorporated into, or logically associated with, the electronic communication containing the statement; and

(c) certifies that the particulars contained in the statement are correct.**]**

(2) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy of the memorandum.

(3) Without prejudice to the registrar's duty under this section to require to be satisfied as above mentioned, he shall not be so satisfied unless—

(a) the creditor entitled to the benefit of the floating charge, or a person authorised to do so on his behalf, certifies as correct the particulars submitted to the registrar with respect to the entry on the register of a memorandum under this section, or

(b) the court, on being satisfied that such certification cannot readily be obtained, directs him accordingly.

(4) Nothing in this section requires the company to submit particulars with respect to the entry in the register of a memorandum of satisfaction where the company, having created a floating charge over all or any part of its property, disposes of part of the property subject to the floating charge.

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(5) A memorandum or certification required for the purposes of this section shall be in such form as may be prescribed.

[[F543](5A) Any person who makes a false statement under subsection (1A) or (1B) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

Editorial Information

X25 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Textual Amendments

F541 Words in s. 419(1) substituted (22.12.2000) by S.I. 2000/3373, **art. 23(1)(2)**

F542 S. 419(1A)(1B) inserted (22.12.2000) by S.I. 2000/3373, **art. 23(1)(3)**

F543 S. 419(5A) inserted (22.12.2000) by S.I. 2000/3373, **art. 23(1)(4)**

Modifications etc. (not altering text)

C456 S. 419 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X26]420 Rectification of register.

The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that it is on other grounds just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended or (as the case may be) that the omission or mis-statement shall be rectified.

Editorial Information

X26 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

Modifications etc. (not altering text)

C457 S. 420 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X27]421 Copies of instruments creating charges to be kept by company.

(1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Chapter to be kept at the company's registered office.

(2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

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Editorial Information

X27 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

Modifications etc. (not altering text)

C458 S. 421 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X28]422 Company's register of charges.

(1) Every company shall keep at its registered office a register of charges and enter in it all charges specifically affecting property of the company, and all floating charges on any property of the company.

(2) There shall be given in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to it.

(3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he is liable to a fine.

Editorial Information

X28 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

Modifications etc. (not altering text)

C459 S. 422 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X29]423 Right to inspect copies of instruments, and company's register.

(1) The copies of instruments creating charges requiring registration under this Chapter with the registrar of companies, and the register of charges kept in pursuance of section 422, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) to the inspection of any creditor or member of the company without fee.

(2) The register of charges shall be open to the inspection of any other person on payment of such fee, not exceeding 5 pence for each inspection, as the company may prescribe.

(3) If inspection of the copies or register is refused, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) If such a refusal occurs in relation to a company, the court may by order compel an immediate inspection of the copies or register.

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Editorial Information

X29 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

Modifications etc. (not altering text)

C460 S. 423 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[X30]424 Extension of Chapter II.

(1) This Chapter extends to charges on property in Scotland which are created, and to charges on property in Scotland which is acquired, by a company incorporated outside Great Britain which has a place of business in Scotland.

(2) In relation to such a company, sections 421 and 422 apply with the substitution, for the reference to the company's registered office, of a reference to its principal place of business in Scotland.

Editorial Information

X30 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

PART XIII

ARRANGEMENTS AND RECONSTRUCTIONS

Modifications etc. (not altering text)

C461 Pt. XIII (ss. 425–430) power to modify conferred (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 71(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

C462 Part XIII modified by S.I. 1989/1461, **reg. 2**

C463 Part XIII (ss. 425-430) modified (E.W.) (1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 9(1)**, 17(2)

C464 Pt. XIII (ss. 425–430) power to modify conferred (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 71(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

C465 Part XIII modified by S.I. 1989/1461, **reg. 2**

425 Power of company to compromise with creditors and members.

(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the court may on the application of the company or any creditor or member of it or, in the case of a company being wound up **[**[F544]or an administration order being in force in relation to a company, of the liquidator or administrator**]**, order a meeting of the

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creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) The court's order under subsection (2) has no effect until an office copy of it has been delivered to the registrar of companies for registration; and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting the company or defining its constitution.

(4) If a company makes default in complying with subsection (3), the company and every officer of it who is in default is liable to a fine.

(5) An order under subsection (1) pronounced in Scotland by the judge acting as vacation judge **[**[F545]in pursuance of section 4 of the [M42]Administration of Justice (Scotland) Act 1933**]** is not subject to review, reduction, suspension or stay of execution.

(6) In this section and the next—

(a) "company" means any company liable to be wound up under this Act, and

(b) "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

Textual Amendments

F544 Words substituted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 11**

F545 Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), Sch. 2 Pts. I, **III**

Modifications etc. (not altering text)

C466 Ss. 425-427 applied (with modifications) (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 70, Sch. 6 paras. 5, **6**; S.I. 2001/3538, **art. 2(1)**

C467 Ss. 425-427 restricted (1.12.2001) by S.I. 2001/3639, **art. 3(3)(a)** (with art. 2)

C468 S. 425 restricted (S.) (1.11.2001) by 2001 asp 10, s. 63, **Sch. 7 para. 10(2)**; S.S.I. 2001/336, art. 2(1)(3), **Sch. Pt. II** (subject to transitional provisions in art. 3)

C469 S. 425 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C470 Ss. 425-427 modified (1.12.2001) by 2000 c. 8, **s. 105(6)**; S.I. 2001/3538, **art. 2(1)**

C471 S. 425 amended (1.12.2001) by 2000 c. 8, **s. 362(6)**; S.I. 2001/3538, **art. 2(1)**
S. 425 amended (1.12.2001) by 2000 c. 8, **s. 365(7)**; S.I. 2001/3538, **art. 2(1)**
S. 425 amended (1.12.2001) by 2000 c. 8, **s. 371(5)**; S.I. 2001/3538, **art. 2(1)**

C472 S. 425 applied (with modifications) (6.1.1997) by S.I. 1996/2827, reg. 64, Sch. 7 paras. 5, **6(1)-(3)**

C473 S. 425: power to apply (with modifications) conferred (15.9.2003) by Enterprise Act 2002 (c. 40), **ss. 255(2)(c)**, 279; S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, S.I. 2003/3340))

C474 S. 425(2) restricted (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 5(2)** (with reg. 3)

C475 S. 425(6)(a) amended (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 40(1)**

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C476 S. 425(6)(a) modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 5(1)** (with reg. 3)

Marginal Citations

M42 1933 c. 41.

426 Information as to compromise to be circulated.

(1) The following applies where a meeting of creditors or any class of creditors, or of members or any class of members, is summoned under section 425.

(2) With every notice summoning the meeting which is sent to a creditor or member there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) In every notice summoning the meeting which is given by advertisement there shall be included either such a statement as above-mentioned or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(6) If a company makes default in complying with any requirement of this section, the company and every officer of it who is in default is liable to a fine; and for this purpose a liquidator **[**[F546]or administrator**]** of the company and a trustee of a deed for securing the issue of debentures of the company is deemed an officer of it.

However, a person is not liable under this subsection if he shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of his interests.

(7) It is the duty of any director of the company, and of any trustee for its debenture holders, to give notice to the company of such matters relating to himself as may be necessary for purposes of this section; and any person who makes default in complying with this subsection is liable to a fine.

Textual Amendments

F546 Words inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 12**

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Modifications etc. (not altering text)

C477 Ss. 425-427 applied (with modifications) (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 70, Sch. 6 paras. 5, **6**; S.I. 2001/3538, **art. 2(1)**

C478 Ss. 425-427 restricted (1.12.2001) by S.I. 2001/3639, **art. 3(3)(a)** (with art. 2)

C479 S. 426 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C480 Ss. 425-427 modified (1.12.2001) by 2000 c. 8, **s. 105(6)**; S.I. 2001/3538, **art. 2(1)**

C481 S. 426 aplied (with modifications) (1.6.1997) by S.I. 1996/2827, reg. 64, Sch. 7 paras. 5, **6(1)-(3)**

427 Provisions for facilitating company reconstruction or amalgamation.

(1) The following applies where application is made to the court under section 425 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section.

(2) If it is shown—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and

(b) that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme ("a transferor company") is to be transferred to another company ("the transferee company"),

the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters.

(3) The matters for which the court's order may make provision are—

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company,

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person,

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company,

(d) the dissolution, without winding up, of any transferor company,

(e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement,

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(4) If an order under this section provides for the transfer of property or liabilities, then—

(a) that property is by virtue of the order transferred to, and vests in, the transferee company, and

(b) those liabilities are, by virtue of the order, transferred to and become liabilities of that company;

and property (if the order so directs) vests freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(5) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy of the order to be delivered to the registrar of companies for registration within 7 days after its making; and if default is made in

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complying with this subsection, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) In this section the expression "property" includes property, rights and powers of every description; the expression "liabilities" includes duties and "company" includes only a company as defined in section 735(1).

Modifications etc. (not altering text)

C482 Ss. 425-427 applied (with modifications) (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 70, Sch. 6 paras. 5, **6**; S.I. 2001/3538, **art. 2(1)**

C483 Ss. 425-427 restricted (1.12.2001) by S.I. 2001/3639, **art. 3(3)(a)** (with art. 2)

C484 S. 427 restricted (S.) (1.11.2001) by 2001 asp 10, s. 63, **Sch. 7 para. 10(3)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3)

C485 S. 427 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C486 Ss. 425-427 modified (1.12.2001) by 2000 c. 8, **s. 105(6)**; S.I. 2001/3538, **art. 2(1)**

C487 S. 427 applied (with modifications) (1.7.1996) by S.I. 1996/2827, reg. 64, Sch. 7 paras. 5, **6(1)-(3)**

[F547 427A Application of ss. 425–427 to mergers and divisions of public companies.

(1) Where—

(a) a compromise or arrangement is proposed between a public company and any such persons as are mentioned in section 425(1) for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,

(b) the circumstances are as specified in any of the Cases described in subsection (2), and

(c) the consideration for the transfer or each of the transfers envisaged in the Case in question is to be shares in the transferee company or any of the transferee companies receivable by members of the transferor company or transferor companies, with or without any cash payment to members,

sections 425 to 427 shall, as regards that compromise or arrangement, have effect subject to the provisions of this section and Schedule **[**F548 15B**]**.

(2) The Cases referred to in subsection (1) are as follows—

Case 1 Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be transferred to another public company, other than one formed for the purpose of, or in connection with, the scheme.

Case 2 Where under the scheme the undertaking, property and liabilities of each of two or more public companies concerned in the scheme, including the company in respect of which the compromise or arrangement in question is proposed, are to be transferred to a company (whether or not a public company) formed for the purpose of, or in connection with, the scheme.

Case 3 Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be divided among and transferred to two or more companies each of which is either-

(a) a public company, or

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(b) a company (whether or not a public company) formed for the purposes of, or in connection with, the scheme.

(3) Before sanctioning any compromise or arrangement under section 425(2) the court may, on the application of any pre-existing transferee company or any member or creditor of it or, an administration order being in force in relation to the company, the administrator, order a meeting of the members of the company or any class of them or of the creditors of the company or any class of them to be summoned in such manner as the court directs.

(4) This section does not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

(5) This section does not apply to compromises or arrangements in respect of which an application has been made to the court for an order under section 425(1) before 1st January 1988.

(6) Where section 427 would apply in the case of a scheme but for the fact that the transferee company or any of the transferee companies is a company within the meaning of Article 3 of the Companies (Northern Ireland) Order [M43]1986 (and thus not within the definition of "company'' in subsection (6) of section 427), section 427 shall apply notwithstanding that fact.

(7) In the case of a scheme mentioned in subsection (1), for a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986, the reference in section 427(5) to the registrar of companies shall have effect as a reference to the registrar as defined in Article 2 of that Order.

(8) In this section and Schedule **[**[F548]15B**]**—

"transferor company" means a company whose undertaking, property and liabilities are to be transferred by means of a transfer envisaged in any of the Cases specified in subsection (2);

"transferee company" means a company to which a transfer envisaged in any of those Cases is to be made;

"pre-existing transferee company" means a transferee company other than one formed for the purpose of, or in connection with, the scheme;

"compromise or arrangement" means a compromise or arrangement to which subsection (1) applies;

"the scheme" means the scheme mentioned in subsection (1)(a);

"company" includes only a company as defined in section 735(1) except that, in the case of a transferee company, it also includes a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986 (referred to in these definitions as a "Northern Ireland company'');

"public company" means, in relation to a transferee company which is a Northern Ireland company, a public company within the meaning of Article 12 of the Companies (Northern Ireland) Order 1986;

"the registrar of companies" means, in relation to a transferee company which is a Northern Ireland company, the registrar as defined in Article 2 of the Companies (Northern Ireland) Order 1986;

"the Gazette" means, in relation to a transferee company which is a Northern Ireland company, the Belfast Gazette;

"Case 1 Scheme", "Case 2 Scheme" and "Case 3 Scheme" mean a scheme of the kind described in Cases 1, 2 and 3 of subsection (2) respectively;

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"property" and "liabilities" have the same meaning as in section 427.**]**

Textual Amendments

F547 S. 427A added by S.I. 1987/1991, **reg. 2** (a), Sch.

F548 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 114(2)**, 213(2)

Modifications etc. (not altering text)

C488 S. 427A applied (with modifications) (6.1.1997) by S.I. 1996/2827, reg. 64, Sch. 7 paras. 5, **6(1)-(3)**

Marginal Citations

M43 S.I. 1986/1032 (N.I. 6).

F549 PART XIIIA

TAKEOVER OFFERS

Textual Amendments

F549 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

Modifications etc. (not altering text)

C489 Pt. 13A excluded (20.5.2006) by The Takeovers Directive (Interim Implementation) Regulations 2006 (S.I. 2006/1183), **reg. 30**

C490 Pt. XIIIA (ss. 428-430F) modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 9(3)**.

428 Takeover offers.

(1) In this part of this Act "a takeover offer" means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In subsection (1) "shares" means shares which have been allotted on the date of the offer but a takeover offer may include among the shares to which it relates all or any shares that are subsequently allotted before a date specified in or determined in accordance with the terms of the offer.

(3) The terms offered in relation to any shares shall for the purposes of this section be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding any variation permitted by subsection (4).

(4) A variation is permitted by this subsection where—

(a) the law of a country or territory outside the United Kingdom precludes an offer of consideration in the form or any of the forms specified in the terms in question or precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous; and

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(b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.

(5) The reference in subsection (1) to shares already held by the offeror includes a reference to shares which he has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder either for no consideration and under seal or for no consideration other than a promise by the offeror to make the offer.

(6) In the application of subsection (5) to Scotland, the words "and under seal" shall be omitted.

(7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Part of this Act as the making of a fresh offer and references in this Part of this Act to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.

(8) In this Part of this Act "the offeror" means, subject to section 430D, the person making a takeover offer and "the company" means the company whose shares are the subject of the offer.

[F550 429 Right of offeror to buy out minority shareholders.

(1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares to which the offer relates he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares of any class to which the offer relates, he may give notice to the holder of any shares of that class which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(3) No notice shall be given under subsection (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that subsection before the end of the period of four months beginning with the date of the offer; and no such notice shall be given after the end of the period of two months beginning with the date on which he has acquired or contracted to acquire shares which satisfy that minimum.

(4) Any notice under this section shall be given in the prescribed manner; and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the company together with a statutory declaration by him in the prescribed form stating that the conditions for the giving of the notice are satisfied.

(5) Where the offeror is a company (whether or not a company within the meaning of this Act) the statutory declaration shall be signed by a director.

(6) Any person who fails to send a copy of a notice or a statutory declaration as required by subsection (4) or makes such a declaration for the purposes of that subsection knowing

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it to be false or without having reasonable grounds for believing it to be true shall be liable to imprisonment or a fine, or both, and for continued failure to send the copy or declaration, to a daily default fine.

(7) If any person is charged with an offence for failing to send a copy of a notice as required by subsection (4) it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.

(8) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then, if—

(a) the value of the consideration for which they are acquired or contracted to be acquired ("the acquisition consideration") does not at that time exceed the value of the consideration specified in the terms of the offer; or

(b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a) above, no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.**]**

Textual Amendments

F550 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

[F551 430 Effect of notice under s. 429.

(1) The following provisions shall, subject to section 430C, have effect where a notice is given in respect of any shares under section 429.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of consideration the notice shall give particulars of the choice and state—

(a) that the holder of the shares may within six weeks from the date of the notice indicate his choice by a written communication sent to the offeror at an address specified in the notice; and

(b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid;

and the terms of the offer mentioned in subsection (2) shall be determined accordingly.

(4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—

(a) is not cash and the offeror is no longer able to provide it; or

(b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen consideration.

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(5) At the end of six weeks from the date of the notice the offeror shall forthwith—

(a) send a copy of the notice to the company; and

(b) pay or transfer to the company the consideration for the shares to which the notice relates.

(6) If the shares to which the notice relates are registered the copy of the notice sent to the company under subsection (5)(*a*) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(7) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments the copy of the notice sent to the company under subsection (5)(*a*) shall be accompanied by a statement to that effect; and the company shall on receipt of the statement issue the offeror with warrants or other instruments in respect of the shares and those already in issue in respect of the shares shall become void.

(8) Where the consideration referred to in paragraph (*b*) of subsection (5) consists of shares or securities to be allotted by the offeror the reference in that paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the company.

(9) Any sum received by a company under paragraph (*b*) of subsection (5) and any other consideration received under that paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other consideration was received.

(10) Any sum received by a company under paragraph (*b*) of subsection (5), and any dividend or other sum accruing from any other consideration received by a company under that paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(11) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of subsection (9) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up the consideration (together with any interest, dividend or other benefit that has accrued from it) shall be paid into court.

(12) In relation to a company registered in Scotland, subsections (13) and (14) shall apply in place of subsection (11).

(13) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of subsection (9) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up—

(a) the trust shall terminate;

(b) the company or, as the case may be, the liquidator shall sell any consideration other than cash and any benefit other than cash that has accrued from the consideration; and

(c) a sum representing—

(i) the consideration so far as it is cash;

(ii) the proceeds of any sale under paragraph (*b*) above; and

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(iii) any interest, dividend or other benefit that has accrued from the consideration, shall be deposited in the name of the Accountant of Court in a bank account such as is referred to in subsection (10) and the receipt for the deposit shall be transmitted to the Accountant of Court.

(14) Section 58 of the Bankruptcy (Scotland) Act 1985 c.66 (**66**).1985 (so far as consistent with this Act) shall apply with any necessary modifications to sums deposited under subsection (13) as that section applies to sums deposited under section 57(1)(*a*) of that Act.

(15) The expenses of any such enquiry as is mentioned in subsection (11) or (13) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.**]**

Textual Amendments

F551 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

Modifications etc. (not altering text)

C491 S. 430(3)(a) modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 9(9)**.
C492 S. 430(5) modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 9(5)**.
C493 S. 430(6) excluded (26.11.2001) by S.I. 2001/3755, **reg. 42(1)** (with regs. 39, 45)
C494 S. 430(6) excluded (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 9(4)**.

[F552 430A Right of minority shareholder to be bought out by offeror.

(1) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted—

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and

(b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares in the company,

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted—

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and

(b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares of that class,

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(3) Within one month of the time specified in subsection (1) or, as the case may be, subsection (2) the offeror shall give any shareholder who has not accepted the offer

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notice in the prescribed manner of the rights that are exercisable by him under that subsection; and if the notice is given before the end of the period mentioned in that subsection it shall state that the offer is still open for acceptance.

(4) A notice under subsection (3) may specify a period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the offer can be accepted.

(5) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 429.

(6) If the offeror fails to comply with subsection (3) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, shall be liable to a fine and, for continued contravention, to a daily default fine.

(7) If an offeror other than a company is charged with an offence for failing to comply with subsection (3) it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.**]**

Textual Amendments

F552 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

Modifications etc. (not altering text)

C495 S. 430A(1)(2) modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 9(9)**.

[F553 430B Effect of requirement under s. 430A.

(1) The following provisions shall, subject to section 430C, have effect where a shareholder exercises his rights in respect of any shares under section 430A.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of shares a choice of consideration the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under section 430A(3)—

(a) shall give particulars of the choice and of the rights conferred by this subsection; and

(b) may state which consideration specified in the offer is to be taken as applying in default of his indicating a choice;

and the terms of the offer mentioned in subsection (2) shall be determined accordingly.

(4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—

(a) is not cash and the offeror is no longer able to provide it; or

(b) was to have been provided by a third party who is no longer bound or able to provide it,

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the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the chosen consideration.**]**

Textual Amendments

F553 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

[F554 430C Applications to the court.

(1) Where a notice is given under section 429 to the holder of any shares the court may, on an application made by him within six weeks from the date on which the notice was given—

(a) order that the offeror shall not be entitled and bound to acquire the shares; or

(b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under subsection (1) is pending at the end of the period mentioned in subsection (5) of section 430 that subsection shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under section 430A the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) No order for costs or expenses shall be made against a shareholder making an application under subsection (1) or (3) unless the court considers—

(a) that the application was unnecessary, improper or vexatious; or

(b) that there has been unreasonable delay in making the application or unreasonable conduct on his part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (1) or (2) of section 429 the court may, on the application of the offeror, make an order authorising him to give notices under that subsection if satisfied—

(a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;

(b) that the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the shares held by the person or persons mentioned in paragraph (a), amount to not less than the minimum specified in that subsection; and

(c) that the consideration offered is fair and reasonable;

but the court shall not make an order under this subsection unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.**]**

Textual Amendments

F554 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

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[F555 430D Joint offers.

(1) A takeover offer may be made by two or more persons jointly and in that event this Part of this Act has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by sections 429 and 430A shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those sections and sections 430 and 430B shall be respectively joint rights and joint and several obligations of the joint offerors.

(3) It shall be a sufficient compliance with any provision of those sections requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the statutory declaration required by section 429(4) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(4) In sections 428, 430(8) and 430E references to the offeror shall be construed as references to the joint offerors or any of them.

(5) In section 430(6) and (7) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

(6) In sections 430(4)(*a*) and 430B(4)(*a*) references to the offeror being no longer able to provide the relevant consideration shall be construed as references to none of the joint offerors being able to do so.

(7) In section 430C references to the offeror shall be construed as references to the joint offerors except that any application under subsection (3) or (5) may be made by any of them and the reference in subsection (5)(*a*) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.]

Textual Amendments

F555 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

Modifications etc. (not altering text)

C496 S. 430D(5) amended (19.12.1995) by S.I. 1995/3272, **reg. 35(4)**
S. 430D(5) amended (26.11.2001) by S.I. 2001/3755, **reg. 42(14)** (with regs. 39, 45)

[F556 430E Associates.

(1) The requirement in section 428(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to subsection (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part of this Act to the shares to which a takeover offer relates.

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(2) Where during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in subsection (8)(*a*) or (*b*) of section 429 is satisfied as respects those shares they shall be treated for the purposes of that section as shares to which the offer relates.

(3) In section 430A(1)(*b*) and (2)(*b*) the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.

(4) In this section "associate", in relation to an offeror means—

(a) a nominee of the offeror;

(b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;

(c) a body corporate in which the offeror is substantially interested; or

(d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the takeover offer, being an agreement which includes provisions imposing obligations or restrictions such as are mentioned in section 204(2)(a).

(5) For the purposes of subsection (4)(*b*) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(6) For the purposes of subsection (4)(*c*) an offeror has a substantial interest in a body corporate if—

(a) that body or its directors are accustomed to act in accordance with his directions or instructions; or

(b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(7) Subsections (5) and (6) of section 204 shall apply to subsection (4)(d) above as they apply to that section and subsections (3) and (4) of section 203 shall apply for the purposes of subsection (6) above as they apply for the purposes of subsection (2)(b) of that section.

(8) Where the offeror is an individual his associates shall also include his spouse and any minor child or step-child of his.**]**

Textual Amendments

F556 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

[F557 430F Convertible securities.

(1) For the purposes of this Part of this Act securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Subsection (1) shall not be construed as requiring any securities to be treated—

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(a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or

(b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.**]**

Textual Amendments

F557 Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

PART XIV

INVESTIGATION OF COMPANIES AND THEIR AFFAIRS; REQUISITION OF DOCUMENTS

Appointment and functions of inspectors

431 Investigation of a company on its own application or that of its members.

(1) The Secretary of State may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) The appointment may be made—

(a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued,

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and

(c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Secretary of State may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

An order under this subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C497 S. 431 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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432 Other company investigations.

(1) The Secretary of State shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he directs, if the court by order declares that its affairs out to be so investigated.

(2) The Secretary of State may make such an appointment if it appears to him that there are circumstances suggesting—

(a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or

(b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or

(c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or

(d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

[F558(2A) Inspectors may be appointed under subsection (2) on terms that any report they may make is not for publication; and in such a case, the provisions of section 437(3) (availability and publication of inspectors' reports) do not apply.**]**

(3) Subsections (1) and (2) are without prejudice to the powers of the Secretary of State under section 431; and the power conferred by subsection (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) The reference in subsection (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

Textual Amendments

F558 S. 432(2A) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 55**, 213(2)

Modifications etc. (not altering text)

C498 S. 432 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C499 S. 432(1)(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 5**

433 Inspectors' powers during investigation.

(1) If inspectors appointed under section 431 or 432 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

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F559(2) . . . . . .

Textual Amendments

F559 S. 433(2) repealed by Financial Services Act 1986 (c. 60, SIF 69), ss. 182, 212(3), Sch. 13 para. 7, **Sch. 17 Pt. I**

Modifications etc. (not altering text)

C500 S. 433 applied (wih modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

434 Production of documents and evidence to inspectors.

(1) When inspectors are appointed under section 431 or 432, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 433(1)—

(a) to produce to the inspectors all **[**F560documents**]** of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,

(b) to attend before the inspectors when required to do so, and

(c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

[F561(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—

(a) to produce to them any documents in his custody or power relating to that matter,

(b) to attend before them, and

(c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it is that person's duty to comply with the requirement.**]**

[F562(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.**]**

(4) In this section a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 431 to 433, or as applied by any other section in this Part) may be used in evidence against him.

[F563(5A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

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by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

F563(5B) Subsection (5A) applies to any offence other than—

(a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath); or

(b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).**]**

[F564(6) In this section "documents" includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.**]**

Textual Amendments

F560 Words in s. 434(1)(a) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 56(2)**, 213(2)

F561 S. 434(2) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 56(3)**, 213(2)

F562 S. 434(3) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 56(4)**, 213(2)

F563 S. 434(5A)(5B) inserted (14.4.2000 for E.W.N.I. and 1.1.2001 for S.) by 1999 c. 23, ss. 59, 68(3), **Sch. 3 para. 5** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2(a)**; S.S.I. 2000/445, **art. 2**

F564 S. 434(6) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 56(5)**, 213(2)

Modifications etc. (not altering text)

C501 S. 434 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 6**

C502 S. 434 applied (with modifications) by Financial Services Act 1986 (c. 60, SIF 69), **s. 94(3)(7)**
S. 434 applied (with modifications) (6.1.1997) by S.I. 1996/2827, **reg. 22(3)(4)**

C503 S. 434 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C504 S. 434(4) amended (E.W.)(01.01.1992) by S.I. 1991/2684, arts. 2(1), 4, 5, **Sch. 1**.

F565435 . . . . . .

Textual Amendments

F565 S. 435 repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

436 Obstruction of inspectors treated as contempt of court.

[F566(1) If any person—

(a) fails to comply with section 434(1)(a) or (c),

(b) refuses to comply with a requirement under section 434(1)(b) or (2), or

(c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the court.**]**

(3) The court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any

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statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

Textual Amendments

F566 S. 436(1) substituted for subsections (1)(2) by Companies Act 1989 (c. 40, SIF 27), **ss. 56(6)**, 213(2)

Modifications etc. (not altering text)

C505 S. 436 applied (with modifications) by Financial Services Act 1986 (c. 60, SIF 69), **s. 94(3)(7)**
S. 436 applied (with modifications) (6.1.1997) by S.I. 1996/2827, **reg. 22(3)(4)**

C506 S. 436 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 7**

C507 S. 436 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

437 Inspectors' reports.

(1) The inspectors may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State, and on the conclusion of their investigation shall make a final report to him.

Any such report shall be written or printed, as the Secretary of State directs.

[F567(1A) Any persons who have been appointed under section 431 or 432 may at any time and, if the Secretary of State directs them to do so, shall inform him of any matters coming to their knowledge as a result of their investigations.**]**

[F568(1B) If it appears to the Secretary of State that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(1C) Where an investigation is the subject of a direction under subsection (1B), the inspectors shall make a final report to the Secretary of State only where—

(a) they were appointed under section 432(1) (appointment in pursuance of an order of the court), or

(b) the Secretary of State directs them to do so.**]**

(2) If the inspectors were appointed under section 432 in pursuance of an order of the court, the Secretary of State shall furnish a copy of any report of theirs to the court.

(3) In any case the Secretary of State may, if he thinks fit—

(a) forward a copy of any report made by the inspectors to the company's registered office,

(b) furnish a copy on request and on payment of the prescribed fee to—

(i) any member of the company or other body corporate which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of that company or body corporate,

(iv) the applicants for the investigation,

(v) any other person whose financial interests appear to the Secretary of State to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and

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(c) cause any such report to be printed and published.

Textual Amendments

F567 S. 437(1A) inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 7**

F568 S. 437(1B)(1C) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 57**, 213(2)

Modifications etc. (not altering text)

C508 S. 437 extended (with modifications) by S.I. 1989/638, **regs. 18**, 21

C509 S. 437 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

438 Power to bring civil proceedings on company's behalf.

(1) **[**F569If from any report made or information obtained under this Part it appears to the Secretary of State**]** that any civil proceedings ought in the public interest to be brought by any body corporate, he may himself bring such proceedings in the name and on behalf of the body corporate.

(2) The Secretary of State shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section.

Textual Amendments

F569 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 58**, 213(2)

Modifications etc. (not altering text)

C510 S. 438 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 8**

C511 S. 438 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C512 S. 438(1): transfer of functions (5.1.1998) by virtue of S.I. 1997/2781, **art. 4(2)** (with art. 7)

439 Expenses of investigating a company's affairs.

[F570(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Secretary of State, but he may recover those expenses from the persons liable in accordance with this section.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.**]**

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under that section is liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this subsection is a first charge on the sums or property recovered.

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(4) A body corporate dealt with by **[**F571an inspectors' report**]**, where the inspectors were appointed otherwise than of the Secretary of State's own motion, is liable except where it was the applicant for the investigation, and except so far as the Secretary of State otherwise directs.

[F572(5) Where inspectors were appointed—

(a) under section 431, or

(b) on an application under section 442(3),

the applicant or applicants for the investigation is or are liable to such extent (if any) as the Secretary of State may direct.**]**

(6) The report of inspectors appointed otherwise than of the Secretary of State's own motion may, if they think fit, and shall if the Secretary of State so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subsection (4) or (5) of this section.

(7) For purposes of this section, any costs or expenses incurred by the Secretary of State in or in connection with proceedings brought under section 438 (including expenses incurred under subsection (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay the Secretary of State imposed by subsections (2) and (3) above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subsections (4) and (5); and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3).

(9) A person liable under any one of those subsections is entitled to contribution from any other person liable under the same subsection, according to the amount of their respective liabilities under it.

(10) Expenses to be defrayed by the Secretary of State under this section shall, so far as not recovered under it, be paid out of money provided by Parliament.

Textual Amendments

F570 S. 439(1) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 59(2)**, 213(2)

F571 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 59(3)**, 213(2)

F572 S. 439(5) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 59(4)**, 213(2)

Modifications etc. (not altering text)

C513 S. 439 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 8**

C514 S. 439 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

F573440 Power of Secretary of State to present winding-up petition.

. . . . . .

Textual Amendments

F573 S. 440 repealed and superseded by Companies Act 1989 (c. 40, SIF 27), ss. 60, 212, 213(2), **Sch. 24** and amended by 1995 c. 40, s. 5, **Sch. 4 para. 56**

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441 Inspectors' report to be evidence.

(1) A copy of any report of inspectors appointed under **[**F574this Part**]**, certified by the Secretary of State to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report **[**F575and, in proceedings on an application under **[**F576section 8 of the Company Directors Disqualification Act 1986**]**, as evidence of any fact stated therein**]**.

(2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

Textual Amendments

F574 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 61**, 213(2)

F575 Words inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 3**

F576 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C515 S. 441 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 9**

C516 S. 441 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Other powers of investigation available to the Secretary of State

442 Power to investigate company ownership.

(1) Where it appears to the Secretary of State that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this section may define the scope of their investigation (whether as respects the matter or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

[F577(3) If an application for investigation under this section with respect to particular shares or debentures of a company is made to the Secretary of State by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under section 431(2)(a) or (b), then, subject to the following provisions, the Secretary of State shall appoint inspectors to conduct the investigation applied for.

(3A) The Secretary of State shall not appoint inspectors if he is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Secretary of State is satisfied that it is unreasonable for it to be investigated.

(3B) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

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An order under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3C) If on an application under subsection (3) it appears to the Secretary of State that the powers conferred by section 444 are sufficient for the purposes of investigating the matters which inspectors would be appointed to investigate, he may instead conduct the investigation under that section.**]**

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existance of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

Textual Amendments

F577 S. 442(3)–(3C) substituted for s. 442(3) by Companies Act 1989 (c. 40, SIF 27), **ss. 62**, 213(2)

443 Provisions applicable on investigation under s. 442.

(1) For purposes of an investigation under section 442, sections 433(1), 434, 436 and 437 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to the following subsections.

(2) Those sections apply to—

(a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and

(b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,

as they apply in relation to officers and agents of the company or the other body corporate (as the case may be).

(3) If the Secretary of State is of opinion that there is good reason for not divulging any part of a report made by virtue of section 442 and this section, he may under section 437 disclose the report with the omission of that part; and he may cause to be kept by the registrar of companies a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

F578(4) . . . . . .

Textual Amendments

F578 S. 443(4) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

444 Power to obtain information as to those interested in shares, etc.

(1) If it appears to the Secretary of State that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to

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appoint inspectors for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Secretary of State.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this section, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is liable to imprisonment or a fine, or both.

445 Power to impose restrictions on shares and debentures.

(1) If in connection with an investigation under either section 442 or 444 it appears to the Secretary of State that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), he may by order direct that the shares shall until further order be subject to the restrictions of Part XV of this Act.

[[F579](1A) If the Secretary of State is satisfied that an order under subsection (1) may unfairly affect the rights of third parties in respect of shares then the Secretary of State, for the purpose of protecting such rights and subject to such terms as he thinks fit, may direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order, shall not constitute a breach of the restrictions of Part XV of this Act.**]**

(2) This section, and Part XV in its application to orders under it, apply in relation to debentures as in relation to shares **[**[F580]save that subsection (1A) shall not so apply.**]**

Textual Amendments

F579 S. 445(1A) inserted by S.I. 1991/1646, **reg. 5(a)**

F580 Words in s. 445(2) inserted by S.I. 1991/1646, **reg. 5(b)**

446 Investigation of share dealings.

(1) If it appears to the Secretary of State that there are circumstances suggesting that contraventions may have occurred, in relation to a company's shares or debentures, of section 323 or 324 (taken with Schedule 13), or of subsections (3) to (5) of section 328 (restrictions on share dealings by directors and their families; obligation of director to disclose shareholding in his own company), he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of their investigations to him.

(2) The appointment of inspectors under this section may limit the period to which their investigation is to extend or confine it to shares or debentures of a particular class, or both.

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(3) For purposes of an investigation under this section, sections 434 **[**F581to 437**]** apply—

(a) with the substitution, for references to any other body corporate whose affairs are investigated under section 433(1), of a reference to any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, or a subsidiary of its holding company, . . . F582

(b) F582

[F583(4) Sections 434 to 436 apply for the purposes of an investigation under this section to the following persons as they apply to officers of the company or of the other body corporate—

(a) an authorised person;

(b) a relevant professional;

(c) a person not falling within paragraph (a) or (b) who may carry on a regulated activity without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000; and

(d) in relation to an authorised person, to a relevant professional or to a person falling within paragraph (c)—

(i) if it is a body corporate, any person who is or has been an officer of it;

(ii) if it is a partnership, any person who is or has been a partner in it;

(iii) if it is an unincorporated association, any person who is or has been a member of its governing body or an officer of it.

F583(4A) In subsection (4)—

"authorised person" has the meaning given in section 31(2) of the Financial Services and Markets Act 2000;

"relevant professional" means a member of a profession in relation to which a body has been designated under section 326(1) of that Act, and, in relation to such a profession, "member" has the meaning given in section 325(2) of that Act.**]**

(5) F584

(6) F585

(7) F586

Textual Amendments

F581 Words substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 8**(*a*)

F582 S. 446(3)(b) and the word "and" preceding it repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

F583 S. 446(4)(4A) substituted (1.12.2001) for s. 446(4) by S.I. 2001/3649, **art. 21**

F584 S. 446(5) repealed by Financial Services Act 1986 (c. 60, SIF 69), ss. 182, 212(3), **Sch. 13 para. 8**(*b*), Sch. 17 Pt. I

F585 S. 446(6) repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I**

F586 S. 446(7) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

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PROSPECTIVE

[F587 Powers of Secretary of State to give directions to inspectors

Textual Amendments

F587 Ss. 446A, 446B and preceding cross-heading inserted (1.10.2007) by Companies Act 2006 (c. 46), **ss. 1035(1)**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48)

446A General powers to give directions

(1) In exercising his functions an inspector shall comply with any direction given to him by the Secretary of State under this section.

(2) The Secretary of State may give an inspector appointed under section 431, 432(2) or 442(1) a direction—

(a) as to the subject matter of his investigation (whether by reference to a specified area of a company's operation, a specified transaction, a period of time or otherwise), or

(b) which requires the inspector to take or not to take a specified step in his investigation.

(3) The Secretary of State may give an inspector appointed under any provision of this Part a direction requiring him to secure that a specified report under section 437—

(a) includes the inspector's views on a specified matter,

(b) does not include any reference to a specified matter,

(c) is made in a specified form or manner, or

(d) is made by a specified date.

(4) A direction under this section—

(a) may be given on an inspector's appointment,

(b) may vary or revoke a direction previously given, and

(c) may be given at the request of an inspector.

(5) In this section—

(a) a reference to an inspector's investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary);

(b) "specified" means specified in a direction under this section.

Modifications etc. (not altering text)

C517 S. 446A applied (with modifications) (E.W.S.) (6.4.2014) by The Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014 (S.I. 2014/574), regs. 1(1), **2**

446B Direction to terminate investigation

(1) The Secretary of State may direct an inspector to take no further steps in his investigation.

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(2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that—

(a) matters have come to light in the course of the inspector's investigation which suggest that a criminal offence has been committed, and

(b) those matters have been referred to the appropriate prosecuting authority.

(3) Where the Secretary of State gives a direction under this section, any direction already given to the inspector under section 437(1) to produce an interim report, and any direction given to him under section 446A(3) in relation to such a report, shall cease to have effect.

(4) Where the Secretary of State gives a direction under this section, the inspector shall not make a final report to the Secretary of State unless—

(a) the direction was made on the grounds mentioned in subsection (2) and the Secretary of State directs the inspector to make a final report to him, or

(b) the inspector was appointed under section 432(1) (appointment in pursuance of order of the court).

(5) An inspector shall comply with any direction given to him under this section.

(6) In this section, a reference to an inspector's investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary).**]**

Modifications etc. (not altering text)

C518 S. 446B applied (with modifications) (E.W.S.) (6.4.2014) by The Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014 (S.I. 2014/574), regs. 1(1), **2**

PROSPECTIVE

[F588Resignation, removal and replacement of inspectors

Textual Amendments

F588 Ss. 446C, 446D and preceding cross-heading inserted (1.10.2007) by Companies Act 2006 (c. 46), **ss. 1036**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48)

446C Resignation and revocation of appointment

(1) An inspector may resign by notice in writing to the Secretary of State.

(2) The Secretary of State may revoke the appointment of an inspector by notice in writing to the inspector.

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Modifications etc. (not altering text)

C519 S. 446C applied (with modifications) (E.W.S.) (6.4.2014) by The Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014 (S.I. 2014/574), regs. 1(1), **2**

446D Appointment of replacement inspectors

(1) Where—

(a) an inspector resigns,

(b) an inspector's appointment is revoked, or

(c) an inspector dies,

the Secretary of State may appoint one or more competent inspectors to continue the investigation.

(2) An appointment under subsection (1) shall be treated for the purposes of this Part (apart from this section) as an appointment under the provision of this Part under which the former inspector was appointed.

(3) The Secretary of State must exercise his power under subsection (1) so as to secure that at least one inspector continues the investigation.

(4) Subsection (3) does not apply if—

(a) the Secretary of State could give any replacement inspector a direction under section 446B (termination of investigation), and

(b) such a direction would (under subsection (4) of that section) result in a final report not being made.

(5) In this section, references to an investigation include any investigation the former inspector conducted under section 433(1) (power to investigate affairs of holding company or subsidiary).**]**

Modifications etc. (not altering text)

C520 S. 446D applied (with modifications) (E.W.S.) (6.4.2014) by The Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014 (S.I. 2014/574), regs. 1(1), **2**

PROSPECTIVE

I[F589 Power to obtain information from former inspectors etc

Textual Amendments

F589 S. 446E and preceding cross-heading inserted (1.10.2007) by Companies Act 2006 (c. 46), **ss. 1037(1)**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48)

446E Obtaining information from former inspectors etc

(1) This section applies to a person who was appointed as an inspector under this Part—

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(a) who has resigned, or
(b) whose appointment has been revoked.

(2) This section also applies to an inspector to whom the Secretary of State has given a direction under section 446B (termination of investigation).

(3) The Secretary of State may direct a person to whom this section applies to produce documents obtained or generated by that person during the course of his investigation to—
(a) the Secretary of State, or
(b) an inspector appointed under this Part.

(4) The power under subsection (3) to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—
(a) in hard copy form, or
(b) in a form from which a hard copy can be readily obtained.

(5) The Secretary of State may take copies of or extracts from a document produced in pursuance of this section.

(6) The Secretary of State may direct a person to whom this section applies to inform him of any matters that came to that person's knowledge as a result of his investigation.

(7) A person shall comply with any direction given to him under this section.

(8) In this section—
(a) references to the investigation of a former inspector or inspector include any investigation he conducted under section 433(1) (power to investigate affairs of holding company or subsidiary), and
(b) "document" includes information recorded in any form.**]**

Modifications etc. (not altering text)
C521 S. 446E applied (with modifications) (E.W.S.) (6.4.2014) by The Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014 (S.I. 2014/574), regs. 1(1), **2**

Requisition and seizure of books and papers

447 Secretary of State's power to require production of documents.

(1) **F590**

(2) The Secretary of State may at any time, if he thinks there is good reason to do so, give directions to **[**F591a company**]** requiring it, at such time and place as may be specified in the directions, to produce such **[**F592documents**]** as may be so specified.

(3) The Secretary of State may at any time, if he thinks there is good reason to do so, authorise an officer of his **[**F593or any other competent person**]**, on producing (if so required) evidence of his authority, to require **[**F594a company**]** to produce to him (the officer **[**F593or other person**]**) forthwith any **[**F595documents**]** which **[**F596he (the officer or other person)**]** may specify.

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(4) Where by virtue of subsection (2) or (3) the Secretary of State or an officer of his **[**F597or other person**]** has power to require the production of **[**F595documents**]** from **[**F598a company**]**, he or the officer **[**F597or other person**]** has the like power to require production of those **[**F595documents**]** from any person who appears to him or the officer **[**F597or other person**]** to be in possession of them; but where any such person claims a lien on **[**F595documents**]** produced by him, the production is without prejudice to the lien.

(5) The power under this section to require **[**F599a company**]** or other person to produce **[**F592documents**]** includes power—

(a) if the **[**F592documents**]** are produced—

(i) to take copies of them or extracts from them, and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, **[**F599the company**]** in question, to provide an explanation of any of them;

(b) if the **[**F592documents**]** are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce **[**F592documents**]** or provide an explanation or make a statement is not complied with, **[**F600the company**]** or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

[F601Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.**]**

(7) However, where a person is charged with an offence under subsection (6) in respect of a requirement to produce any **[**F592documents**]**, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

[F602(8A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(8B) Subsection (8A) applies to any offence other than—

(a) an offence under subsection (6) or section 451;

(b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath); or

(c) an offence under section 44(2) of the M44Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath).**]**

[F603(9) In this section "documents" includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.**]**

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Textual Amendments

F590 S. 447(1) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 63(2), 212, 213(2), **Sch. 24**
F591 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(a)**, 213(2)
F592 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(3)**, 213(2)
F593 Words inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(4)**, 213(2)
F594 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(a)**, 213(2)
F595 Word substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(3)**, 213(2)
F596 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(4)**, 213(2)
F597 Words inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(5)**, 213(2)
F598 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(b)**, 213(2)
F599 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(b)**, 213(2)
F600 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(c)**, 213(2)
F601 S. 447(6): second sentence substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(6)**, 213(2)
F602 S. 447(8A)(8B) inserted (14.4.2000 for E.W.N.I. and 1.1.2001 for S.) by 1999 c. 23, ss. 59, 68(3), **Sch. 3 para. 6** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2(a)**; S.S.I. 2000/445, **art. 2**
F603 S. 447(9) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 63(7)**, 213(2)

Modifications etc. (not altering text)

C522 S. 447 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 10**
C523 S. 447 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Marginal Citations

M44 1995 c. 39.

VALID FROM 06/04/2005

[F604 447A Information provided: evidence

(1) A statement made by a person in compliance with a requirement under section 447 may be used in evidence against him.

(2) But in criminal proceedings in which the person is charged with a relevant offence—

(a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution,

unless evidence relating to it is adduced or a question relating to it is asked in the proceedings by or on behalf of that person.

(3) A relevant offence is any offence other than the following—

(a) an offence under section 451,

(b) an offence under section 5 of the Perjury Act 1911 (false statement made otherwise than on oath), or

(c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statement made otherwise than on oath).]

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Textual Amendments

F604 S. 447A inserted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 17**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

[F605 448 Entry and search of premises.

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.

(2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part—:

(a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,

(b) that the Secretary of State, or the person so appointed or authorised, has power to require the production of the documents under this Part, and

(c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—

(a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of any such documents; and

(d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.

(5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(6) Any documents of which possession is taken under this section may be retained—

(a) for a period of three months; or

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(b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of an offence and liable to a fine.

Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.

(8) For the purposes of sections 449 and 451A (provision for security of information) documents obtained under this section shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.

(9) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.

(10) In this section "document" includes information recorded in any form.**]**

Textual Amendments

F605 S. 448 substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 64(1)**, 213(2)

Modifications etc. (not altering text)

C524 S. 448 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**

C525 S. 448 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C526 S. 448 restricted (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008 for specified purposes) by Companies Act 2006 (c. 46), **ss. 1126**, 1300 (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

C527 S. 448(3): powers of seizure extended (8.10.2004) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. I para. 35; S.I. 2004/1376, **art. 3**

C528 S. 448(6) applied (1.4.2003) by 2001 c. 16, ss. 57(1)(f), 138(2) (with s. 57(4)); S.I. 2003/708, **art. 2**

VALID FROM 06/04/2005

[F606**448A Protection in relation to certain disclosures: information provided to Secretary of State**

(1) A person who makes a relevant disclosure is not liable by reason only of that disclosure in any proceedings relating to a breach of an obligation of confidence.

(2) A relevant disclosure is a disclosure which satisfies each of the following conditions—

(a) it is made to the Secretary of State otherwise than in compliance with a requirement under this Part;

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(b) it is of a kind that the person making the disclosure could be required to make in pursuance of this Part;

(c) the person who makes the disclosure does so in good faith and in the reasonable belief that the disclosure is capable of assisting the Secretary of State for the purposes of the exercise of his functions under this Part;

(d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Secretary of State for the purposes of the exercise of those functions;

(e) the disclosure is not one falling within subsection (3) or (4).

(3) A disclosure falls within this subsection if the disclosure is prohibited by virtue of any enactment.

(4) A disclosure falls within this subsection if—

(a) it is made by a person carrying on the business of banking or by a lawyer, and

(b) it involves the disclosure of information in respect of which he owes an obligation of confidence in that capacity.

(5) An enactment includes an enactment—

(a) comprised in, or in an instrument made under, an Act of the Scottish Parliament;

(b) comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);

(c) whenever passed or made.**]**

Textual Amendments

F606 S. 448A inserted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 22**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

449 Provision for security of information obtained.

(1) No information or document relating to a **[**F607company**]** which has been obtained under section 447 . . . F608 shall, without the previous consent in writing of that **[**F607company**]**, be published or disclosed, except to a competent authority, unless the publication or disclosure is required—

[F609(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;**]**

[F610(ba) with a view to the institution of, or otherwise for the purposes of, any proceedings on an application under **[**F611section 6, 7 or 8 of the Company Directors Disqualification Act 1986**],]**

[F612(c) for the purposes of enabling or assisting any inspector appointed under this Part F613. . . to discharge his functions;**]**

[F614(cc) for the purpose of enabling or assisting any person authorised to exercise powers **[**F615section 447 of this Act**]** or section 84 of the Companies Act 1989 to discharge his functions;**]**

[F616(cd) for the purposes of enabling or assisting a person appointed under—

(i) section 167 of the Financial Services and Markets Act 2000 (general investigations),

(ii) section 168 of that Act (investigations in particular cases),

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(iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),

(iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or

(v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation to discharge his functions;**]**

[F617(d) for the purpose of enabling or assisting the **[**F618Secretary of State or the Treasury to exercise any of their functions**]** under this Act, the **[**F619insider dealing legislation**]**, **[**F620the Prevention of Fraud (Investments) Act M451958**]**, F621. . . the Insolvency Act M461986, the Company Directors Disqualification Act M471986, **[**F622, Part 2, 3 or 7 of the Companies Act 1989 or the Financial Services and Markets Act 2000;**]**.**]**

[F617(dd) for the purpose of enabling or assisting the Department of Economic Development for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by it under the enactments relating to companies to discharge his functions**]**

F623(de) . . . . . .

F623(df) . . . . . .

[F624(dg) for the purpose of enabling or assisting the Occupational Pensions Regulatory Authority to discharge their functions under the Pension Schemes Act 1993 or the Pensions Act 1995 or any enactment in force in Northern Ireland corresponding to either of them,**]**

(e) . . . . . .

[F625(f) for the purpose of enabling or assisting the Bank of England to discharge its functions,

[F625(fa) for the purposes of enabling or assisting the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident societies, under the Building Societies Act 1986, under Part 7 of the Companies Act 1989 or under the Financial Services and Markets Act 2000;

F625(fb) for the purposes of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 to discharge its functions under that Part;

F625(g) for the purposes of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager) to discharge its functions;

F625(h) for the purposes of any proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;

F625(ha) with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal;

F625(hb) for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to discharge its functions as such;

F625(hc) for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to discharge its functions in its capacity as a body designated under that section;**]]**

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[F626(hh) for the purpose of enabling or assisting a body established by order under section 46 of the Companies Act 1989 to discharge its functions under Part II of that Act, or of enabling or assisting a recognised supervisory or qualifying body within the meaning of that Part to discharge its functions as such;**]**

F627(i) . . . . . .

F628(j) . . . . . .

(k) for the purpose of enabling or assisting an official receiver to discharge his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 to discharge its functions as such,

(l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties,

[F629(ll) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties;**]**

[F630(m) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.**]**

[F631**[** In subsection (1)—

F632(1A) **[** F633(aa) in paragraph (hb) "recognised investment exchange" and "recognised clearing house" has the same meaning as in section 285 of the Financial Services and Markets Act 2000;**]**

(a) in paragraph (ll) "public servant" means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that paragraph by the Secretary of State by order made by statutory instrument; and

(b) in paragraph (m) "overseas regulatory authority" and "regulatory functions" have the same meaning as in section 82 of the Companies Act 1989.**]**

(1B) Subject to subsection (1C), subsection (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being **[**F634designated for the purposes of this subsection**]** by the Secretary of State by an order in a statutory instrument to discharge any functions which are specified in the order.

(1C) An order under subsection (1B) designating an authority for the purpose of that subsection may—

(a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that subsection; and

(b) otherwise restrict the circumstances in which that subsection permits publication or disclosure**]**.

F635(1D) . . . . . .

(2) A person who publishes or discloses any information or document in contravention of this section is guilty of an offence and liable to imprisonment or a fine, or both.

[F636Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.**]**

[F637**[** For the purposes of this section each of the following is a competent authority—

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F638(3) (a) the Secretary of State,

(b) an inspector appointed under this Part F639. . .,

[F640(ba) a person appointed under—

(i) section 167 of the Financial Services and Markets Act 2000 (general investigations),

(ii) section 168 of that Act (investigations in particular cases),

(iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),

(iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or

(v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation;**]**

(c) any person authorised to exercise powers **[**F641under section 447 of this Act**]** or section 84 of the Companies Act 1989,

(d) the Department of Economic Development in Northern Ireland,

(e) the Treasury,

(f) the Bank of England,

(g) the Lord Advocate,

(h) the Director of Public Prosecutions, and the Director of Public Prosecutions for Northern Ireland,

[F642(ha) the Financial Services Authority;**]**

(l) any constable,

(m) any procurator fiscal.

[F643(n) the Scottish Ministers.**]**

(3A) Any information which may by virtue of this section be disclosed to a competent authority may be disclosed to any officer or servant of the authority.**]]**

[F637(4) A statutory instrument containing an order under **[**F644subsection (1A)(a) or (1B)**]** is subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F607 The word "company" substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4**, otherwise 25.4.1991) for the word "body" by Companies Act 1989 (c. 40, SIF 27), **s. 65(2)(a)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**

F608 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

F609 S. 449(1)(*a*) substituted for s. 449(1)(*a*)(*b*) by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 9(1)**(*a*)

F610 S. 449(1)(*ba*) inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 4**

F611 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F612 S. 449(1)(c) substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **s. 65(2)(b)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**

F613 Words in s. 449(1)(c) repealed (1.12.2001) by S.I. 2001/3649, **art. 22(1)(2)(a)**

F614 S. 449(1)(cc) inserted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **s. 65(2)(c)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**

F615 Words in s. 449(1)(cc) substituted (1.12.2001) by S.I. 2001/3649, **art. 22(1)(3)**
F616 S. 449(1)(cd) inserted (1.12.2001) by S.I. 2001/3649, **art. 22(1)(4)**
F617 S. 449(1)(*d*)(*dd*) substituted for para. (*d*) by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 9(1)**(*b*)
F618 Words in s. 449(1)(d) substituted (7.7.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 1**
F619 Words in s. 449(1)(d) substituted (1.3.1994) by 1993 c. 36, s. art.3(2), 79(13), Sch. 5 para. 4(2); S.I. 1994/242, **art. 3(2)**
F620 Words repealed (29.4.1988 to the extent mentioned in S.I. 1988/740, art. 2, **Sch.** otherwise*prosp.*) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211, 212(3), **Sch. 17 Pt. I**
F621 Words in s. 449(1)(d) repealed (1.12.2001) by S.I. 2001/3649, **art. 22(1)(2)(b)**
F622 Words in s. 449(1)(d) substituted (1.12.2001) by S.I. 2001/3649, **art. 22(1)(5)**
F623 S. 449(1)(de)(df) repealed (1.12.2001) by S.I. 2001/3649, **art. 22(1)(2)(c)**
F624 S. 449(1)(dg) inserted (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 12** (with s. 121(5)); S.I. 1997/664, art. 2, **Sch. 1 Pt. II**
F625 S. 449(1)(fa)-(hc) substituted (1.12.2001) for s. 449(1)(fa)-(h) by S.I. 2001/3649, **art. 22(1)(6)**
F626 Para. (hh) inserted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4**, 25.4.1991 to the extent mentioned in S.I. 1991/878, art. 2, **Sch** and otherwise*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 65(2)(g)**, 215(2); S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**
F627 S. 449(1)(i) repealed (1.12.2001) by S.I. 2001/3649, **art. 22(1)(2)(d)**
F628 S. 449(1)(j) omitted (30.4.2001) by virtue of S.I. 2001/1283, **art. 3(3)(b)**
F629 Para. (ll) inserted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **s. 65(2)(h)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**
F630 Para. (m) ending with words "regulatory functions" substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) for para. (m) ending with the words "supervisory functions" by Companies Act 1989 (c. 40, SIF 27), **s. 62(2)(i)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, art. 2, **Sch.**
F631 S. 449(1A)–(1D) inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 9(2)**
F632 Subsection (1A) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(3)**, 213(2)
F633 S. 449(1A)(aa) inserted (1.12.2001) by S.I. 2001/3649, **art. 22(1)(7)**
F634 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(4)**, 213(2)
F635 S. 449(1D) repealed (1.12.2001) by S.I. 2001/3649, **art. 22(1)(8)**
F636 Sentence substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(5)**, 213(2)
F637 S. 449(3) and new s. 449(4) substituted for s. 449(3) by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 9(3)**
F638 S. 449(3) and new s. 449(3A) substituted for s. 449(3) by Companies Act 1989 (c. 40, SIF 27), **ss. 65(6)**, 213(2)
F639 Words in s. 449(3)(b) repealed (1.12.2001) by S.I. 2001/3649, **art. 22(1)(9)**
F640 S. 449(3)(ba) inserted (1.12.2001) by S.I. 2001/3649, **art. 22(1)(10)**
F641 Words in s. 449(3)(c) substituted (1.12.2001) by S.I. 2001/3649, **art. 22(1)(11)**
F642 S. 449(3)(ha) substituted (1.12.2001) for s. 449(3)(ha)-(k) by S.I. 2001/3649, **art. 22(1)(12)**
F643 S. 449(3)(n) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 para. 78**; S.I. 1998/3178, **art. 1(2)**
F644 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(7)**, 213(2)

Modifications etc. (not altering text)

C529 S. 449 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**
C530 S. 449 modified by Companies Act 1989 (c. 40, SIF 27), **ss. 88(3)(b)(5)(6)**, 213(2)
C531 S. 449 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
C532 S. 449(1): disclosure powers extended (14.12.2001) by 2001 c. 24, s. 17, **Sch. 4 Pt. I para. 24**
C533 S. 449(1A) amended by S.I. 1987/942, **art. 11**
C534 S. 449(1B) restricted (14.8.2002) by The Companies (Disclosure of Infoirmation) (Designated Authorities) (No. 2) Order 2002 (S.I. 2002/1889), **art. 2(2)**

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Marginal Citations

M45 1958 c.45 (**69**).
M46 1986 c.45 (**66**).
M47 1986 c.46 (**27**).

450 Punishment for destroying, mutilating, etc. company documents.

[F645(1) An officer of a company**]**. . . who—

(a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting, or relating to the **[**F646company's**]** property or affairs, or

(b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of **[**F647the company**]** or to defeat the law.

[F648(1A) Subsection (1) applies to an officer of an authorised insurance company which is not a body corporate as it applies to an officer of a company.**]**

(2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

[F649(4) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under this section.**]**

[F650(5) In this section "document" includes information recorded in any form.**]**

Textual Amendments

F645 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(2)**, 213(2)
F646 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(2)**, 213(2)
F647 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(2)**, 213(2)
F648 S. 450(1A) inserted (1.12.2001) by S.I. 2001/3649, **art. 23(1)(3)**
F649 S. 450(4) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(3)**, 213(2)
F650 S. 450(5) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(4)**, 213(2)

Modifications etc. (not altering text)

C535 S. 450 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**
C536 S. 450 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I** (as amended (4.3.2004) by S.I. 2004/355, **art. 9(2)**)
C537 S. 450 restricted (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008 for specified purposes) by Companies Act 2006 (c. 46), **ss. 1126**, 1300 (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)
C538 S. 450(1) amended (1.7.1994) by S.I. 1994/1696, reg. 68, **Sch. 8 Pt. I para. 9(1)(c)**

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451 Punishment for furnishing false information.

A person who, in purported compliance with a requirement imposed under section 447 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment or a fine, or both.

[F651Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.**]**

Textual Amendments

F651 S. 451: sentence substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 67**, 213(2)

Modifications etc. (not altering text)

C539 S. 451 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**

C540 S. 451 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F652451A Disclosure of information by Secretary of State or inspector.

(1) This section applies to information obtained under sections 434 to 446.

(2) The Secretary of State may, if he thinks fit—

(a) disclose any information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 449, or

(b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.

F653**[** Information to which this section applies may also be disclosed by an inspector (3) appointed under this Part to—

(a) another inspector appointed under this Part;

(b) a person appointed under—

(i) section 167 of the Financial Services and Markets Act 2000 (general investigations),

(ii) section 168 of that Act (investigations in particular cases),

(iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),

(iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or

(v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation; or

(c) a person authorised to exercise powers under—

(i) section 447 of this Act; or

(ii) section 84 of the Companies Act 1989 (exercise of powers to assist overseas regulatory authority).**]**

(4) Any information which may by virtue of subsection (3) be disclosed to any person may be disclosed to any officer or servant of that person.

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(5) The Secretary of State may, if he thinks fit, disclose any information obtained under section 444 to—

(a) the company whose ownership was the subject of the investigation,

(b) any member of the company,

(c) any person whose conduct was investigated in the course of the investigation,

(d) the auditors of the company, or

(e) any person whose financial interests appear to the Secretary of State to be affected by matters covered by the investigation.**]**

Textual Amendments

F652 S. 451A inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 10** and substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 68**, 213(2) Supplementary

F653 S. 451A(3) substituted (1.12.2001) by S.I. 2001/3649, **art. 24**

Modifications etc. (not altering text)

C541 S. 451A extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**

C542 S. 451A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

452 Privileged information.

(1) Nothing in sections 431 to 446 requires the disclosure to the Secretary of State or to an inspector appointed by him—

(a) by any person of information which he would in an action in the High Court or the Court of Session be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,

(b) F654

[F655(1A) Nothing in section 434, 443 or 446 requires a person (except as mentioned in subsection (1B) below) to disclose information or produce documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,

(b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(c) the making of the requirement is authorised by the Secretary of State.

(1B) Subsection (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under section 431, 432 or 433.**]**

(2) Nothing in sections 447 to 451 compels the production by any person of a document which he would in an action in the High Court or the Court of Session be entitled to refuse to produce on grounds of legal professional privilege, or authorises the taking of possession of any such document which is in the person's possession.

(3) The Secretary of State shall not under section 447 require, or authorise an officer of his **[**F656or other person**]** to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either

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it appears to the Secretary of State that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person, **[**F657or the customer is—.

(a) a person on whom a requirement has been imposed under that section, or

(b) a person on whom a requirement to produce information or documents has been imposed by the Secretary of State, or by a person appointed by the Secretary of State to conduct an investigation, under section 171 or 173 of the Financial Services and Markets Act 2000.**]**

Textual Amendments

F654 S. 452(1)(b) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 69(2), 212, 213(2), **Sch. 24**

F655 S. 452(1A)(1B) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 69(3)**, 213(2)

F656 Words inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 69(4)**, 213(2)

F657 S. 452(3)(a)(b) and words substituted (1.12.2001) for words in s. 452(3) by S.I. 2001/3649, **art. 25**

Modifications etc. (not altering text)

C543 S. 452 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**

C544 S. 452 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

453 Investigation of oversea companies.

[F658(1) The provisions of this Part apply to bodies corporate incorporated outside Great Britain which are carrying on business in Great Britain, or have at any time carried on business there, as they apply to companies under this Act; but subject to the following exceptions, adaptations and modifications.

(1A) The following provisions do not apply to such bodies—

(a) section 431 (investigation on application of company or its members),

(b) section 438 (power to bring civil proceedings on the company's behalf),

(c) sections 442 to 445 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and

(d) section 446 (investigation of share dealings).

(1B) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be specified by regulations made by the Secretary of State.**]**

(2) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F658 S. 453(1)(1A)(1B) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 70**, 213(2)

VALID FROM 06/04/2005

[F659453A Power to enter and remain on premises

(1) An inspector or investigator may act under subsection (2) in relation to a company if—

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(a) he is authorised to do so by the Secretary of State, and

(b) he thinks that to do so will materially assist him in the exercise of his functions under this Part in relation to the company.

(2) An inspector or investigator may at all reasonable times—

(a) require entry to relevant premises, and

(b) remain there for such period as he thinks necessary for the purpose mentioned in subsection (1)(b).

(3) Relevant premises are premises which the inspector or investigator believes are used (wholly or partly) for the purposes of the company's business.

(4) In exercising his powers under subsection (2), an inspector or investigator may be accompanied by such other persons as he thinks appropriate.

(5) A person who intentionally obstructs a person lawfully acting under subsection (2) or (4)—

(a) is guilty of an offence, and

(b) is liable on conviction to a fine.

(6) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to the offence under subsection (5).

(7) An inspector is a person appointed under section 431, 432 or 442.

(8) An investigator is a person authorised for the purposes of section 447.**]**

Textual Amendments

F659 Ss. 453A, 453B inserted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 23**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

Modifications etc. (not altering text)

C545 S. 453A restricted (20.1.2007, 6.4.2007, 1.10.2007 for specified purposes) by Companies Act 2006 (c. 46), **ss. 1126**, 1300 (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

VALID FROM 06/04/2005

[F659 453B Power to enter and remain on premises: procedural

(1) This section applies for the purposes of section 453A.

(2) The requirements of subsection (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under section 453A(2)(a).

(3) The requirements are—

(a) the inspector or investigator must produce evidence of his identity and evidence of his appointment or authorisation (as the case may be);

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(b) any person accompanying the inspector or investigator must produce evidence of his identity.

(4) The inspector or investigator must, as soon as practicable after obtaining entry, give to an appropriate recipient a written statement containing such information as to—

(a) the powers of the investigator or inspector (as the case may be) under section 453A;

(b) the rights and obligations of the company, occupier and the persons present on the premises,

as may be prescribed by regulations.

(5) If during the time the inspector or investigator is on the premises there is no person present who appears to him to be an appropriate recipient for the purposes of subsection (8), the inspector or investigator must as soon as reasonably practicable send to the company—

(a) a notice of the fact and time that the visit took place, and

(b) the statement mentioned in subsection (4).

(6) As soon as reasonably practicable after exercising his powers under section 453A(2), the inspector or investigator must prepare a written record of the visit and—

(a) if requested to do so by the company he must give it a copy of the record;

(b) in a case where the company is not the sole occupier of the premises, if requested to do so by an occupier he must give the occupier a copy of the record.

(7) The written record must contain such information as may be prescribed by regulations.

(8) If the inspector or investigator thinks that the company is the sole occupier of the premises an appropriate recipient is a person who is present on the premises and who appears to the inspector or investigator to be—

(a) an officer of the company, or

(b) a person otherwise engaged in the business of the company if the inspector or investigator thinks that no officer of the company is present on the premises.

(9) If the inspector or investigator thinks that the company is not the occupier or sole occupier of the premises an appropriate recipient is—

(a) a person who is an appropriate recipient for the purposes of subsection (8), and (if different)

(b) a person who is present on the premises and who appears to the inspector or investigator to be an occupier of the premises or otherwise in charge of them.

(10) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F659 Ss. 453A, 453B inserted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 23**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 06/04/2005

[F660 453C Failure to comply with certain requirements

(1) This section applies if a person fails to comply with a requirement imposed by an inspector, the Secretary of State or an investigator in pursuance of either of the following provisions—

(a) section 447;

(b) section 453A.

(2) The inspector, Secretary of State or investigator (as the case may be) may certify the fact in writing to the court.

(3) If, after hearing—

(a) any witnesses who may be produced against or on behalf of the alleged offender;

(b) any statement which may be offered in defence,

the court is satisfied that the offender failed without reasonable excuse to comply with the requirement, it may deal with him as if he had been guilty of contempt of the court.**]**

Textual Amendments

F660 S. 453C inserted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 24**, 65; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

VALID FROM 06/04/2008

[F661 453D Offences by bodies corporate

Where an offence under any of sections 448, 449 to 451 and 453A is committed by a body corporate, every officer of the body who is in default also commits the offence. For this purpose—

(a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and

(b) if the body is a company, any shadow director is treated as an officer of the company.**]**

Textual Amendments

F661 S. 453D inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 82** (with arts. 6, 11, 12)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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PART XV

ORDERS IMPOSING RESTRICTIONS ON SHARES (SECTIONS 210, 216, 445)

454 Consequence of order imposing restrictions.

(1) So long as any shares are directed to be subject to the restrictions of this Part **[**F662then, subject to any directions made in relation to an order pursuant to sections 210(5A), 216(1B), 445(1A) or 456(1A) or subject in the case of an interim order pursuant to section 216(1A) to the termsof that order**]**—

(a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of them, is void;

(b) no voting rights are exercisable in respect of the shares;

(c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; and

(d) except in a liquidation, no payment shall be made of any sums due from the company on the shares, whether in respect of capital or otherwise.

(2) Where shares are subject to the restrictions of subsection (1)(a), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them is void (except **[**F663such agreement or right as may be made or exercised under the terms of directions made by the Secretary of State or the court under sections 210(5A), 216(1B), 445(1A), 456(1A) or of an interim order made under section 216(1A) or**]**an agreement to **[**F664transfer**]** the shares on the making of an order under section 456(3)(b) below).

(3) Where shares are subject to the restrictions of subsection (1)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation) is void (except **[**F665such agreement or right as may be made or exercised under the terms of directions made by the Secretary of State or the court under sections 210(5A), 216(1B), 445(1A), 456(1A) or of an interim order made under section 216(1A) or**]**an agreement to transfer any such right on the **[**F664transfer**]** of the shares on the making of an order under section 456(3)(b) below).

Extent Information

E1 Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

Textual Amendments

F662 Words in s. 454(1) inserted by S.I. 1991/1646, **reg. 6(a)**

F663 Words in s. 454(2) inserted by S.I. 1991/1646, **reg. 6(b)**

F664 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 10(2)**

F665 Words in s. 454(3) inserted by S.I. 1991/1646, **reg. 6(c)**

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455 Punishment for attempted evasion of restrictions.

(1) **[**F666Subject to the terms of any directions made under sections 210(5A), 216(1B) or 445(1A) or 456 or of an interim order made under section 216(1A)**]** a person is liable to a fine if he—

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the restrictions of this Part or of any right to be issued with any such shares, or

(b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them, or

(c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy, or

(d) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 454(2) or (3).

(2) **[**F667Subject to the terms of any directions made under sections 210(5A), 216(1B), 445(1A) or 456 or of an interim order made under section 216(1A)**]** if shares in a company are issued in contravention of the restrictions, the company and every officer of it who is in default is liable to a fine.

(3) Section 732 (restriction on prosecutions) applies to an offence under this section.

Extent Information

E2 Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

Textual Amendments

F666 Words in s. 455(1) inserted by S.I. 1991/1646, **reg. 7(a)**

F667 Words in s. 455(2) inserted by S.I. 1991/1646, **reg. 7(b)**

Modifications etc. (not altering text)

C546 S. 455 restricted (20.1.2007, 6.4.2007 for specified purposes) by Companies Act 2006 (c. 46), **ss. 1126**, 1300 (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**

456 Relaxation and removal of restrictions.

(1) Where shares in a company are by order made subject to the restrictions of this Part, application may be made to the court for an order directing that the shares be no longer so subject.

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[F668(1A) Where the court is satisfied that an order subjecting the shares tothe restrictions of this Part unfairly affects the rights of third parties in respect of shares then the court, for the purpose of protecting such rights and subject to such terms as it thinks fit and in addition to any order it may make under subsection (1), may direct on an application made under that subsection that such acts by such persons or descriptions of persons and for such purposes, as may be set out in the order, shall not constitute a breach of the restrictions of Part XV of this Act.

Subsection (3) does not apply to an order made under this subsection.**]**

(2) If the order applying the restrictions was made by the Secretary of State, or he has refused to make an order disapplying them, the application may be made by any person aggrieved; and if the order was made by the court under section 216 (non-disclosure of share holding), it may be made by any such person or by the company.

(3) Subject as follows, an order of the court or the Secretary of State directing that shares shall cease to be subject to the restrictions may be made only if—

(a) the court or (as the case may be) the Secretary of State is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or

(b) the shares are to be **[**F669transferred for valuable consideration**]** and the court (in any case) or the Secretary of State (if the order was made under section 210 or 445) approves the **[**F669transfer**]**.

(4) **[**F670Without prejudice to the power of the court to give directions under subsection (1A),**]** where shares in a company are subject to the restrictions, the court may on application order the shares to be sold, subject to the court's approval as to the sale, and may also direct that the shares shall cease to be subject to the restrictions.

An application to the court under this subsection may be made by the Secretary of State (unless the restrictions were imposed by court order under section 216), or by the company.

(5) Where an order has been made under subsection (4), the court may on application make such further order relating to the sale or transfer of the shares as it thinks fit.

An application to the court under this subsection may be made—

(a) by the Secretary of State (unless the restrictions on the shares were imposed by court order under section 216), or

(b) by the company, or

(c) by the person appointed by or in pursuance of the order to effect the sale, or

(d) by any person interested in the shares.

(6) An order (whether of the Secretary of State or the court) directing that shares shall cease to be subject to the restrictions of this Part, if it is—

(a) expressed to be made with a view to permitting a transfer of the shares, or

(b) made under subsection (4) of this section,

may continue the restrictions mentioned in paragraphs (c) and (d) of section 454(1), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

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(7) Subsection (3) does not apply to an order directing that shares shall cease to be subject to any restrictions which have been continued in force in relation to those shares under subsection (6).

Extent Information

E3 Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

Textual Amendments

F668 S. 456(1A) inserted by S.I. 1991/1646, **regs. 8(a)**, 9

F669 Words in s. 456(3)(b) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 10(1)**

F670 Words in s. 456(4) inserted by S.I. 1991/1646, **reg. 8(b)**

457 Further provisions on sale by court order of restricted shares.

(1) Where shares are sold in pursuance of an order of the court under section 456(4) the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and any such person may apply to the court for the whole or part of those proceeds to be paid to him.

(2) On application under subsection (1) the court shall (subject as provided below) order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the shares at the time of their sale, such proportion of those proceeds and interest as is equal to the proportion which the value of the applicant's interest in the shares bears to the total value of the shares.

(3) On granting an application for an order under section 456(4) or (5) the court may order that the applicant's costs be paid out of the proceeds of sale; and if that order is made, the applicant is entitled to payment of his costs out of those proceeds before any person interested in the shares in question receives any part of those proceeds.

Extent Information

E4 Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

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PART XVI

FRAUDULENT TRADING BY A COMPANY

458 Punishment for fraudulent trading.

If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner is liable to imprisonment or a fine, or both.

This applies whether or not the company has been, or is in the course of being, wound up.

Modifications etc. (not altering text)
C547 S. 458 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 12**
C548 S. 458 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

PART XVII

PROTECTION OF COMPANY'S MEMBERS AGAINST UNFAIR PREJUDICE

459 Order on application of company member.

(1) A member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is **[**F671unfairly prejudicial to the interests of its members generally or of some part of its members**]** (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

[F672(3) In this section (and so far as applicable for the purposes of this section, in section 461(2)) 'company' means any company within the meaning of this Act or any company which is not such a company but is a statutory water company within the meaning of **[**F673the Statutory Water Companies Act 1991**].]**

Textual Amendments
F671 Words in s. 459(1) substituted (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 11(a)**
F672 S. 459(3) inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 71(3)** (with 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
F673 Words in s. 459(3) substituted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130) ss. 2(1), 4(2), Sch. 1 para. 40(2)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)
C549 S. 459 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

460 Order on application of Secretary of State.

[F674(1) If it appears to the Secretary of State that—

(a) the affairs of a company to which this subsection applies are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members, or

(b) any actual or proposed act or omission of a company to which this subsection applies, including an act or omission on its behalf, is or would be so prejudicial,

he may himself (in addition to or instead of presenting a petition for the winding up of the company) apply to the court by petition for an order under this Part.

(1A) Subsection (1) applies to a company in respect of which—

(a) the Secretary of State has received a report under section 437 of this Act;

(b) the Secretary of State has exercised his powers under section 447 or 448 of this Act;

(c) the Secretary of State or the Financial Services Authority has exercised his or its powers under Part 11 of the Financial Services and Markets Act 2000; or

(d) the Secretary of State has received a report from an investigator appointed by him or the Financial Services Authority under that Part.**]**

(2) In this section (and, so far as applicable for its purposes, in the section next following) "company" means any body corporate which is liable to be wound up under this Act.

Textual Amendments
F674 S. 460(1)(1A) substituted (1.12.2001) for s. 460(1) by S.I. 2001/3649, **arts. 1**, 26

Modifications etc. (not altering text)
C550 S. 460 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I** (as amended (4.3.2004) by S.I. 2004/355, **art. 9(3)**)
C551 S. 460(2) amended (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 40(1)**

461 Provisions as to petitions and orders under this Part.

(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may—

(a) regulate the conduct of the company's affairs in the future,

(b) require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do,

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct,

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(d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this Part requires the company not to make any, or any specified, alteration in the memorandum or articles, the company does not then have power without leave of the court to make any such alteration in breach of that requirement.

(4) Any alteration in the company's memorandum or articles made by virtue of an order under this Part is of the same effect as if duly made by resolution of the company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.

(5) An office copy of an order under this Part altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

[F675(6) The power under **[**F676section 411 of the Insolvency Act**]** to make rules shall, so far as it relates to a winding-up petition, apply for the purposes of a petition under this Part.**]**

Textual Amendments

F675 S. 461(6) substituted (E.W.S.) by Insolvency Act 1985 (c. 65, SIF 27), s. 109, Sch. 6 para. 24, **Sch. 9 para. 9**

F676 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C552 S. 461 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

PART XVIII

FLOATING CHARGES AND RECEIVERS (SCOTLAND)

Modifications etc. (not altering text)

C553 Pt. XVIII (ss. 462–487) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 13**

CHAPTER I

FLOATING CHARGES

Modifications etc. (not altering text)

C554 Chap. I (ss. 462–466) extended by Industrial and Provident Societies Act 1967 (c.48, SIF 55), **s. 3**, as substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **ss. 21**, 26(2)

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462 Power of incorporated company to create floating charge.

(1) It is competent under the law of Scotland for an incorporated company (whether a company within the meaning of this Act or not), for the purpose of securing any debt or other obligation (including a cautionary obligation) incurred or to be incurred by, or binding upon, the company or any other person, to create in favour of the creditor in the debt or obligation a charge, in this Part referred to as a floating charge, over all or any part of the property (including uncalled capital) which may from time to time be comprised in its property and undertaking.

(2) F677

(4) References in this Part to the instrument by which a floating charge was created are, in the case of a floating charge created by words in a bond or other written acknowledgment, references to the bond or, as the case may be, the other written acknowledgment.

(5) Subject to this Act, a floating charge has effect in accordance with this Part **[**F678and Part III of the Insolvency Act 1986**]** in relation to any heritable property in Scotland to which it relates, notwithstanding that the instrument creating it is not recorded in the Register of Sasines or, as appropriate, registered in accordance with the M48Land Registration (Scotland) Act 1979.

Textual Amendments

F677 S. 462(2) substituted for S. 462(2)(3) by Companies Act 1989 (c. 40, SIF 27), s. 130(7), **Sch. 17 para. 8** and repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), Sch. 8 para. 33(6), **Sch. 9**

F678 Words inserted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C555 S. 462 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

Marginal Citations

M48 1979 c. 33.

463 Effect of floating charge on winding up.

(1) **[**F679Where a company goes into liquidation within the meaning of section 247(2) of the Insolvency Act 1986,**]** a floating charge created by the company attaches to the property then comprised in the company's property and undertaking or, as the case may be, in part of that property and undertaking, but does so subject to the rights of any person who—

(a) has effectually executed diligence on the property or any part of it; or

(b) holds a fixed security over the property or any part of it ranking in priority to the floating charge; or

(c) holds over the property or any part of it another floating charge so ranking.

(2) The provisions of **[**F680Part IV of the Insolvency Act (except section 185)**]** have effect in relation to a floating charge, subject to subsection (1), as if the charge were a fixed security over the property to which it has attached in respect of the principal of the debt or obligation to which it relates and any interest due or to become due thereon.

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[F681(3) Nothing in this section derogates from the provisions of sections 53(7) and 54(6) of the Insolvency Act (attachment of floating charge on appointment of receiver), or prejudices the operation of sections 175 and 176 of that Act (payment of preferential debts in winding up)**]**.

(4) F682. . . interest accrues, in respect of a floating charge which after 16th November 1972 attaches to the property of the company, until payment of the sum due under the charge is made.

Textual Amendments

F679 Words substituted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(1)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 4)

F680 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F681 S. 463(3) substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F682 Words repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

Modifications etc. (not altering text)

C556 S. 463 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

464 Ranking of floating charges.

(1) Subject to subsection (2), the instrument creating a floating charge over all or any part of the company's property under section 462 may contain—

(a) provisions prohibiting or restricting the creation of any fixed security or any other floating charge having priority over, or ranking pari passu with, the floating charge; or

(b) **[**F683with the consent of the holder of any subsisting floating charge or fixed security which would be adversely affected,**]** provisions regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over that property or any part of it.

[F684(1A) Where an instrument creating a floating charge contains any such provision as is mentioned in subsection (1)(a), that provision shall be effective to confer priority on the floating charge over any fixed security or floating charge created after the date of the instrument.**]**

(2) Where all or any part of the property of a company is subject both to a floating charge and to a fixed security arising by operation of law, the fixed security has priority over the floating charge.

[F685(3) The order of ranking of the floating charge with any other subsisting or future floating charges or fixed securities over all or any part of the company's property is determined in accordance with the provisions of subsections (4) and (5) except where it is determined in accordance with any provision such as is mentioned in paragraph (a) or (b) of subsection (1).**]**

(4) Subject to the provisions of this section—

(a) a fixed security, the right to which has been constituted as a real right before a floating charge has attached to all or any part of the property of the company, has priority of ranking over the floating charge;

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(b) floating charges rank with one another according to the time of registration in accordance with Chapter II of Part XII;

(c) floating charges which have been received by the registrar for registration by the same postal delivery rank with one another equally.

(5) Where the holder of a floating charge over all or any part of the company's property which has been registered in accordance with Chapter II of Part XII has received intimation in writing of the subsequent registration in accordance with that Chapter of another floating charge over the same property or any part thereof, the preference in ranking of the first-mentioned floating charge is restricted to security for—

(a) the holder's present advances;

(b) future advances which he may be required to make under the instrument creating the floating charge or under any ancillary document;

(c) interest due or to become due on all such advances; [F686]. . .

(d) any expenses or outlays which may reasonably be incurred by the holder **[**[F687];and

(e) (in the case of a floating charge to secure a contingent liability other than a liability arising under any further advances made from time to time) the maximum sum to which that contingent liability is capable of amounting whether or not it is contractually limited.**]**

(6) This section is subject to **[**[F688]Part XII and to**][**[F689]sections 175 and 176 of the Insolvency Act**]**.

Textual Amendments

F683 Words inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(3)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 5)

F684 S. 464(1A) inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(4)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 6)

F685 S. 464(3) substituted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(5)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 7)

F686 Word repealed (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**; S.I. 1995/1352, **art. 3(a)(c)**

F687 S. 464(5)(e) and the word "and" immediately preceding it inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **s. 140(6)**; S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 8)

F688 Words inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(7)**, 213(2)

F689 Words substituted by virtue of Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 19** and Insolvency Act 1986 (c.45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C557 S. 464 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C558 S. 464(1A) restricted (20.5.1995) by S.I. 1995/1352, **art. 6**

C559 S. 464(3) restricted (20.5.1995) by S.I. 1995/1352, **art. 7**

465 Continued effect of certain charges validated by Act of 1972.

(1) Any floating charge which—

(a) purported to subsist as a floating charge on 17th November 1972, and

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(b) if it had been created on or after that date, would have been validly created by virtue of the [M49]Companies (Floating Charges and Receivers) (Scotland) Act 1972,

is deemed to have subsisted as a valid floating charge as from the date of its creation.

(2) Any provision which—

(a) is contained in an instrument creating a floating charge or in any ancillary document executed prior to, and still subsisting at, the commencement of that Act,

(b) relates to the ranking of charges, and

(c) if it had been made after the commencement of that Act, would have been a valid provision,

is deemed to have been a valid provision as from the date of its making.

Marginal Citations

M49 1972 c. 67.

466 Alteration of floating charges.

(1) The instrument creating a floating charge under section 462 or any ancillary document may be altered by the execution of an instrument of alteration by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.

(2) **[**[F690]Without prejudice to any enactment or rule of law regarding the execution of documents,**]** such an instrument of alteration is validly executed if it is executed—

[F691](a) . . . . . .

(b) where trustees for debenture-holders are acting under and in accordance with a trust deed, by those trustees **[**[F692]; or**]**

(c) where, in the case of a series of secured debentures, no such trustees are acting, by or on behalf of—

(i) a majority in nominal value of those present or represented by proxy and voting at a meeting of debenture-holders at which the holders of at least one-third in nominal value of the outstanding debentures of the series are present or so represented; or

(ii) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series; [F693]. . .

(3) Section 464 applies to an instrument of alteration under this section as it applies to an instrument creating a floating charge.

[[F694](4) Subject to the next subsection, section 410(2) and (3) and section 420 apply to an instrument of alteration under this section which—

(a) prohibits or restricts the creation of any fixed security or any other floating charge having priority over, or ranking pari passu with, the floating charge; or

(b) varies, or otherwise regulates the order of, the ranking of the floating charge in relation to fixed securities or to other floating charges; or

(c) releases property from the floating charge; or

(d) increases the amount secured by the floating charge.

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(5) Section 410(2) and (3) and section 420 apply to an instrument of alteration falling under subsection (4) of this section as if references in the said sections to a charge were references to an alteration to a floating charge, and as if in section 410(2) and (3)—

(a) references to the creation of a charge were references to the execution of such alteration; and

(b) for the words from the beginning of subsection (2) to the word "applies" there were substituted the words "Every alteration to a floating charge created by a company".**]**

(6) Any reference (however expressed) in any enactment, including this Act, to a floating charge is, for the purposes of this section and unless the context otherwise requires, to be construed as including a reference to the floating charge as altered by an instrument of alteration **[**[F695]falling under subsection (4) of this section**]**.

Textual Amendments

F690 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 9(a)**

F691 S. 466(2)(1.10.1990) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 212, 213(2), Sch. 17 para. 9(b), **Sch. 24**

F692 Word inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 9(c)**

F693 S. 466(2)(d) and the word "or" preceding it repealed by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 212, 213(2), Sch. 17 para. 9(d), **Sch. 24**

F694 S. 466(4)(5) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 140(8), 212, 213(2), 215(2), **Sch. 24**

F695 Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 140(8), 212, 213(2), 215(2), **Sch. 24**

Modifications etc. (not altering text)

C560 S. 466 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C561 S. 466(1)-(3)(6) applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

CHAPTER II

RECEIVERS

[F696]467–485 . . . . . .

Textual Amendments

F696 Ss. 467–485 repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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CHAPTER III

GENERAL

486 Interpretation for Part XVIII generally.

(1) In this Part, unless the context otherwise requires, the following expressions have the following meanings respectively assigned to them, that is to say—

"ancillary document" means—

(a) a document which relates to the floating charge and which was executed by the debtor or creditor in the charge before the registration of the charge in accordance with Chapter II or Part XII; or

(b) an instrument of alteration such as is mentioned in section 466 in this Part;

"company", . . . [F697], means an incorporated company (whether a company within the meaning of this Act or not);

"fixed security", in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of section 9(8) of the [M50]Conveyancing and Feudal Reform (Scotland) Act 1970;

[F697] . . . . . .

[F697] . . . . . .

[F697] . . . . . .

[F697] . . . . . .

"Register of Sasines" means the appropriate division of the General Register of Sasines.

Textual Amendments

F697 S. 486: words and the definitions of "instrument of appointment", "prescribed", "receiver" and "register of charges" repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

Modifications etc. (not altering text)

C562 S. 486 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**
S. 486 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Marginal Citations

M50 1970 c. 35.

487 Extent of Part XVIII.

This Part extends to Scotland only.

Modifications etc. (not altering text)

C563 S. 487 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**
S. 487 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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PART XIX

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

F698 488–. . . . . .
500

Textual Amendments

F698 Ss. 488–650 repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

PART XX

WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

Modifications etc. (not altering text)

C564 Pt. 20 modified (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. {426(10)(b)}, 458(1)(3); S.I. 2003/333,{art. 2}, Sch. (as amended by S.I. 2003/531)

F699 CHAPTERS I–V

. . . . . .

Textual Amendments

F699 Ss. 488–650 repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

F700 501–. . . . . .
650

Textual Amendments

F700 Ss. 488-650 repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 438, Sch. 12 (with saving for ss. 615, 615A, 615B (24.3.2003) by virtue of Proceeds of Crime Act 2002 (c. 29), **ss. 427(6)**, 458(1)(3)); S.I. 2003/333, **art. 2**, Sch. (as amended by S.I. 2003/531)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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CHAPTER VI

MATTERS ARISING SUBSEQUENT TO WINDING UP

651 Power of court to declare dissolution of company void.

(1) Where a company has been dissolved, the court may . . . [F701], on an application made for the purpose by the liquidator of the company or by any other person appearing to the court to be interested, make an order, on such terms as the court thinks fit, declaring the dissolution to have been void.

(2) Thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) It is the duty of the person on whose application the order was made, within 7 days after its making (or such further time as the court may allow), to deliver to the registrar of companies for registration an office copy of the order.

If the person fails to do so, he is liable to a fine and, for continued contravention, to a daily default fine.

[[F702](4) Subject to the following provisions, an application under this section may not be made after the end of the period of two years from the date of the dissolution of the company.

(5) An application for the purpose of bringing proceedings against the company—

(a) for damages in respect of personal injuries (including any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (funeral expenses)), or

(b) for damages under the Fatal Accidents Act 1976 or the Damages (Scotland) Act 1976,

may be made at any time; but no order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.

(6) Nothing in subsection (5) affects the power of the court on making an order under this section to direct that the period between the dissolution of the company and the making of the order shall not count for the purposes of any such enactment.

(7) In subsection (5)(a) "personal injuries" includes any disease and any impairment of a person's physical or mental condition.**]**

Textual Amendments

F701 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 141(2)(5), 212, 213(2), **Sch. 24**

F702 S. 651(4)–(7) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 141(3)–(5)**, 213(1)

Modifications etc. (not altering text)

C565 S. 651 excluded by Companies Act 1989 (c. 40, SIF 27), **ss. 141(4)(5)**, 213(2)
S. 651 applied (with modifications) (E.W.) (1.11.1992) by Charities Act 1960 (c. 58), **s. 30(3)** (as inserted (1.11.1992) by Charities Act 1992 (c. 41), **s. 10(1)**; S.I. 1992/1900, art. 3, **Sch.2**).
S. 651 modified (E.W.) (1.8.1993) by 1993 c. 10, **ss. 63(3)**, 99(1)
S. 651 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C566 S. 651(1) extended (31.10.1994) by 1994 c. 21, **s. 36(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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S. 651 extended (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 51(1)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

652 Registrar may strike defunct company off register.

(1) If the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer to it, he shall within 14 days after the expiration of that month send to the company by post a registered letter referring to the first letter, and stating that no answer to it has been received, and that if an answer is not received to the second letter within one month from its date, a notice will be published in the Gazette with a view to striking the company's name off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of 3 months from the date of that notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in a case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator (if any) a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice of this in the Gazette; and on the publication of that notice in the Gazette the company is dissolved.

(6) However—

(a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and

(b) nothing in subsection (5) affects the power of the court to wind up a company the name of which has been struck off the register.

(7) A notice to be sent to a liquidator under this section may be addressed to him at his last known place of business; and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company.

If there is no officer of the company whose name and address are known to the registrar of companies, the letter or notice may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Modifications etc. (not altering text)
C567 S. 652 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

C568 S. 652 extended (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 51(2)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

[F703 652A Registrar may strike private company off register on application.

(1) On application by a private company, the registrar of companies may strike the company's name off the register.

(2) An application by a company under this section shall—

(a) be made on its behalf by its directors or by a majority of them,

(b) be in the prescribed form, and

(c) contain the prescribed information.

(3) The registrar shall not strike a company off under this section until after the expiration of 3 months from the publication by him in the Gazette of a notice—

(a) stating that he may exercise his power under this section in relation to the company, and

(b) inviting any person to show cause why he should not do so.

(4) Where the registrar strikes a company off under this section, he shall publish notice of that fact in the Gazette.

(5) On the publication in the Gazette of a notice under subsection (4), the company to which the notice relates is dissolved.

(6) However, the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved.

(7) Nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.**]**

Textual Amendments

F703 Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2**, 3(a)

Modifications etc. (not altering text)

C569 S. 652A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

F704 652B Duties in connection with making application under section 652A.

(1) A person shall not make an application under section 652A on behalf of a company if, at any time in the previous 3 months, the company has—

(a) changed its name,

(b) traded or otherwise carried on business,

(c) made a disposal for value of property or rights which, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or

(d) engaged in any other activity, except one which is—

(i) necessary or expedient for the purpose of making an application under section 652A, or deciding whether to do so,

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(ii) necessary or expedient for the purpose of concluding the affairs of the company,

(iii) necessary or expedient for the purpose of complying with any statutory requirement, or

(iv) specified by the Secretary of State by order for the purposes of this sub-paragraph.

(2) For the purposes of subsection (1), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

(3) A person shall not make an application under section 652A on behalf of a company at a time when any of the following is the case—

(a) an application has been made to the court under section 425 on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;

(b) a voluntary arrangement in relation to the company has been proposed under Part I of [M51] the Insolvency Act 1986 and the matter has not been finally concluded;

(c) an administration order in relation to the company is in force under Part II of that Act or a petition for such an order has been presented and not finally dealt with or withdrawn;

(d) the company is being wound up under Part IV of that Act, whether voluntarily or by the court, or a petition under that Part for the winding up of the company by the court has been presented and not finally dealt with or withdrawn;

(e) there is a receiver or manager of the company's property;

(f) the company's estate is being administered by a judicial factor.

(4) For the purposes of subsection (3)(a), the matter is finally concluded if—

(a) the application has been withdrawn,

(b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or

(c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.

(5) For the purposes of subsection (3)(b), the matter is finally concluded if—

(a) no meetings are to be summoned under section 3 of the Insolvency [M52]Act 1986,

(b) meetings summoned under that section fail to approve the arrangement with no, or the same, modifications,

(c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act, has been fully implemented, or

(d) the court makes an order under subsection (5) of section 6 of that Act revoking approval given at previous meetings and, if the court gives any directions under subsection (6) of that section, the company has done whatever it is required to do under those directions.

(6) A person who makes an application under section 652A on behalf of a company shall secure that a copy of the application is given, within 7 days from the day on which the application is made, to every person who, at any time on that day, is—

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(a) a member of the company,
(b) an employee of the company,
(c) a creditor of the company,
(d) a director of the company,
(e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
(f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State.

(7) Subsection (6) shall not require a copy of the application to be given to a director who is a party to the application.

(8) The duty imposed by subsection (6) shall cease to apply if the application is withdrawn before the end of the period for giving the copy application.

(9) The Secretary of State may by order amend subsection (1) for the purpose of altering the period in relation to which the doing of the things mentioned in paragraphs (a) to (d) of that subsection is relevant.

Textual Amendments
F704 Ss. 652A-625F inserted (1.7.1995) by 1994 c. 40, s.13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2**, 3(a)

Modifications etc. (not altering text)
C570 S. 652B applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Marginal Citations
M51 1986 c. 45.
M52 1986 c. 45.

F705 652C Directors' duties following application under section 652A.

(1) Subsection (2) applies in relation to any time after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn.

(2) A person who is a director of the company at the end of a day on which a person other than himself becomes—
(a) a member of the company,
(b) an employee of the company,
(c) a creditor of the company,
(d) a director of the company,
(e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
(f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State,

shall secure that a copy of the application is given to that person within 7 days from that day.

(3) The duty imposed by subsection (2) shall cease to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.

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(4) Subsection (5) applies where, at any time on or after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn—

(a) the company—

(i) changes its name,

(ii) trades or otherwise carries on business,

(iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under section 652A, or

(iv) engages in any other activity, except one to which subsection (6) applies;

(b) an application is made to the court under section 425 on behalf of the company for the sanctioning of a compromise or arrangement;

(c) a voluntary arrangement in relation to the company is proposed under Part I of the [M53] Insolvency Act 1986;

(d) a petition is presented for the making of an administration order under Part II of that Act in relation to the company;

(e) there arise any of the circumstances in which, under section 84(1) of that Act, the company may be voluntarily wound up;

(f) a petition is presented for the winding up of the company by the court under Part IV of that Act;

(g) a receiver or manager of the company's property is appointed; or

(h) a judicial factor is appointed to administer the company's estate.

(5) A person who, at the end of a day on which an event mentioned in any of paragraphs (a) to (h) of subsection (4) occurs, is a director of the company shall secure that the company's application is withdrawn forthwith.

(6) This subsection applies to any activity which is—

(a) necessary or expedient for the purpose of making, or proceeding with, an application under section 652A,

(b) necessary or expedient for the purpose of concluding affairs of the company which are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application,

(c) necessary or expedient for the purpose of complying with any statutory requirement, or

(d) specified by the Secretary of State by order for the purposes of this subsection.

(7) For the purposes of subsection (4)(a), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

Textual Amendments

F705 Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2**, 3(a)

Modifications etc. (not altering text)

C571 S. 652C applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M53 1986 c. 45.

F706 652D Sections 652B and 652C: supplementary provisions.

(1) For the purposes of sections 652B(6) and 652C(2), a document shall be treated as given to a person if it is delivered to him or left at his proper address or sent by post to him at that address.

(2) For the purposes of subsection (1) and section 7 of the Interpretation M54 Act 1978 (which relates to the service of documents by post) in its application to that subsection, the proper address of any person shall be his last known address, except that—

(a) in the case of a body corporate, other than one to which subsection (3) applies, it shall be the address of its registered or principal office,

(b) in the case of a partnership, other than one to which subsection (3) applies, it shall be the address of its principal office, and

(c) in the case of a body corporate or partnership to which subsection (3) applies, it shall be the address of its principal office in the United Kingdom.

(3) This subsection applies to a body corporate or partnership which—

(a) is incorporated or formed under the law of a country or territory outside the United Kingdom, and

(b) has a place of business in the United Kingdom.

(4) Where a creditor of the company has more than one place of business, subsection (1) shall have effect, so far as concerns the giving of a document to him, as if for the words from "delivered" to the end there were substituted "left, or sent by post to him, at each place of business of his with which the company has had dealings in relation to a matter by virtue of which he is a creditor of the company."

(5) Any power to make an order or regulations under section 652B or 652C shall—

(a) include power to make different provision for different cases or classes of case,

(b) include power to make such transitional provisions as the Secretary of State considers appropriate, and

(c) be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(6) For the purposes of sections 652B and 652C, an application under section 652A is withdrawn if notice of withdrawal in the prescribed form is given to the registrar of companies.

(7) In sections 652B and 652C, "disposal" includes part disposal.

(8) In sections 652B and 652C and this section, "creditor" includes a contingent or prospective creditor.

Textual Amendments
F706 Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2**, 3(a)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)
C572 S. 652D applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Marginal Citations
M54 1978 c. 30.

[F707]652E Sections 652B and 652C: enforcement.

(1) A person who breaches or fails to perform a duty imposed on him by section 652B or 652C is guilty of an offence and liable to a fine.

(2) A person who fails to perform a duty imposed on him by section 652B(6) or 652C(2) with the intention of concealing the making of the application in question from the person concerned is guilty of an offence and liable to imprisonment or a fine, or both.

(3) In any proceedings for an offence under subsection (1) consisting of breach of a duty imposed by section 652B(1) or (3), it shall be a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts which led to the breach.

(4) In any proceedings for an offence under subsection (1) consisting of failure to perform the duty imposed by section 652B(6), it shall be a defence for the accused to prove that he took all reasonable steps to perform the duty.

(5) In any proceedings for an offence under subsection (1) consisting of failure to perform a duty imposed by section 652C(2) or (5), it shall be a defence for the accused to prove—

(a) that at the time of the failure he was not aware of the fact that the company had made an application under section 652A, or

(b) that he took all reasonable steps to perform the duty.

Textual Amendments
F707 Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2**, 3(a)

Modifications etc. (not altering text)
C573 S. 652E applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F708]652F Other offences connected with section 652A.

(1) Where a company makes an application under section 652A, any person who, in connection with the application, knowingly or recklessly furnishes any information to the registrar of companies which is false or misleading in a material particular is guilty of an offence and liable to a fine.

(2) Any person who knowingly or recklessly makes an application to the registrar of companies which purports to be an application under section 652A, but which is not, is guilty of an offence and liable to a fine.

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Textual Amendments

F708 Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2**, 3(a)

Modifications etc. (not altering text)

C574 S. 652F applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

653 Objection to striking off by person aggrieved.

(1) **[**F709Subsection (2)**]** applies if a company or any member or creditor of it feels aggrieved by the company having been struck off the register **[**F710under section 652**]**.

(2) The court, on an application by the company or the member or creditor made before the expiration of 20 years from publication in the Gazette of notice under section 652, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the company's name to be restored.

[F711(2A) Subsections (2B) and (2D) apply if a company has been struck off the register under section 652A.

F711(2B) The court, on an application by a notifiable person made before the expiration of 20 years from publication in the Gazette of notice under section 652A(4), may, if satisfied—

(a) that any duty under section 652B or 652C with respect to the giving to that person of a copy of the company's application under section 652A was not performed,

(b) that the making of the company's application under section 652A involved a breach of duty under section 652B(1) or (3), or

(c) that it is for some other reason just to do so,

order the company's name to be restored to the register.

F711(2C) In subsection (2B), "notifiable person" means a person to whom a copy of the company's application under section 652A was required to be given under section 652B or 652C.

F711(2D) The court, on an application by the Secretary of State made before the expiration of 20 years from publication in the Gazette of notice under section 652A(4), may, if satisfied that it is in the public interest to do so, order the company's name to be restored.**]**

(3) On an office copy of **[**F712an order under subsection (2), (2B) or (2D)**]** being delivered to the registrar of companies for registration the company **[**F713to which the order relates**]** is deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position (as nearly as may be) as if the company's name had not been struck off.

Textual Amendments

F709 Words in s. 653(1) substituted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(2)(a)**; S.I. 1995/1433, **arts. 2**, 3(2)

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F710 Words in s. 653(1) inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(2)(b)**; S.I. 1995/1433, **arts. 2**, 3(2)

F711 S. 653(2A)-(2D) inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(3)**; S.I. 1995/1433, **arts. 2**, 3(2)

F712 Words in s. 653(3) substituted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(4)(a)**; S.I. 1995/1433, **arts. 2**, 3(2)

F713 Words in s. 653(3) inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(4)(b)**; S.I. 1995/1433, **arts. 2**, 3(2)

Modifications etc. (not altering text)

C575 S. 653 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C576 S. 653(2) applied (with modifications) (E.W.) (1.11.1992) by Charities Act 1960 (c. 58), **s. 30(4)** (as inserted (1.11.1992) by Charities Act 1992 (c. 41), **s. 10(1)**; S.I. 1992/1900, art. 3, **Sch. 2**).
S. 653(2) modified (E.W.) (1.8.1993) by 1993 c. 10, **ss. 63(4)**, 99(1)
S. 653(2) extended (31.10.1994) by 1994 c. 21, **s. 36(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
S. 653(2) extended (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 51(2)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

654 Property of dissolved company to be bona vacantia.

(1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for any other person) are deemed to be bona vacantia and—

(a) accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be), and

(b) vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

(2) Except as provided by the section next following, the above has effect subject and without prejudice to any order made by the court under section 651 or 653.

Modifications etc. (not altering text)

C577 Ss. 654–656 applied with modifications by Building Societies Act 1986 (c. 53, SIF 16), s. 90, **Sch. 15 para. 57**

C578 S. 654 excluded (19. 12. 1991) by Commercial and Private Bank Act 1991 (c. xxii), **s. 14(2)**
S. 654 excluded (5.11.1993) by 1993 c. xvii, **s. 16(2)**
S. 654 excluded (5.11.1993) by 1993 c. xviii, **s. 14(2)**
S. 654 excluded by 1998 c. v, **s. 10(2)**, in accordance with instructions in s. 3 of that Act
S. 654 excluded (coming into force in accordance with s. 3 of the amending Act) by 1999 c. iv, **ss. 3**, 14(2)
S. 654 excluded (22.3.2001) by 2001 c. i, **ss. 3**, 12(2) (with s. 13)
S. 654 excluded (4.12.2001) by 2001 c. v, **ss. 3**, 12(2)
S. 654 excluded (7.11.2002) by HSBC Investment Banking Act 2002 (c. iii), **s. 11(2)**
S. 654 excluded (7.11.2002) by Barclays Group Reorganisation Act 2002 (c. iv), **s. 15(2)**
S. 654 excluded by HBOS Group Reorganisation Act 2006 (c. i), ss. 9, **18(2)**

C579 S. 654 applied (with modifications) (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 68(1)(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**
S. 654 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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655 Effect on s. 654 of company's revival after dissolution.

(1) The person in whom any property or right is vested by section 654 may dispose of, or of an interest in, that property or right notwithstanding that an order may be made under section 651 or 653.

(2) Where such an order is made—

(a) it does not affect the disposition (but without prejudice to the order so far as it relates to any other property or right previously vested in or held on trust for the company), and

(b) the Crown or, as the case may be, the Duke of Cornwall shall pay to the company an amount equal to—

(i) the amount of any consideration received for the property or right, or interest therein, or

(ii) the value of any such consideration at the time of the disposition,

or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.

(3) Where a liability accrues under subsection (2) in respect of any property or right which, before the order under section 651 or 653 was made, had accrued as bona vacantia to the Duchy of Lancaster, the Attorney General of the Duchy shall represent Her Majesty in any proceedings arising in connection with that liability.

(4) Where a liability accrues under subsection (2) in respect of any property or right which, before the order under section 651 or 653 was made, had accrued as bona vacantia to the Duchy of Cornwall, such persons as the Duke of Cornwall (or other possessor for the time being of the Duchy) may appoint shall represent the Duke (or other possessor) in any proceedings arising out of that liability.

(5) This section applies in relation to the disposition of any property, right or interest on or after 22nd December 1981, whether the company concerned was dissolved before, on or after that day.

Modifications etc. (not altering text)

C580 Ss. 654–656 applied with modifications by Building Societies Act 1986 (c. 53, SIF 16), s. 90, **Sch. 15 para. 57**
S. 655 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C581 S. 655 applied (with modifications) (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 68(1)(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

656 Crown disclaimer of property vesting as bona vacantia.

(1) Where property vests in the Crown under section 654, the Crown's title to it under that section may be disclaimed by a notice signed by the Crown representative, that is to say the Treasury Solicitor, or, in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer

(2) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.

(3) A notice of disclaimer under this section is of no effect unless it is executed—

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(a) within 12 months of the date on which the vesting of the property under section 654 came to the notice of the Crown representative, or

(b) if an application in writing is made to the Crown representative by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of 3 months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.

(4) A statement in a notice of disclaimer of any property under this section that the vesting of it came to the notice of the Crown representative on a specified date, or that no such application as above mentioned was received by him with respect to the property before a specified date, is sufficient evidence of the fact stated, until the contrary is proved.

(5) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him; and copies of it shall be published in the Gazette and sent to any persons who have given the Crown representative notice that they claim to be interested in the property.

(6) This section applies to property vested in the Duchy of Lancaster or the Duke of Cornwall under section 654 as if for references to the Crown and the Crown representative there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to that Duchy, or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

Modifications etc. (not altering text)

C582 Ss. 654–656 applied with modifications by Building Societies Act 1986 (c. 53, SIF 16), s. 90, **Sch. 15 para. 57**

C583 S. 656 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 68(1)(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**
S. 656 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

657 Effect of Crown disclaimer under s. 656.

(1) Where notice of disclaimer is executed under section 656 as respects any property, that property is deemed not to have vested in the Crown under section 654.

[[F714](2) As regards property in England and Wales **[**[F715]section 178(4) and sections 179 to 182 of the Insolvency Act**]** shall apply as if the property had been disclaimed by the liquidator under the said section 91 immediately before the dissolution of the company.**]**

(3) As regards property in Scotland, the following 4 subsections apply.

(4) The Crown's disclaimer operates to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed; but it does not (except so far as is necessary for the purpose of releasing the company and its property from liability) affect the rights or liabilities of any other person.

(5) The court may, on application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Act in respect of disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting

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of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just.

(6) On such a vesting order being made, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignation for that purpose.

(7) Part II of Schedule 20 has effect for the protection of third parties where the property disclaimed is held under a lease.

Textual Amendments

F714 S. 657(2) substituted by Insolvency Act 1985 (c. 65, SIF 66), ss. 109, 235, Sch. 6 para. 46, **Sch. 9 para. 9**

F715 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C584 S. 657 applied with modifications by Building Societies Act 1986 (c. 53, SIF 16), s. 90, **Sch. 15 para. 57**
S. 657 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C585 S. 657 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 68(1)(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

658 Liability for rentcharge on company's land after dissolution.

[F716(1) **[**F717Section 180 of the Insolvency Act**]** shall apply to land in England and Wales which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under that section.**]**

(2) In this section "company" includes any body corporate.

Textual Amendments

F716 S. 658(1) substituted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 47**

F717 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C586 S. 658 applied with modifications by Building Societies Act 1986 (c. 53, SIF 16), s. 90, **Sch. 15 para. 57**
S. 658 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
S. 658 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 68(1)(2)(3)** (with ss. 7(5), 9(4)); S.I. 1993/16, art. 2, **Sch.3**

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CHAPTER VII

MISCELLANEOUS PROVISIONS ABOUT WINDING UP

F718659–662 . . . . . .

Textual Amendments

F718 Ss. 659–662 repealed (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

F719663 . . . . . .

Textual Amendments

F719 S. 663 repealed by Insolvency Act 1985 (c. 65, SIF 66), s. 253, **Sch. 10 Pt. II**

F720664 . . . . . .

Textual Amendments

F720 Ss. 664–674 repealed (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

PART XXI

Modifications etc. (not altering text)

C587 Pt. 21 modified (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. {426(10)(b)}, 458(1)(3); S.I. 2003/333,{art. 2}, Sch. (as amended by S.I. 2003/531)

F721665–674 . . . . . .

Textual Amendments

F721 Ss. 664–674 repealed (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

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PART XXII

BODIES CORPORATE SUBJECT, OR BECOMING SUBJECT, TO THIS ACT (OTHERWISE THAN BY ORIGINAL FORMATION UNDER PART I)

CHAPTER I

COMPANIES FORMED OR REGISTERED UNDER FORMER COMPANIES ACTS

675 Companies formed and registered under former Companies Acts.

(1) In its application to existing companies, this Act applies in the same manner—

(a) in the case of a limited company (other than a company limited by guarantee), as if the company had been formed and registered under Part I of this Act as a company limited by shares,

(b) in the case of a company limited by guarantee, as if the company had been formed and registered under that Part as a company limited by guarantee, and

(c) in the case of a company other than a limited company, as if the company had been formed and registered under that Part as an unlimited company.

(2) But reference, express or implied, to the date of registration is to be read as the date at which the company was registered under the Joint Stock Companies Acts, the [M55]Companies Act 1862, the [M56] Companies (Consolidation) Act 1908 the [M57]Companies Act 1929, or the [M58]Companies Act 1948.

Marginal Citations

M55 1862 25 & 26 Vict. c. 89

M56 1908 8 Edw. 7 c. 69

M57 1929 c. 23.

M58 1948 c. 38.

676 Companies registered but not formed under former Companies Acts.

(1) This Act applies to every company registered but not formed under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidated) Act 1908, the Companies Act 1929, or the Companies Act 1948, in the same manner as it is in Chapter II of this Part declared to apply to companies registered but not formed under this Act.

(2) But reference, express or implied, to the date of registration is to be read as referring to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929, or the Companies Act 1948.

677 Companies re-registered with altered status under former Companies Acts.

(1) This Act applies to every unlimited company registered or re-registered as limited in pursuance of the [M59] Companies Act 1879, section 57 of the [M60]Companies (Consolidation) Act 1908, section 16 of the [M61]Companies Act 1929, section 16 of the [M62]Companies Act 1948 or section 44 of the [M63]Companies Act 1967 as it (this

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Act) applies to an unlimited company re-registered as limited in pursuance of Part II of this Act.

(2) But reference, express or implied, to the date of registration or re-registration is to be read as referring to the date at which the company was registered or re-registered as a limited company under the relevant enactment.

Marginal Citations

M59 1879 42 & 43 Vict. c. 76
M60 1908 8 Edw. 7 c. 69
M61 1929 c. 23.
M62 1948 c. 38.
M63 1967 c. 81.

678 Companies registered under Joint Stock Companies Acts.

(1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power of altering articles under section 9 of this Act extends, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

679 Northern Ireland and Irish companies.

Nothing in sections 675 to 678 applies to companies registered in Northern Ireland or the Republic of Ireland.

CHAPTER II

COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION, BUT AUTHORISED TO REGISTER

Modifications etc. (not altering text)

C588 Pt. XXII Ch. II (ss. 680-690) modified (E.W.) (1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 11(1)**, 17(2)
C589 Pt. XXII Ch. II (ss. 680-690) applied (30.9.2009) by The Manchester Ship Canal Harbour Revision Order 2009 (S.I. 2009/2579), **art. 3** (with art. 4)
C590 Pt. XXII Ch. II (ss. 680-690) applied (30.9.2009) by The Mersey Docks and Harbour Revision Order 2009 (S.I. 2009/2604), **art. 3** (with art. 4)

680 Companies capable of being registered under this Chapter.

(1) With the exceptions and subject to the provisions contained in this section and the next—

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(a) any company consisting of two or more members, which was in existence on 2nd November 1862, including any company registered under the Joint Stock Companies Acts, and

(b) any company formed after that date (whether before or after the commencement of this Act), in pursuance of any Act of Parliament (other than this Act), or of letters patent, or being otherwise duly constituted according to law, and consisting of two or more members,

may at any time, on making application in the prescribed form, register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration is not invalid by reason that it has taken place with a view to the company's being wound up.

[F722(1A) A company shall not be prevented from registering under this Act as a private company limited by shares or by guarantee solely because it has only one member.**]**

(2) A company registered in any part of the United Kingdom under the M64Companies Act 1862 the M65 Companies (Consolidation) Act 1908the M66Companies Act 1929 or the M67Companies Act 1948 shall not register under this section.

(3) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company, shall not register under this section.

(4) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee.

(5) A company that is not a joint stock company shall not register under this section as a company limited by shares.

Textual Amendments

F722 S. 680(1A) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.7**.

Marginal Citations

M64 1862 25 & 26 Vict. c. 89

M65 1908 8 Edw. 7 c. 69

M66 1929 c. 23.

M67 1948 c. 38.

681 Procedural requirements for registration.

(1) A company shall not register under section 680 without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed) at a general meeting summoned for the purpose.

(2) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as required by subsection (1) shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.

(3) In computing any majority under this section when a poll is demanded, regard is to be had to the number of votes to which each member is entitled according to the company's regulations.

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(4) Where a company is about to register (under section 680) as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the company's assets, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the company's debts and liabilities contracted before he ceased to be a member, and of the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(5) Before a company is registered under section 680, it shall deliver to the registrar of companies—

(a) a statement that the registered office of the company is to be situated in England and Wales, or in Wales, or in Scotland (as the case may be).

(b) a statement specifying the intended situation of the company's registered office after registration, and

(c) in an appropriate case, if the company wishes to be registered with the Welsh equivalent of "public limited company" or, as the case may be, "limited" as the last words or word of its name, a statement to that effect.

(6) Any statement delivered to the registrar under subsection (5) shall be made in the prescribed form.

Modifications etc. (not altering text)
C591 S. 681 restricted (E.W.)(1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 13(3)**, 17(2)

682 Change of name on registration.

(1) Where the name of a company seeking registration under section 680 is a name by which it is precluded from registration by section 26 of this Act, either because it falls within subsection (1) of that section or, if it falls within subsection (2), because the Secretary of State would not approve the company's being registered with that name, the company may change its name with effect from the date on which it is registered under this Chapter.

(2) A change of name under this section requires the like assent of the company's members as is required by section 681 for registration.

683 Definition of "joint stock company".

(1) For purposes of this Chapter, as far as relates to registration of companies as companies limited by shares, "joint stock company" means a company—

(a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and

(b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company when registered with limited liability under this Act is deemed a company limited by shares.

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684 Requirements for registration by joint stock companies.

(1) Before the registration under section 680 of a joint stock company, there shall be delivered to the registrar of companies the following documents—

(a) a statement in the prescribed form specifying the name with which the company is proposed to be registered,

(b) a list in the prescribed form showing the names and addresses of all persons who on a day named in the list **[**F723(not more than 28 clear days before the day of registration)**]** were members of the company, with the addition of the shares or stock held by them respectively (distinguishing, in cases where the shares are numbered, each share by its number), and

(c) a copy of any Act of Parliament, royal charter, letters patent, deed or settlement, contract of copartnery or other instrument constituting or regulating the company.

(2) If the company is intended to be registered as a limited company, there shall also be delivered to the registrar of companies a statement in the prescribed form specifying the following particulars—

(a) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists, and

(b) the number of shares taken and the amount paid on each share.

Textual Amendments

F723 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 12**

685 Registration of joint stock company as public company.

(1) A joint stock company applying to be registered under section 680 as a company limited by shares may, subject to—

(a) satisfying the conditions set out in section 44(2)(a) and (b) (where applicable) and section 45(2) to (4) as applied by this section, and

(b) complying with subsection (4) below,

apply to be so registered as a public company.

(2) Sections 44 and 45 apply for this purpose as in the case of a private company applying to be re-registered under section 43, but as if a reference to the special resolution required by section 43 were to the joint stock company's resolution that it be a public company.

(3) The resolution may change the company's name by deleting the word "company" or the words "and company", or its or their equivalent in Welsh ("cwmni", "a'r cwmni"), including any abbreviation of them.

(4) The joint stock company's application shall be made in the form prescribed for the purpose, and shall be delivered to the registrar of companies together with the following documents (as well as those required by section 684), namely—

(a) a copy of the resolution that the company be a public company,

(b) a copy of a written statement by an accountant with the appropriate qualifications that in his opinion a relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves,

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(c) a copy of the relevant balance sheet, together with a copy of an unqualified report (by an accountant with such qualifications) in relation to that balance sheet,

(d) a copy of any valuation report prepared under section 44(2)(b) as applied by this section, and

(e) **[**F724subject to subsection (4A),**]**a statutory declaration in the prescribed form by a director or secretary of the company—

(i) that the conditions set out in section 44(2)(a) and (b) (where applicable) and section 45(2) to (4) have been satisfied, and

(ii) that, between the balance sheet date referred to in paragraph (b) of this subsection and the joint stock company's application, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called up share capital and undistributable reserves.

[F725(4A) In place of the statutory declaration referred to in paragraph (e) of subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.**]**

(5) The registrar may accept a declaration under subsection (4)(e) **[**F726or statement under subsection (4A)**]** as sufficient evidence that the conditions referred to in that paragraph have been satisfied.

(6) In this section—

"accountant with the appropriate qualifications" means **[**F727a person who would be eligible**]** for appointment as the company's auditor, if it were a company registered under this Act,

"relevant balance sheet" means a balance sheet prepared as at a date not more that 7 months before the joint stock company's application to be registered as a public company limited by shares, and

"undistributable reserves" has the meaning given by section 264(3);

and section 46 applies (with necessary modifications) for the interpretation of the reference in subsection (4)(c) above to an unqualified report by the accountant.

[F728(6A) Any person who makes a false statement under subsection (4A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

Textual Amendments

F724 Words in s. 685(4)(e) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(2)**

F725 S. 685(4A) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(3)**

F726 Words in s. 685(5) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(4)**

F727 Words in s. 685(6) substituted by S.I. 1991/1997, reg. 2, **Sch. para. 53(2)**.

F728 S. 685(6A) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(5)**

686 Other requirements for registration.

(1) Before the registration in pursuance of this Chapter of any company (not being a joint stock company), there shall be delivered to the registrar of companies—

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(a) a statement in the prescribed form specifying the name with which the company is proposed to be registered,

[F729(b) a list showing with respect to each director or manager of the company—

(i) in the case of an individual, his name, address, occupation and date of birth,

(ii) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office,**]**

(c) a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the company, and

(d) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

[F730(1A) For the purposes of subsection (1)(b)(i) a person's "name" means his Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.**]**

(2) **[**F731Subject to subsection (2A), the lists**]** of members and directors and any other particulars relating to the company which are required by this Chapter to be delivered to the registrar shall be verified by a statutory declaration in the prescribed form made by any two or more directors or other principal officers of the company.

[F732(2A) In place of the statutory declaration referred to in subsection (2), there may be delivered to the registrar of companies using electronic communications a statement made by any two or more directors or other principal officers of the company verifying the matters set out in that subsection.**]**

(3) The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether a company proposing to be registered is or is not a joint stock company as defined by section 683.

[F733(3A) Any person who makes a false statement under subsection (2A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

Textual Amendments

F729 S. 686(1)(*b*) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 5(2)**

F730 S. 686(1A) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 5(3)**

F731 Words in s. 686(2) substituted (22.12.2000) by S.I. 2000/3373, **art. 25(1)(2)**

F732 S. 686(2A) inserted (22.12.2000) by S.I. 2000/3373, **art. 25(1)(3)**

F733 S. 686(3A) inserted (22.12.2000) by S.I. 2000/3373, **art. 25(1)(4)**

687 Name of company registering.

(1) The following applies with respect to the name of a company registering under this Chapter (whether a joint stock company or not).

(2) If the company is to be registered as a public company, its name must end with the words "public limited company" or, if it is stated that the company's registered office is to be situated in Wales, with those words or their equivalent in Welsh ("cwmni cyfyngedig cyhoeddus"); and those words or that equivalent may not be preceded by the word "limited" or its equivalent in Welsh ("cyfyngedig").

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(3) In the case of a company limited by shares or by guarantee (not being a public company), the name must have "limited" as its last word (or, if the company's registered office is to be situated in Wales, "cyfyngedig"); but this is subject to section 30 (exempting a company, in certain circumstances, from having "limited" as part of the name).

(4) If the company is registered with limited liability, then any additions to the company's name set out in the statements delivered under section 684(1)(a) or 686(1)(a) shall form and be registered as the last part of the company's name.

688 Certificate of registration under this Chapter.

(1) On compliance with the requirements of this Chapter with respect to registration, the registrar of companies shall give a certificate (which may be signed by him, or authenticated by his official seal) that the company applying for registration is incorporated as a company under this Act and, in the case of a limited company, that it is limited.

(2) On the issue of the certificate, the company shall be so incorporated; and a banking company in Scotland so incorporated is deemed a bank incorporated, constituted or established by or under Act of Parliament.

(3) The certificate is conclusive evidence that the requirements of this Chapter in respect of registration, and of matters precedent and incidental to it, have been complied with.

(4) Where on an application by a joint stock company to register as a public company limited by shares the registrar of companies is satisfied that the company may be registered as a public company so limited, the certificate of incorporation given under this section shall state that the company is a public company; and that statement is conclusive evidence that the requirements of section 685 have been complied with and that the company is a public company so limited.

689 Effect of registration.

Schedule 21 to this Act has effect with respect to the consequences of registration under this Chapter, the vesting of property, savings for existing liabilities, continuation of existing actions, status of the company following registration, and other connected matters.

690 Power to substitute memorandum and articles for deed of settlement.

(1) Subject as follows, a company registered in pursuance of this Chapter may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of sections 4 to 6 of this Act with respect to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations (so far as applicable) apply, but with the following modifications—

(a) there is substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles, and

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(b) on the delivery to the registrar of the substituted memorandum and articles or the date when the alteration is no longer liable to be cancelled by order of the court (whichever is the later)—

(i) the substituted memorandum and articles apply to the company in the same manner as if it were a company registered under Part I with that memorandum and those articles, and

(ii) the company's deed of settlement ceases to apply to the company.

(3) An alteration under this section may be made either with or without alteration of the company's objects.

(4) In this section "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter or letters patent.

PART XXIII

OVERSEA COMPANIES

CHAPTER I

REGISTRATION, ETC.

[F734 690A Branch registration under the Eleventh Company Law Directive (89/666/EEC).

(1) This section applies to any limited company which—

(a) is incorporated outside the United Kingdom and Gibraltar, and

(b) has a branch in Great Britain.

(2) Schedule 21A to this Act (Branch registration under the Eleventh Company Law Directive (89/666/EEC)) shall have effect in relation to any company to which this section applies.]

Textual Amendments

F734 Ss. 690A, 690B inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.2**.

F735 690B Scope of sections 691 and 692.

Sections 691 and 692 shall not apply to any limited company which—

(a) is incorporated outside the United Kingdom and Gibraltar, and

(b) has a branch in the United Kingdom.

Textual Amendments

F735 Ss. 690A, 690B inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.2**.

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691 Documents to be delivered to registrar.

(1) When a company incorporated outside Great Britain establishes a place of business in Great Britain, it shall within one month of doing so deliver to the registrar of companies for registration—

(a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the company's constitution, and, if the instrument is not written in the English language, a certified translation of it; and

(b) a return in the prescribed form containing—

(i) a list of the company's directors and secretary, containing **[**F736(subject to subsection (5)).**]** the particulars specified in the next subsection,

(ii) a list of the names and addresses of some one or more persons resident in Great Britain authorised to accept on the company's behalf service of process and any notices required to be served on it,

(iii) a list of the documents delivered in compliance with paragraph (a) of this subsection, and

(iv) **[**F737subject to subsection (3A),**]**a statutory declaration (made by a director or secretary of the company or by any person whose name and address are given in the list required by sub-paragraph (ii)), stating the date on which the company's place of business in Great Britain was established.

[F738(2) The list referred to in subsection (1)(b)(i) shall contain the following particulars with respect to each director—

(a) in the case of an individual—

(i) his name,

(ii) any former name,

(iii) his usual residential address,

(iv) his nationality,

(v) his business occupation (if any),

(vi) if he has no business occupation but holds other directorships, particulars of them, and

(vii) his date of birth;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

(3) The list referred to in subsection (1)(b)(i) shall contain the following particulars with respect to the secretary (or, where there are joint secretaries, with respect to each of them)—

(a) in the case of an individual, his name, any former name and his usual residential address;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

Where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars required by paragraph (a).

[In place of the statutory declaration referred to in sub-paragraph (iv) of paragraph (b)
F739(3A) of subsection (1), there may be delivered to the registrar of companies using electronic communications a statement made by any person by whom the declaration could have

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been made stating the date on which the company's place of business in Great Britain was established.**]**

(4) In subsections (2)(a) and (3)(a) above—

(a) "name" means a person's Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and

(b) the reference to a former name does not include—

(i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or

(ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or

(iii) in the case of a married woman, the name by which she was known previous to the marriage.**]**

[[F740](4A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.**]**

[[F741](5) Where a confidentiality order made under section 723B is in force in respect of a director or secretary required to be specified in the list under subsection (1)(b)(i)—

(a) if the order is in respect of a director, subsection (2) has effect in respect of that director as if the reference in subsection (2)(a)(iii) to his usual residential address were a reference to the address for the time being notified by him to the company under regulations made under sections 723B to 723F;

(b) if the order is in respect of a secretary, subsection (3) has effect in respect of that secretary as if the reference in subsection (3)(a) to his usual residential address were a reference to the address for the time being notified by him to the company under such regulations; and

(c) in either case the company shall deliver to the registrar, in addition to the return required by subsection (1), a return in the prescribed form containing the usual residential address of the director or secretary to whom the confidentiality order relates, and any such return shall be delivered to the registrar within one month of the company establishing a place of business in Great Britain.**]**

Textual Amendments

F736 Words in s. 691(1)(b)(i) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 5(2)**

F737 Words in s. 691(1)(b)(iv) inserted (22.12.2000) by S.I. 2000/3373, **art. 26(1)(2)**

F738 S. 691(2) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 6**

F739 S. 691(3A) inserted (22.12.2000) by S.I. 2000/3373, **art. 26(1)(3)**

F740 S. 691(4A) inserted (22.12.2000) by S.I. 2000/3373, **art. 26(1)(4)**

F741 S. 691(5) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 5(3)**

Modifications etc. (not altering text)

C592 S. 691 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 1(5)(7)**.

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692 Registration of altered particulars.

(1) If any alteration is made in—

(a) the charter, statutes, or memorandum and articles of an oversea company or any such instrument as is mentioned above, or

(b) the directors or secretary of an oversea company or the particulars contained in the list of the directors and secretary, or

(c) the names or addresses of the persons authorised to accept service on behalf of an oversea company,

the company shall, within the time specified below, deliver to the registrar of companies for registration a return containing the prescribed particulars of the alteration.

[F742(1A) If an individual in respect of whom a confidentiality order under section 723B is in force becomes a director or secretary of an oversea company—

(a) the return required to be delivered to the registrar under subsection (1) shall contain the address for the time being notified by the director or secretary to the company under regulations made under sections 723B to 723F, but shall not contain his usual residential address; and

(b) with that return the company shall deliver to the registrar a return in the prescribed form containing the usual residential address of that director or secretary.

(1B) If a confidentiality order under section 723B is made in respect of an existing director or secretary of an oversea company, the company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the address for the time being notified to it by the director or secretary under regulations made under sections 723B to 723F.

(1C) If while a confidentiality order made under section 723B is in force in respect of a director or secretary of an oversea company there is an alteration in his usual residential address, the company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the new address.**]**

(2) If any change is made in the corporate name of an oversea company, the company shall, within the time specified below, deliver to the registrar of companies for registration a return containing the prescribed particulars of the change.

(3) The time for delivery of the returns required by subsections (1) **[**F743, (1B), (1C)**]** and (2) is—

(a) in the case of an alteration to which subsection (1)(c) applies, 21 days after the making of the alteration, and

(b) otherwise, 21 days after the date on which notice of the alteration or change in question could have been received in Great Britain in due course of post (if despatched with due diligence).

Textual Amendments

F742 S. 692(1A)-(1C) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 6(2)**

F743 Words in s. 692(3) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 6(3)**

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Modifications etc. (not altering text)
C593 S. 692 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 1(5)(7)**.

[F744 692A Change in registration regime.

(1) Where a company ceases to be a company to which section 690A applies and, immediately after ceasing to be such a company—

(a) continues to have in Great Britain a place of business which it had immediately before ceasing to be such a company, and

(b) does not have a branch in Northern Ireland,

it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to be a company to which section 690A applies.

(2) Where a limited company incorporated outside the United Kingdom and Gibraltar—

(a) ceases to have a branch in Northern Ireland, and

(b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Great Britain,

it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to have a branch in Northern Ireland.

(3) Where a company—

(a) becomes a company to which section 690A applies,

(b) immediately after becoming such a company, has in a part of Great Britain an established place of business but no branch, and

(c) immediately before becoming such a company, had an established place of business in that part,

sections 691 and 692 shall, in relation to that part, continue to apply to the company (notwithstanding section 690B) until such time as it gives notice to the registrar for that part that it is a company to which that section applies.

(4) Schedule 21B to this Act (transitional provisions in relation to change in registration regime) shall have effect.]

Textual Amendments
F744 S. 692A inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.4**.

F745 693 Obligation to state name and other particulars.

(1) Every oversea company shall—

[F746(a) in every prospectus inviting subscriptions for its shares or debentures in Great Britain, state the country in which the company is incorporated,]

(b) conspicuously exhibit on every place where it carries on business in Great Britain the company's name and the country in which it is incorporated,

(c) cause the company's name and the country in which it is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company, and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters [F747in every such prospectus as

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above mentioned and**]** in all bill-heads, letter paper, notices and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

[F748(2) Every company to which section 690A applies shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

(a) the place of registration of the branch, and

(b) the registered number of the branch.

(3) Every company to which section 690A applies, which is not incorporated in a Member State and which is required by the law of the country in which it is incorporated to be registered shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

(a) the identity of the registry in which the company is registered in its country of incorporation, and

(b) the number with which it is registered.

(4) Every company to which section 690A applies and which is not incorporated in a Member State shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

(a) the legal form of the company,

(b) the location of its head office, and

(c) if applicable, the fact that it is being wound up.**]**

Textual Amendments

F745 S. 693 became s. 693(1) (1.1.1993) by virtue of S.I. 1992/3179, reg. 3, **Sch. 2 para.6**.

F746 S. 693(*a*) repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I** (the repeal being or coming into force as mentioned in S.I. 1986/2246, art. 5, **Sch. 4**, S.I. 1988/740, art. 2, Sch., S.I. 1988/1960, **art. 4** (as amended) and S.I. 1988/2285, **art. 5** and being otherwise (*prosp.*))

F747 Words repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I** (the repeal being or coming into force as mentioned in S.I. 1986/2246, art. 5, **Sch. 4**, S.I. 1988/740, art. 2, Sch., S.I. 1988/1960, **art. 4** (as amended) and S.I. 1988/2285, **art. 5** and being otherwise (*prosp.*))

F748 S. 693(2)-(4) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.6**.

Modifications etc. (not altering text)

C594 S. 693 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C595 S. 693(1)(a) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

C596 S. 693(1)(a)(d) applied (19.6.1995) by S.I. 1995/1537, reg. 20, **Sch. 4 Pt. III para. 12**

C597 S. 693(1)(d) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

694 Regulation of oversea companies in respect of their names.

(1) If it appears to the Secretary of State that the corporate name of an oversea company is a name by which the company, had it been formed under this Act, would on the relevant date **[**F749(determined in accordance with subsections (3A) and (3B))**]** have been precluded from being registered by section 26 either—

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(a) because it falls within subsection (1) of that section, or

(b) if it falls within subsection (2) of that section, because the Secretary of State would not approve the company's being registered with that name,

the Secretary of State may serve a notice on the company, stating why the name would not have been registered.

(2) If the corporate name of an oversea company is in the Secretary of State's opinion too like a name appearing on the relevant date in the index of names kept by the registrar of companies under section 714 or which should have appeared in that index on that date, or is the same as a name which should have so appeared, the Secretary of State may serve a notice on the company specifying the name in the index which the company's name is too like or which is the same as the company's name.

(3) No notice shall be served on a company under subsection (1) or (2) later than 12 months after the relevant date [F750]. . .

[[F751](3A) For the purposes of subsections (1) to (3), the relevant date, in relation to a company, is the date on which it has complied with paragraph 1 of Schedule 21A or section 691(1) or, if there is more than one such date, the first date on which it has complied with that paragraph or that subsection since becoming an oversea company.

(3B) But where the company's corporate name has changed since the date ascertained in accordance with subsection (3A), the relevant date is the date on which the company has, in respect of the change or, if more than one, the latest change, complied with paragraph 7(1) of Schedule 21A or section 692(2), as the case may be.**]**

(4) An oversea company on which a notice is served under subsection (1) or (2)—

(a) may deliver to the registrar of companies for registration a statement in the prescribed form specifying a name approved by the Secretary of State other than its corporate name under which it proposes to carry on business in Great Britain, and

(b) may, after that name has been registered, at any time deliver to the registrar for registration a statement in the prescribed form specifying a name approved by the Secretary of State (other than its corporate name) in substitution for the name previously registered.

(5) The name by which an oversea company is for the time being registered under subsection (4) is, for all purposes of the law applying in Great Britain (including this Act and the [M68]Business Names Act 1985), deemed to be the company's corporate name; but—

(a) this does not affect references to the corporate name in this section, or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and

(b) any legal proceedings that might have been continued or commenced against the company by its corporate name or its name previously registered under this section may be continued or commenced against it by its name for the time being so registered.

(6) An oversea company on which a notice is served under subsection (1) or (2) shall not at any time after the expiration of 2 months from the service of that notice (or such longer period as may be specified in that notice) carry on business in Great Britain under its corporate name.

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Nothing in this subsection or in section 697(2) (which imposes penalties for its contravention) invalidates any transaction entered into by the company.

(7) The Secretary of State may withdraw a notice served under subsection (1) or (2) at any time before the end of the period mentioned in subsection (6); and that subsection does not apply to a company served with a notice which has been withdrawn.

Textual Amendments

F749 Words in s. 694(1) substituted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 7(2)**.

F750 S. 694(3)(a)(b) and words repealed (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 7(3)**.

F751 S. 694(3A)(3B) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 7(4)**.

Modifications etc. (not altering text)

C598 S. 694 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 14**

C599 S. 694(4) extended with modifications by Banking Act 1987 (c. 22, SIF 10), **ss. 72(1)(2)**, 78(1)(2)

Marginal Citations

M68 1985 c. 7.

[F752 694A Service of documents: companies to which section 690A applies.

(1) This section applies to any company to which section 690A applies.

(2) Any process or notice required to be served on a company to which this section applies in respect of the carrying on of the business of a branch registered by it under paragraph 1 of Schedule 21A is sufficiently served if—

(a) addressed to any person whose name has, in respect of the branch, been delivered to the registrar as a person falling within paragraph 3(e) of that Schedule, and

(b) left at or sent by post to the address for that person which has been so delivered.

(3) Where—

(a) a company to which this section applies makes default, in respect of a branch, in delivering to the registrar the particulars mentioned in paragraph 3(e) of Schedule 21A, or

(b) all the persons whose names have, in respect of a branch, been delivered to the registrar as persons falling within paragraph 3(e) of that Schedule are dead or have ceased to reside in Great Britain, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Great Britain.

(4) Where a company to which this section applies has more than one branch in Great Britain, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this section as required to be served in respect of the carrying on of the business of each of its branches.**]**

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Textual Amendments

F752 S. 694A inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.8**.

695 Service of documents on oversea company.

(1) Any process or notice required to be served on an oversea company **[**F753to which section 691 applies**]** is sufficiently served if addressed to any person whose name has been delivered to the registrar under preceding sections in this Part and left at or sent by post to the address which has been so delivered.

(2) However—

(a) where such a company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices, or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Great Britain.

Textual Amendments

F753 Words in s. 695(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.9**.

[F754695A Registrar to whom documents to be delivered: companies to which section 690A applies.

(1) References to the registrar, in relation to a company to which section 690A applies, (except references in Schedule 21C) shall be construed in accordance with the following provisions.

(2) The documents which a company is required to deliver to the registrar shall be delivered—

(a) to the registrar for England and Wales, if required to be delivered in respect of a branch in England and Wales, and

(b) to the registrar for Scotland, if required to be delivered in respect of a branch in Scotland.

(3) If a company closes a branch in a part of Great Britain, it shall forthwith give notice of that fact to the registrar for that part; and from the date on which notice is so given it is no longer obliged to deliver documents to that registrar in respect of that branch.

(4) In subsection (3) above, the reference to closing a branch in either part of Great Britain includes a reference to a branch ceasing to be situated in that part on becoming situated elsewhere.**]**

Textual Amendments

F754 S. 695A inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.10**.

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696 [F755]Office where documents to be filed.

(1) Any document which an oversea company **[**[F756]to which section 691 applies;**]** is required to deliver to the registar of companies shall be delivered to the registrar at the registration office in England and Wales or Scotland, according to where the company has established a place of business.

(2) If the company has established a place of business both in England and Wales and in Scotland, the document shall be delivered at the registration office both in England and Wales and in Scotland.

(3) References in this Part **[**[F757](except references in Schedule 21C)**]** to the registrar of companies **[**[F758], in relation to a company to which section 691 applies,**]** are to be construed in accordance with the above subsections.

(4) If an oversea company **[**[F759]to which section 691 applies**]** ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of that fact to the registrar of companies for that part; and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar ceases.

Textual Amendments

F755 A new s. 696 commencing "References to" substituted (*prosp.*) for s. 696 commencing "Any document" by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), 215(2), **Sch. 19 para. 13**

F756 Words in s. 696(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 11(a)**.

F757 Words in s. 696(3) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para.4**.

F758 Words in s. 696(3) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 11(b)**.

F759 Words in s. 696(4) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 11(c)**.

697 Penalties for non-compliance.

(1) If an oversea company fails to comply with any of sections 691 to 693 and 696, the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention.

(2) If an oversea company contravenes section 694(6), the company and every officer or agent of it who knowingly and wilfully authorises or permits the contravention is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

[[F760](3) if an oversea company fails to comply with section 695A or Schedule 21A, the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention**]**

Textual Amendments

F760 S. 697(3) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.12**.

Modifications etc. (not altering text)

C600 S. 697(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 15, 16, **17**

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F762]698 Definitions [F761]. . ..

(1) For purposes of this Chapter—

"certified" means certified in the prescribed manner to be a true copy or a correct translation;

"director", in relation to an oversea company, includes shadow director; and

"secretary" includes any person occupying the position of secretary by whatever name called.

[[F763](2) For the purposes of this Part (except section 699A and Schedule 21C):

(a) where a branch comprises places of business in more than one part of the United Kingdom, the branch shall be treated as being situated in that part of the United Kingdom where its principal place of business is situated; and

(b) "branch" means a branch within the meaning of the Council Directive concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (the Eleventh Company Law Directive, 89/666/EEC)**]**

Textual Amendments

F761 S. 698: words in the sidenote omitted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 13(2)**.

F762 S. 698 became s. 698(1) (1.1.1993) by virtue of S.I. 1992/3179, reg. 3, **Sch. 2 para. 13(2)**.

F763 S. 698(2) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 13(3)**.

699 Channel Islands and Isle of Man companies.

(1) With the exceptions specified in subsection (3) below, the provisions of this Act requiring documents to be forwarded or delivered to or filed with the registrar of companies and applying to companies formed and registered under Part I apply also (if they would not otherwise) to an oversea company **[**[F764]to which section 691 applies**]** incorporated in the Channel Islands or the Isle of Man.

(2) Those provisions apply to such a company—

(a) if it has established a place of business in England and Wales, as if it were registered in England and Wales,

(b) if it has established a place of business in Scotland, as if it were registered in Scotland, and

(c) if it has established a place of business both in England and Wales and in Scotland, as if it were registered in both England and Wales and Scotland,

with such modifications as may be necessary and, in particular, apply in a similar way to documents relating to things done outside Great Britain as if they had been done in Great Britain.

(3) The exceptions are—

section 6(1) (resolution altering company's objects),

section 18 (alteration of memorandum or articles by statute or statutory instrument),

[[F765]section 242(1)**]** (directors' duty to file accounts),

section 288(2) (notice to registrar of change of directors or secretary), and

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section 380 (copies of certain resolutions and agreements to be sent to registrar within 15 days), so far as applicable to a resolution altering a company's memorandum or articles.

Textual Amendments

F764 Words in s. 699(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.14**.

F765 Words substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 12**

[F766CHAPTER II

DELIVERY OF ACCOUNTS AND REPORTS]

Textual Amendments

F766 Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

[F767699A Credit and financial institutions to which the Bank Branches Directive (89/117/EEC) applies.

(1) This section applies to any credit or financial institution—

(a) which is incorporated or otherwise formed outside the United Kingdom and Gibraltar,

(b) whose head office is outside the United Kingdom and Gibraltar, and

(c) which has a branch in Great Britain.

(2) Schedule 21C (delivery of accounts and reports) shall have effect in relation to any institution to which this section applies.

(3) In this section—

"branch", in relation to a credit or financial institution, means a place of business which forms a legally dependent part of the institution and which conducts directly all or some of the operations inherent in its business;

[F768"credit institution" means a credit institution as defined in [F769article 1(1)(a)] of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, that is to say an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;]

"financial institution"means a financial institution within the meaning of Article 1 of the Council Directive on the obligations of branches established in a Member State of credit and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (the Bank Branches Directive, 89/117/EEC); and

"undertaking" has the same meaning as in Part VII.]

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F767 S. 699A inserted (1.1.1993) by S.I. 1992/3179, **reg. 2(1)**.

F768 Definition of "credit institution" in s. 699A(3) substituted (22.11.2000) by S.I. 2000/2952, **reg. 2(3)**

F769 S. 699A(3): words in definition of "credit institution" substituted (27.4.2002) by The Electronic Money (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/765), **reg. 2(3)**

[F770 699AA Companies to which the Eleventh Company Law Directive applies.

(1) This section applies to any limited company which—

(a) is incorporated outside the United Kingdom and Gibraltar,

(b) has a branch in Great Britain, and

(c) is not an institution to which section 699A applies.

(2) Schedule 21D to this Act (delivery of accounts and reports) shall have effect in relation to any company to which this section applies.**]**

Textual Amendments

F770 S. 699AA inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.16**.

[F771 699B Scope of sections 700 to 703.

Sections 700 to 703 shall not apply to any institution to which section 699A applies **[**F772or to any limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in the United Kingdom**]]**.

Textual Amendments

F771 S. 699B inserted (1.1.1993) by S.I. 1992/3179, **reg. 2(1)**.

F772 Words in s. 699B inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.17**.

700 Preparation of accounts and reports by oversea companies.

(1) Every oversea company shall in respect of each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditors' report, as would be required if the company were formed and registered under this Act.

(2) The Secretary of State may by order—

(a) modify the requirements referred to in subsection (1) for the purpose of their application to oversea companies;

(b) exempt an oversea company from those requirements or from such of them as may be specified in the order.

(3) An order may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.

(4) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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Modifications etc. (not altering text)
C601 S. 700 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.
C602 S. 700(1) modified by S.I. 1990/440, art. 2, **Sch.**

[F773 701 Oversea company's financial year and accounting reference periods.

(1) Sections 223 to 225 (financial year and accounting reference periods) apply to an oversea company, subject to the following modifications.

(2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Great Britain.

(3) Omit section 225(4) (restriction on frequency with which current accounting reference period may be extended).]

Textual Amendments
F773 Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

Modifications etc. (not altering text)
C603 S. 701 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.

[F774 702 Delivery to registrar of accounts and reports of oversea company.

(1) An oversea company shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with section 700.

If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(2) In relation to an oversea company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period.

This is subject to the following provisions of this section.

(3) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company's establishing a place of business in Great Britain.

(4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under section 225 (alteration of accounting reference date), the period allowed is that applicable in accordance with the above provisions or three months from the date of the notice under that section, whichever last expires.

(5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to an oversea company extend that period by such further period as may be specified in the notice.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(6) In this section "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.**]**

Textual Amendments

F774 Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

Modifications etc. (not altering text)

C604 S. 702 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.

[F775 703 Penalty for non-compliance.

(1) If the requirements of section 702(1) are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Act, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Act.**]**

Textual Amendments

F775 Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

Modifications etc. (not altering text)

C605 S. 703 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.

VALID FROM 01/10/2009

F776F776 CHAPTER III

REGISTRATION OF CHARGES

Textual Amendments

F776 Ss. 651-706 repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2008/2860, **art. 4**, Sch. 1 (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch.))

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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703A [F777 Introductory provisions.]

(1) The provisions of this Chapter have effect for securing the registration in Great Britain of charges on the property of a registered oversea company.

(2) Section 395(2) and (3) (meaning of "charge" and "property") have effect for the purposes of this Chapter.

(3) A "registered oversea company", in relation to England and Wales or Scotland, means an oversea company which has duly delivered documents to the registrar for that part of Great Britain under section 691 and has not subsequently given notice to him under section 696(4) that it has ceased to have an established place of business in that part.

(4) References in this Chapter to the registrar shall be construed in accordance with section 703E below and references to registration, in relation to a charge, are to registration in the register kept by him under this Chapter.

Textual Amendments

F777 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F777 703B Charges requiring registration.

(1) The charges requiring registration under this Chapter are those which if created by a company registered in Great Britain would require registration under Part XII of this Act.

(2) Whether a charge is one requiring registration under this Chapter shall be determined—

(a) in the case of a charge over property of a company at the date it delivers documents for registration under section 691, as at that date,

(b) in the case of a charge created by a registered oversea company, as at the date the charge is created, and

(c) in the case of a charge over property acquired by a registered oversea company, as at the date of the acquisition.

(3) In the following provisions of this Chapter references to a charge are, unless the context otherwise requires, to a charge requiring registration under this Chapter.

Where a charge not otherwise requiring registration relates to property by virtue of which it requires to be registered and to other property, the references are to the charge so far as it relates to property of the former description.]

Textual Amendments

F777 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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[F778 703C The register.

(1) The registrar shall keep for each registered oversea company a register, in such form as he thinks fit, of charges on property of the company.

(2) The register shall consist of a file containing with respect to each such charge the particulars and other information delivered to the registrar under or by virtue of the following provisions of this Chapter.

(3) Section 397(3) to (5) (registrar's certificate as to date of delivery of particulars) applies in relation to the delivery of any particulars or other information under this Chapter.]

Textual Amendments

F778 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F779 703D Company's duty to deliver particulars of charges for registration.

(1) If when an oversea company delivers documents for registration under section 691 any of its property is situtated in Great Britain and subject to a charge, it is the company's duty at the same time to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.

(2) Where a registered oversea company—

(a) creates a charge on property situated in Great Britain, or

(b) acquires property which is situated in Great Britain and subject to a charge,

it is the company's duty to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration within 21 days after the date of the charge's creation or, as the case may be, the date of the acquisition.

This subsection does not apply if the property subject to the charge is at the end of that period no longer situated in Great Britain.

(3) Where the preceding subsections do not apply and property of a registered oversea company is for a continuous period of four months situated in Great Britain and subject to a charge, it is the company's duty before the end of that period to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.

(4) Particulars of a charge required to be delivered under subsections (1), (2) or (3) may be delivered for registration by any person interested in the charge.

(5) If a company fails to comply with subsection (1), (2) or (3), then, unless particulars of the charge have been delivered for registration by another person, the company and every officer of it who is in default is liable to a fine.

(6) Section 398(2), (4) and (5) (recovery of fees paid in connection with registration, filing of particulars in register and sending of copy of particulars filed and note as to date) apply in relation to particulars delivered under this Chapter.]

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F779 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F780 703E Registrar to whom particulars, &c. to be delivered.

(1) The particulars required to be delivered by section 703D(1) (charges over property of oversea company becoming registered in a part of Great Britain) shall be delivered to the registrar to whom the documents are delivered under section 691.

(2) The particulars required to be delivered by section 703D(2) or (3) (charges over property of registered oversea company) shall be delivered—

(a) if the company is registered in one part of Great Britain and not in the other, to the registrar for the part in which it is registered, and

(b) if the company is registered in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part;

and in any other case the particulars shall be delivered to the registrars for both parts of Great Britain.

(3) Other documents required or authorised by virtue of this Chapter to be delivered to the registrar shall be delivered to the registrar or registrars to whom particulars of the charge to which they relate have been, or ought to have been, delivered.

(4) If a company gives notice under section 696(4) that it has ceased to have an established place of business in either part of Great Britain, charges over property of the company shall cease to be subject to the provisions of this Chapter, as regards registration in that part of Great Britain, as from the date on which notice is so given.

This is without prejudice to rights arising by reason of events occurring before that date.**]**

Textual Amendments

F780 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F781 703F Effect of failure to deliver particulars, late delivery and effect of errors and omissions.

(1) The following provisions of Part XII—

(a) section 399 (effect of failure to deliver particulars),

(b) section 400 (late delivery of particulars), and

(c) section 402 (effect of errors and omissions in particulars delivered),

apply, with the following modifications, in relation to a charge created by a registered oversea company of which particulars are required to be delivered under this Chapter.

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Those provisions do not apply to a charge of which particulars are required to be delivered under section 703D(1) (charges existing when company delivers documents under section 691).

(3) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the references to the period of 21 days after the charge's creation shall be construed as references to the period of four months referred to in that subsection.**]**

Textual Amendments

F781 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F782 703G Delivery of further particulars or memorandum.

Sections 401 and 403 (delivery of further particulars and memorandum of charge ceasing to affect company's property) apply in relation to a charge of which particulars have been delivered under this Chapter.**]**

Textual Amendments

F782 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F783 703H Further provisions with respect to voidness of charges.

(1) The following provisions of Part XII apply in relation to the voidness of a charge by virtue of this Chapter—

(a) section 404 (exclusion of voidness as against unregistered charges),

(b) section 405 (restrictions on cases in which charge is void),

(c) section 406 (effect of exercise of power of sale), and

(d) section 407 (effect of voidness on obligation secured).

(2) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the reference in section 404 to the period of 21 days after the charge's creation shall be construed as a reference to the period of four months referred to in that subsection.**]**

Textual Amendments

F783 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

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[F784 703I Additional information to be registered.

(1) Section 408 (particulars of taking up of issue of debentures) applies in relation to a charge of which particulars have been delivered under this Chapter.

(2) Section 409 (notice of appointment of receiver or manager) applies in relation to the appointment of a receiver or manager of property of a registered oversea company.

(3) Regulations under section 410 (notice of crystallisation of floating charge, &c.) may apply in relation to a charge of which particulars have been delivered under this Chapter; but subject to such exceptions, adaptations and modifications as may be specified in the regulations.]

Textual Amendments

F784 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F785 703J Copies of instruments and register to be kept by company.

(1) Sections 411 and 412 (copies of instruments and register to be kept by company) apply in relation to a registered oversea company and any charge over property of the company situated in Great Britain.

(2) They apply to any charge, whether or not particulars are required to be delivered to the registrar.

(3) In relation to such a company the references to the company's registered office shall be construed as references to its principal place of business in Great Britain.]

Textual Amendments

F785 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F786 703K Power to make further provision by regulations.

(1) The Secretary of State may by regulations make further provision as to the application of the provisions of this Chapter, or the provisions of Part XII applied by this Chapter, in relation to charges of any description specified in the regulations.

(2) The regulations may apply any provisions of regulations made under section 413 (power to make further provision with respect to application of Part XII) or make any provision which may be made under that section with respect to the application of provisions of Part XII.]

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Textual Amendments

F786 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F787 703L Provisions as to situation of property.

(1) The following provisions apply for determining for the purposes of this Chapter whether a vehicle which is the property of an oversea company is situated in Great Britain—

(a) a ship, aircraft or hovercraft shall be regarded as situated in Great Britain if, and only if, it is registered in Great Britain;

(b) any other description of vehicle shall be regarded as situated in Great Britain on a day if, and only if, at any time on that day the management of the vehicle is directed from a place of business of the company in Great Britain;

and for the purposes of this Chapter a vehicle shall not be regarded as situated in one part of Great Britain only.

(2) For the purposes of this Chapter as it applies to a charge on future property, the subject-matter of the charge shall be treated as situated in Great Britain unless it relates exclusively to property of a kind which cannot, after being acquired or coming into existence, be situated in Great Britain; and references to property situated in a part of Great Britain shall be similarly construed.**]**

Textual Amendments

F787 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F788 703M Other supplementary provisions.

(1) The following provisions of Part XII apply for the purposes of this Chapter—

(a) section 414 (construction of references to date of creation of charge),

(b) section 415 (prescribed particulars and related expressions),

(c) section 416 (notice of matters disclosed on the register),

(d) section 417 (power of court to dispense with signature),

(e) section 418 (regulations) and

(f) section 419 (minor definitions).**]**

Textual Amendments

F788 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

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[F789 703N Index of defined expressions.

The following Table shows the provisions of this Chapter and Part XII defining or otherwise explaining expressions used in this Chapter (other than expressions used only in the same section)—

charge	sections 703A(2), 703B(3) and 395(2)
charge requiring registration	sections 703B(1) and 396
creation of charge	sections 703M(f) and 419(2)
date of acquisition (of property by a company)	sections 703M(f) and 419(3)
date of creation of charge	sections 703M(a) and 414
property	sections 703A(2) and 395(2)
registered oversea company	section 703A(3)
registrar and registration in relation to a charge	sections 703A(4) and 703E
situated in Great Britain in relation to vehicles	section 703L(1)
in relation to future property	section 703L(2)]

Textual Amendments

F789 Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

[F790 CHAPTER IV

WINDING UP ETC.]

Textual Amendments

F790 Chapter IV (ss. 703O-703R) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.19**.

F791 703O Scope of Chapter.

This Chapter applies to any company to which section 690A applies.

Textual Amendments

F791 S. 703O inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.19**.

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[F792]703PParticulars to be delivered to the registrar: winding up.

(1) Subject to subsection (8), where a company to which this Chapter applies is being wound up, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

(a) the name of the company;

(b) whether the company is being wound up by an order of a court and, if so, the name and address of the court and the date of the order;

(c) if the company is not being so wound up, as a result of what action the winding up has commenced;

(d) whether the winding up has been instigated by:

(i) the company's members;

(ii) the company's creditors; or

(iii) some other person or persons,

and, in the case of (iii) the identity of that person or those persons shall be given; and

(e) the date on which the winding up became or will become effective.

(2) The period allowed for delivery of a return under subsection (1) above is 14 days from the date on which the winding up begins.

(3) Subject to subsection (8), a person appointed to be the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

(a) his name and address,

(b) the date of his appointment, and

(c) a description of such of his powers, if any, as are derived otherwise than from the general law or the company's constitution.

(4) The period allowed for delivery of a return under subsection (3) above is 14 days from the date of the liquidator's appointment.

(5) Subject to subsection (8), the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form upon the occurrence of the following events—

(a) the termination of the winding up of the company, and

(b) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance.

The following particulars shall be given:

(i) in the case of (a), the name of the company and the date on which the winding up terminated; and

(ii) in the case of (b), the name of the company and the date on which the company ceased to be registered.

(6) The period allowed for delivery of a return under subsection (5) is 14 days from the date of the event concerned.

(7) The obligation to deliver a return under subsection (1), (3) or (5) above shall apply in respect of each branch which the company has in Great Britain (though where the company has more than one branch in a part of Great Britain a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

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(8) No return is required under subsection (1), (3), or (5) above in respect of a winding up under Part V of the Insolvency Act 1986. [M69]

Textual Amendments

F792 S. 703P inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.19**.

Marginal Citations

M69 1986 c. 45.

[F793]703Q Particulars to be delivered to the registrar: insolvency proceedings etc.

(1) Where a company to which this Chapter applies becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—

(a) the name of the company;

(b) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;

(c) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;

(d) whether the proceedings have been instigated by:

(i) the company's members;

(ii) the company's creditors; or

(iii) some other person or persons,

and, in the case of (iii) the identity of that person or those persons shall be given; and

(e) the date on which the proceedings became or will become effective.

(2) Where a company to which this Chapter applies ceases to be subject to any of the proceedings mentioned in subsection (1) it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars:

(a) the name of the company; and

(b) the date on which it ceased to be subject to the proceedings.

(3) The period allowed for delivery of a return under subsection (1) or (2) is 14 days from the date on which the company becomes subject, or (as the case may be) ceases to be subject to the proceedings concerned.

(4) The obligation to deliver a return under subsection (1) or (2) shall apply in respect of each branch which the company has in Great Britain (though where the company has more than one branch in a part of Great Britain a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

Textual Amendments

F793 S. 703Q inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.19**.

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F794 703R Penalty for non-compliance

(1) If a company fails to comply with section 703P(1) or 703Q(1) or (2) within the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) If a liquidator fails to comply with section 703P(3) or (5) within the period allowed for compliance, he is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing compliance with the requirements concerned.

Textual Amendments

F794 S. 703R inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.19**.

PART XXIV

THE REGISTRAR OF COMPANIES, HIS FUNCTIONS AND OFFICES

Modifications etc. (not altering text)

C606 Pt. XXIV (ss. 704-715) applied (with modifications) (6.1.1997) by S.I. 1996/2827, reg. 4, **Sch. 1**

C607 Power to amend and modify Pt. 24 conferred (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 58(a)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

C608 Pt. 24 (ss. 704-715A) modified (1.7.2005) by The Community Interest Company Regulations 2005 (S.I. 2005/1788), **reg. 34(4)**

704 Registration offices.

(1) For the purposes of the registration of companies under the Companies Acts, there shall continue to be offices in England and Wales and in Scotland, at such places as the Secretary of State thinks fit.

(2) The Secretary of State may appoint such registrars, assistant registrars, clerks and servants as he thinks necessary for that purpose, and may make regulations with respect to their duties, and may remove any persons so appointed.

(3) The salaries of the persons so appointed continue to be fixed by the Secretary of State, with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Secretary of State may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of companies; and any seal so prepared is referred to in this Act as the registrar's official seal.

(5) Wherever any act is by the Companies Acts directed to be done to or by the registrar of companies, it shall (until the Secretary of State otherwise directs) be done to or by the

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existing registrar of companies in England and Wales or in Scotland (as the case may be), or to or by such person as the Secretary of State may for the time being authorise.

(6) In the event of the Secretary of State altering the constitution of the existing registration offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Secretary of State may appoint.

[F795(7) Subsection (8) below applies where by virtue of an order made under section 69 of the Deregulation and Contracting Out Act 1994 a person is authorised by the registrar of companies to accept delivery of any class of documents which are under any provision of the Companies Acts to be delivered to the registrar.

F795(8) If—

(a) the registrar directs that documents of that class shall be delivered to a specified address of the authorised person; and

(b) the direction is printed and made available to the public (with or without payment),

any document of that class which is delivered to an address other than the specified address shall be treated for the purposes of those Acts as not having been delivered.**]**

Textual Amendments

F795 S. 704(7)(8) inserted (3.1.1995) by 1994 c. 40, ss. 76, 82(2)(f), **Sch. 16 para. 8**

Modifications etc. (not altering text)

C609 S. 704 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C610 S. 704(2) amended (3.12.1998) by 1998 c. 48, ss. 23, 25(3), **Sch. 3 para. 2**

C611 S. 704(5) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 15, 16, **17**
S. 704(5) amended (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 10**.

C612 S. 704(5)(7)(8) applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, **Sch. 2 para. 1**

[F796**705 Companies' registered numbers.**

(1) The registrar shall allocate to every company a number, which shall be known as the company's registered number.

(2) Companies' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.

(3) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.

(4) A change of a company's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of section 351(1)(a) as to the use of the company's registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(5) In this section "company" includes—

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[any oversea company which has complied with paragraph 1 of Schedule 21A F797(za) other than a company which appears to the registrar not to have a branch in Great Britain;**]**

(a) any oversea company which has complied with section 691 (delivery of statutes to registrar, &c.), other than a company which appears to the registrar not to have a place of business in Great Britain; and

(b) any body to which any provision of this Act applies by virtue of section 718 (unregistered companies).**]**

Textual Amendments

F796 S. 705 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 14**

F797 S. 705(za) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para.5**.

Modifications etc. (not altering text)

C613 S. 705 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C614 S. 705 applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, **Sch. 2 para. 2**

C615 S. 705(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 15, 16, **17**

[F798**705A Registration of branches of oversea companies.**

(1) For each company to which section 690A applies the registrar, shall keep, in such form as he thinks fit, a register of the branches registered by the company under paragraph 1 of Schedule 21A.

(2) The registrar shall allocate to every branch registered by him under this section a number, which shall be known as the branch's registered number.

(3) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.

(4) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.

(5) A change of a branch's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of section 693(2) as to the use of the branch's registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(6) Where an oversea company to which section 690A applies files particulars, in any circumstances permitted by this Act, by:

(i) adopting particulars already filed in respect of another branch; or

(ii) including in one document particulars which are to relate to two or more branches,

the registrar shall ensure that the particulars concerned become part of the registered particulars of each branch concerned.**]**

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Textual Amendments

F798 S. 705A inserted (1.1.1993) by S.I. 1992/3179, **reg. 3(2)**.

[F799 706 Delivery to the registrar of documents in legible form.

(1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents in legible form.

(2) The document must—

(a) state in a prominent position the registered number of the company to which it relates, **[**F800and, if the document is delivered under sections 695A(3), 703P or 703Q or Schedules 21A or 21D the registered number of the branch to which it relates,**]**

(b) satisfy any requirements prescribed by regulations for the purposes of this section, and

(c) conform to such requirements as the registrar may specify for the purpose of enabling him to copy the document.

(3) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(4) Where the registrar serves such a notice, then, unless a replacement document—

(a) is delivered to him within 14 days after the service of the notice, and

(b) complies with the requirements of this section (or section **[**F801707B**]**) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar' notice.

(5) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document.**]**

Textual Amendments

F799 S. 706 substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 125(1)**, 213(2)

F800 Words in s. 706(2)(a) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 6**.

F801 Words in s. 706(4)(b) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(4)(a)**

Modifications etc. (not altering text)

C616 S. 706 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 18**

C617 S. 706 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C618 Ss. 706, 707A, 707B applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, **Sch. 2 para. 3**

C619 S. 706(1) amended (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 10**.

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[F802]707 . . . . . .

Textual Amendments

F802 S. 707 repealed (22.12.2000) by S.I. 2000/3373, **art. 31(4)**

[F803]707A The keeping of company records by the registrar.

(1) The information contained in a document delivered to the registrar under the Companies Acts may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in legible form.

This is sufficient compliance with any duty of his to keep, file or register the document.

(2) The originals of documents delivered to the registrar in legible form shall be kept by him for ten years, after which they may be destroyed.

(3) Where a company has been dissolved, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any records in his custody relating to the company may be removed to the Public Record Office; and records in respect of which such a direction is given shall be disposed of in accordance with the enactments relating to that Office and the rules made under them.

This subsection does not extend to Scotland.

(4) In subsection (3) "company" includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.**]**

Textual Amendments

F803 S. 707A inserted (1.7.1991 subject to transitional provisions in art. 3 of the commencing S.I.) by Companies Act 1989 (c. 40, SIF 27), **ss. 126(1)**, 213(2), 215(2); S.I. 1991/488, **arts. 2**, 3

Modifications etc. (not altering text)

C620 S. 707A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C621 Ss. 706, 707A, 707B applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, **Sch. 2 para. 3**

C622 S. 707A(1) amended (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para.10**.

[F804]707B Delivery to the registrar using electronic communications

(1) Electronic communications may be used for the delivery of any document to the registrar under any provision of the Companies Acts (including delivery of a document in the prescribed form), provided that such delivery is in such form and manner as is directed by the registrar.

(2) Where the document is required under any provision of the Companies Acts to be signed or sealed, it shall instead be authenticated in such manner as is directed by the registrar.

(3) The document must contain in a prominent position—

(a) the name and registered number of the company to which it relates, or

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(b) if the document is delivered under Part XXIII, the registered number of the branch or place of business of the company to which it relates.

(4) If a document is delivered to the registrar which does not comply with the requirements imposed by or under this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(5) Where the registrar serves such a notice, then unless a replacement document—

(a) is delivered to him within 14 days after the service of the notice, and

(b) complies with the requirements of this section (or section 706) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.

(6) In this section references to the delivery of a document include references to the forwarding, lodging, registering, sending or submission of a document and to the giving of a notice, and cognate expressions are to be construed accordingly.**]**

Textual Amendments

F804 S. 707B inserted (22.12.2000) by S.I. 2000/3373, **art. 27**

Modifications etc. (not altering text)

C623 S. 707B applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C624 Ss. 706, 707A, 707B applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, **Sch. 2 para. 3**

708 Fees payable to registrar.

(1) The Secretary of State may by regulations made by statutory instrument require the payment to the registrar of companies of such fees as may be specified in the regulations in respect of—

(a) the performance by the registrar of such functions under the Companaies Acts as may be so specified, including the receipt by him of **[**F805any document which under those Acts is required to be delivered to him**]**.

(b) the inspection of documents . . . F806 kept by him under those Acts.

(2) A statutory instrument containing regulations under this section requiring the payment of a fee in respect of a matter for which no fee was previously payable, or increasing a fee, shall be laid before Parliament after being made and shall cease to have effect at the end of the period of 28 days beginning with the day on which the regulations were made (but without prejudice to anything previously done under the regulations or to the making of further regulations) unless in that period the regulations are approved by resolution of each House of Parliament.

In reckoning that period of 28 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

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(3) A statutory instrument containing regulations under this section, where subsection (2) does not apply, is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Fees paid to the registrar under the Companies Acts shall be paid into the Consolidated Fund.

(5) It is hereby declared that the registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation on him by law.

Textual Amendments

F805 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 127(2)(a)**, 213(2)

F806 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 127(2)(b), 212, 213(2), **Sch. 24**

Modifications etc. (not altering text)

C625 S. 708 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C626 S. 708(1)(a)(4) amended (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para.10**.

[709 F807 Inspection, &c. of records kept by the registrar.

(1) **[**F808Subject to section 723B,**]**Any person may inspect any records kept by the registrar for the purposes of the Companies Acts and may require—

(a) a copy, in such form as the registrar considers appropriate, of any information contained in those records, or

(b) a certified copy of, or extract from, any such record.

(2) The right of inspection extends to the originals of documents delivered to the registrar in legible form only where the record kept by the registrar of the contents of the document is illegible or unavailable.

(3) A copy of or extract from a record kept at any of the offices for the registration of companies in England and Wales or Scotland, certified in writing by the registrar (whose official position is unecessary to prove) to be an accurate record of the contents of any document delivered to him under the Companies Acts, is in all legal proceedings admissible in evidence as of equal validity with the original document and as eveidnce of any fact stated therein of which direct oral evidence would be admissible.

[F809In England and Wales this is subject, in the case of proceedings to which section 69 of the Police and Criminal Evidence Act 1984 applies, to compliance with any applicable rules of court under subsection (2) of that section (which relates to evidence from computer records).**]**

(4) Copies of or extracts from records furnished by the registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.

(5) No process for compelling the production of a record kept by the registrar shall issue from any court except with the leave of the court; and any such process shall bear on it a statement that it is issued with the leave of the court.

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Textual Amendments

F807 Ss. 709 - 710A substituted (1.7.1991) for ss. 709 and 710 by Companies Act 1989 (c. 40, SIF 27), **ss. 126(2)**, 213(2); S.I. 1991/488, **arts. 2(1)**, 3

F808 Words in s. 709(1) inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(4), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, **art. 3**

F809 Words in s. 709(3) repealed (E.W.) (14.4.2000) by 1999 c. 23, s. 67, **Sch. 6** (with Sch. 7 paras. 3(3), 5(2)); S.I. 2000/1034, **art. 2(c)**

Modifications etc. (not altering text)

C627 S. 709 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C628 S. 709(1)(3) amended (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 10**.

[F810 710 Certificate of incorporation.

Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.**]**

Textual Amendments

F810 Ss. 709-710A substituted (1.7.1991) for ss. 709 and 710 by Companies Act 1989 (c. 40, SIF 27), **ss. 126(2)**, 213(2); S.I. 1991/488, **arts. 2(1)**, 3

Modifications etc. (not altering text)

C629 S. 710 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F811 710A Provision and authentication by registrar of documents in non-legible form.

(1) Any requirement of the Companies Acts as to the supply by the registrar of a document may, if the registrar thinks fit, be satisfied by the communication by the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by him.

(2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.**]**

Textual Amendments

F811 Ss. 709 - 710A substituted (1. 7. 1991) for ss. 709 and 710 by Companies Act 1989 (c. 40, SIF 27), **ss. 126(2)**, 213(2); S.I. 1991/488, **arts. 2(1)**, 3

Modifications etc. (not altering text)

C630 S. 710A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F812 710B Documents relating to Welsh companies.

(1) This section applies to any document which—

(a) is delivered to the registrar under this Act or the Insolvency Act 1986, and

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(b) relates to a company (whether already registered or to be registered) whose memorandum states that its registered office is to be situated in Wales.

(2) A document to which this section applies may be in Welsh but, subject to subsection (3), shall on delivery to the registrar be accompanied by a certified translation into English.

(3) The requirement for a translation imposed by subsection (2) shall not apply—

(a) to documents of such descriptions as may be prescribed for the purposes of this paragraph, or

(b) to documents in a form prescribed in Welsh (or partly in Welsh and partly in English) by virtue of section 26 of the Welsh Language Act 1993.

(4) Where by virtue of subsection (3) the registrar receives a document in Welsh without a certified translation into English, he shall, if that document is to be available for inspection, himself obtain such a translation; and that translation shall be treated as delivered to him in accordance with the same provision as the original.

(5) A company whose memorandum states that its registered office is to be situated in Wales may deliver to the registrar a certified translation into Welsh of any document in English which relates to the company and which is or has been delivered to the registrar.

(6) The provisions within subsection (7) (which require certified translations into English of certain documents delivered to the registrar) shall not apply where a translation is required by subsection (2) or would be required but for subsection (3).

(7) The provisions within this subsection are section 228(2)(f), the second sentence of section 242(1), sections 243(4), 272(5) and 273(7) and paragraph 7(3) of Part II of Schedule 9.

(8) In this section "certified translation" means a translation certified in the prescribed manner to be a correct translation.**]**

Textual Amendments

F812 S. 710B inserted (25.1.1994 for certain purposes and otherwise 1.2.1994) by 1993 c. 38, **s. 30(6)**; S.I. 1994/115, **art. 2**

Modifications etc. (not altering text)

C631 S. 710B applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

711 Public notice by registrar of receipt and issue of certain documents.

(1) The registrar of companies shall cause to be published in the Gazette notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the company, the description of document and the date of issue or receipt)—

(a) any certificate of incorporation of a company,

(b) any document making or evidencing an alteration in a company's memorandum or articles,

(c) any notification of a change among the directors of a company,

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(d) any copy of a resolution of a public company which gives, varies, revokes or renews an authority for the purposes of section 80 (allotment of relevant securities),

(e) any copy of a special resolution of a public company passed under section 95(1), (2) or (3) (disapplication of pre-emption rights),

(f) any report under section 103 or 104 as to the value of a non-cash asset,

(g) any statutory declaration **[**F813or statement**]** delivered under section 117 (public company share capital requirements),

(h) any notification (given under section 122) of the redemption of shares.

(j) any statement or notice delivered by a public company under section 128 (registration of particulars of special rights),

(k) any documents delivered by a company under **[**F814section 242(1) (accounts and reports)**]**,

(l) a copy of any resolution or agreement to which section 380 applies and which—

(i) states the rights attached to any shares in a public company, other than shares which are in all respects uniform (for purposes of section 128) with shares previously allotted, or

(ii) varies rights attached to any shares in a public company, or

(iii) assigns a name or other designation, or a new name or designation, to any class of shares in a public company,

(m) any return of allotments of a public company,

(n) any notice of a change in the situation of a company's registered office,

(p) any copy of a winding-up order in respect of a company,

(q) any order for the dissolution of a company on a winding up,

(r) any return by a liquidator of the final meeting of a company on a winding up.

[F815(s) any copy of a draft of the terms of a scheme delivered to the registrar of companies under paragraph 2(1) of Schedule 15A,

(t) any copy of an order under section 425(2) or section 427 in respect of a compromise or arrangement to which section 427A(1) applies.**]**

[F816(u) any return delivered under paragraph 1, 7 or 8 of Schedule 21A (branch registration),

(v) any document delivered under paragraph 1 or 8 of that Schedule,

(w) any notice under section 695A(3) of the closure of a branch,

(x) any document delivered under Schedule 21C (accounts and reports of foreign credit and financial institutions),

(y) any document delivered under Schedule 21D (accounts and reports of oversea companies subject to branch registration, other than credit and financial institutions),

(z) any return delivered under section 703P (particulars of winding up of oversea companies subject to branch registration).**]**

(2) In section 42 "official notification" means—

(a) in relation to anything stated in a document of any of the above descriptions, the notification of that document in the Gazette under this section, and

(b) in relation to the appointment of a liquidator in a voluntary winding up, the notification of it in the Gazette under **[**F817section 109 of the Insolvency Act**]**;

and "officially notified" is to be construed accordingly.

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Textual Amendments

F813 Words in s. 711(1)(g) inserted (22.12.2000) by S.I. 2000/3373, **art. 31(5)**

F814 Words substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 14**

F815 S. 711(1)(s)(t) added by S.I. 1987/1991, **art. 2**(*b*), Sch.

F816 S. 711(u)-(z) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 7**.

F817 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C632 S. 711 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C633 S. 711 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F818 711A Exclusion of deemed notice.

(1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document kept by the registrar of companies (and thus available for inspection) or made available by the company for inspection.

(2) This does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such inquiries as ought reasonably to be made.

(3) In this section "document" includes any material which contains information.

(4) Nothing in this section affects the operation of—

(a) section 416 of this Act (under which a person taking a charge over a company's property is deemed to have notice of matters disclosed on the companies charges register), or

(b) section 198 of the Law of Property Act [M70] 1925 as it applies by virtue of section 3(7) of the Land Charges Act [M71] 1972 (under which the registration of certain land charges under Part XII, or Chapter III of Part XXIII, of this Act is deemed to constitute actual notice for all purposes connected with the land affected).]

Textual Amendments

F818 S. 711A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 142(1)**, 213(2), 215(2)

Marginal Citations

M70 1925 c.20 (**98:1**).

M71 1972 c.61 (**98:2**).

F819 712 . . . . . .

Textual Amendments

F819 S. 712 repealed (*1.7.1991*) by Companies Act 1989 (c. 40, SIF 27), ss. 127(3), 212, 213(2), **Sch. 24**; S.I. 1991/488, **art. 2(4)**

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713 Enforcement of company's duty to make returns.

(1) If a company, having made default in complying with any provision of the Companies Acts which requires it to **[**F820deliver a document to the registrar of companies**]**, or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the court may, on an application made to it by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer of it to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of it responsible for the default.

(3) Nothing in this section prejudices the operation of any enactment imposing penalties on a company or its officers in respect of any such default as is mentioned above.

Textual Amendments

F820 Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 127(4)**, 213(2)

Modifications etc. (not altering text)

C634 S. 713 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C635 S. 713 applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, **Sch. 2 para. 4**

C636 S. 713 applied (temp.) (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 4, **Sch. 1 para. 2**

714 Registrar's index of company and corporate names.

(1) The registrar of companies shall keep an index of the names of the following bodies—

(a) companies as defined by this Act,

[F821(aa) companies incorporated outside the United Kingdom and Gibraltar which have complied with paragraph 1 of Schedule 21A and which do not appear to the registrar of companies not to have a branch in Great Britain,**]**

(b) companies incorporated outside Great Britain which have complied with section 691 and which do not appear to the registrar of companies not to have a place of business in Great Britain,

(c) incorporated and unincorporated bodies to which any provision of this Act applies by virtue of section 718 (unregistered companies),

(d) limited partnerships registered under the M72Limited Partnerships Act 1907

[F822(da) limited liability partnerships incorporated under the Limited Liability Partnerships Act 2000,**]**

(e) companies within the meaning of the M73Companies Act (Northern Ireland) 1960,

(f) companies incorporated outside Northern Ireland which have complied with section 356 of that Act (which corresponds with section 691 of this Act), and which do not appear to the registrar not to have a place of business in Northern Ireland, and

(g) societies registered under the M74Industrial and Provident Societies Act 1965 or the M75Industrial and Provident Societies Act (Northern Ireland) 1969.

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(2) The Secretary of State may by order in a statutory instrument vary subsection (1) by the addition or deletion of any class of body, except any within paragraph (a) or (b) of the subsection, whether incorporated or unincorporated; and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F821 S. 714(1)(aa) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 8**.

F822 S. 714(1)(da) inserted (6.4.2001) by 2000 c. 12, s. 1(6), **Sch. 1 Pt. I para. 1**; S.I. 2000/3316, **art. 2**

Modifications etc. (not altering text)

C637 S. 714 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C638 S. 714 amended (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(3)**, 20(2); S.I. 2001/3538, **art. 2(1)**

C639 S. 714(1) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 19**

Marginal Citations

M72 1907 7 Edw. 7 c. 24

M73 1960 c. 22 (N.I.).

M74 1965 c. 12.

M75 1969 c. 24 (N.I.).

F823 715 . . . . . .

Textual Amendments

F823 S. 715 repealed (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 127(3), 212, 213(2), **Sch. 24**; S.I. 1990/488, **art. 2(4)**

[F824 715A Interpretation.

(1) In this Part— "document" includes information recorded in any form; and "legible", in the context of documents in legible or non-legible form, means capable of being read with the naked eye.

(2) References in this Part to delivering a document include sending, forwarding, producing or (in the case of a notice) giving it.]

Textual Amendments

F824 S. 715A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 127(1)**, 213(2)

Modifications etc. (not altering text)

C640 S. 715A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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[F825]PART XXV

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Textual Amendments

F825 Ss. 716-734 repealed (prosp.) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16** and the repeal being partly in force, as to which see individual sections.

Modifications etc. (not altering text)

C641 Power to amend and modify Pt. 25 conferred (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 58(b)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

716 Prohibition of partnerships with more than 20 members.

(1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by its individual members, unless it is registered as a company under this Act **[**[F826]is incorporated by virtue of regulations made under section 262 of the Financial Services and Markets Act 2000**]**, or is formed in pursuance of some other Act of Parliament, or of letters patent.

(2) However, this does not prohibit the formation—

(a) for the purpose of carrying on practice as solicitors, of a partnership consisting of persons each of whom is a solicitor;

(b) for the purpose of carrying on practice as accountants, of **[**[F827]a partnership which is eligible for appointment as a company auditor under section 25 of the Companies Act 1989**]**;

(c) for the purpose of carrying on business as members of a recognised stock exchange, of a partnership consisting of persons each of whom is a member of that stock exchange.

[[F828](d) for any purpose prescribed by regulations (which may include a purpose mentioned above), of a partnership of a description so prescribed.**]**

[[F829](e) of an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.**]**

[[F830](3) In subsection (2)(a) "solicitor"—

(a) in relation to England and Wales, means solicitor of the Supreme Court, and

(b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.

(4) In subsection (2)(c) "recognised stock exchange" means—

(a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and

(b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.**]**

(5) Subsection (1) does not apply in relation to any body of persons for the time being approved for the purposes of the Marine and Aviation Insurance (War Risks) Act 1952 by the Secretary of State, being a body the objects of which are or include the carrying

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on of business by way of the re-insurance of risks which may be re-insured under any agreement for the purpose mentioned in section 1(1)(b) of that Act.

Textual Amendments

F826 Words in s. 716(1) inserted (1.12.2001) by 2000 c. 8, **s. 263**; S.I. 2001/3538, **art. 2(1)**

F827 Words in s. 716(2)(b) substituted by S.I. 1991/1997, reg. 2, **Sch. para. 53(3)**.

F828 S. 716(2)(d) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 15(2)**

F829 S. 716(2)(e) substituted (1.12.2001) by 2001/1228, regs. 1(2), 84, Sch. 7 para. 7; S.I. 2001/3538, **art. 2(1)** (with reg. 1(2)(3))

F830 S. 716(3)(4) substituted by Companies Act 1989 (c. 40, SIF 27), s. 145, **Sch. 19 para. 15(3)**

Modifications etc. (not altering text)

C642 S. 716 excluded (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 127(3)**, 302.

C643 S. 716(1) amended (30.4.1992) by S.I. 1992/1028, **reg. 2(1)**.

C644 S. 716(1) excluded (1.9.1997) by S.I. 1996/1937, **reg. 2**
S. 716(1) excluded (30.9.1999) by S.I. 1999/2464, **reg. 2**
S. 716(1) excluded (31.3.2000) by S.I. 2000/486, **reg. 2**
S. 716(1) excluded (10.5.2001) by S.I. 2001/1389, **reg. 2**

C645 S. 716(2): by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 22** certain words were inserted at the end of s. 716(2) and those words were repealed (subject to any relevant transitional or saving provisions mentioned in S.I. 1990/355, **art. 5**) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 212, 213(2), Sch. 19 para. 15(2), **Sch. 24**

717 Limited partnerships: limit on number of members.

(1) So much of the [M76]Limited Partnerships Act 1907as provides that a limited partnership shall not consist of more than 20 persons does not apply—

(a) to a partnership carrying on practice as solicitors and consisting of persons each of whom is a solicitor,

(b) to a partnership carrying on practice as accountants **[**[F831]which is eligible for appointment as a company auditor under **[**[F832] section 5**]** of the Companies Act 1989**]**,

(c) to a partnership carrying on business as members of a recognised stock exchange and consisting of persons each of whom is a member of that exchange.

[[F833](d) to a partnership carrying on business of any description prescribed by regulations (which may include a business of any description mentioned above), of a partnership of a description so prescribed.**]**

[[F834](2) In subsection (1)(a) "solicitor"—

(a) in relation to England and Wales, means solicitor of the Supreme Court, and

(b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.

(3) In subsection (1)(c) "recognised stock exchange" means—

(a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and

(b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.**]**

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Textual Amendments

F831 Words in s. 717(1)(b) substituted by S.I. 1991/1997, reg. 2, **Sch. para. 53(4)**.

F832 Words in s. 717(1)(b) substituted (23.5.1995) by S.I. 1995/1163, **reg. 2**

F833 S. 717(1)(d) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 16(2)**

F834 S. 717(2)(3) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 16(3)**

Modifications etc. (not altering text)

C646 S. 717(1): by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 22** certain words were inserted at the end of s. 717(1) and those words were repealed (subject to any relevant transitional or saving provisions mentioned in S.I. 1990/355, **art. 5**) by Companies Act 1989 (c.40, SIF 27), ss. 145, 212, 213(2), Sch. 19 para. 16(2), **Sch. 24**

Marginal Citations

M76 1907 7 Edw. 7 c. 24

718 Unregistered companies.

(1) The provisions of this Act specified in the first column of Schedule 22 (relating respectively to the matters specified in the second column of the Schedule) apply to all bodies corporate incorporated in and having a principal place of business in Great Britain, other than those mentioned in subsection (2) below, as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column and to such adaptations and modifications (if any) as may be specified by regulations made by the Secretary of State.

(2) Those provisions of this Act do not apply by virtue of this section to any of the following—

(a) any body incorporated by or registered under any public general Act of Parliament,

(b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or its individual members,

(c) any body for the time being exempted by direction of the Secretary of State (or before him by the Board of Trade).

[[F835](d) any open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.**]**

(3) Where against any provision of this Act specified in the first column of Schedule 22 there appears in the third column the entry "Subject to section 718(3)", it means that the provision is to apply by virtue of this section so far only as may be specified by regulations made by the Secretary of State and to such bodies corporate as may be so specified.

(4) The provisions specified in the first column of the Schedule also apply in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the [M77]Chartered Companies Act 1837 and not registered under any other public general Act of Parliament, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (b) and (c) of subsection (2).

(5) This section does not repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which those

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provisions are applied by virtue of this section, or restrict the power of Her Majesty to grant a charter in lieu of or supplementary to any such charter as above mentioned; but, in relation to any such body, the operation of any such enactment, charter or instrument is suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body.

(6) The power to make regulations conferred by this section (whether regulations under subsection (1) or subsection (3)) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F835 S. 718(2)(d) substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2), 84, **Sch. 7 para. 8** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

Modifications etc. (not altering text)

C647 S. 718(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 20**

Marginal Citations

M77 1837 c. 73.

719 Power of company to provide for employees on cessation or transfer of business.

(1) The powers of a company include (if they would not otherwise do so apart from this section) power to make the following provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

(2) The power conferred by subsection (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue only of subsection (1) shall only be exercised by the company if sanctioned—

(a) in a case not falling within paragraph (b) or (c) below, by an ordinary resolution of the company, or

(b) if so authorised by the memorandum or articles, a resolution of the directors, or

(c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description;

and in any case after compliance with any other requirements of the memorandum or articles applicable to its exercise.

(4) Any payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

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Modifications etc. (not altering text)

C648 S. 719 modified (subject to the transitional and savings provisions mentioned in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 36**

720 Certain companies to publish periodical statement.

(1) Every company, being an **[**F836insurer**]** or a deposit provident or benefit society, shall before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in Schedule 23, or as near to it as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the company's registered office, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company is entitled to a copy of the statement, on payment of a sum not exceeding 2 1/2 pence.

(4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) For purposes of this Act, a company which carries on the business of insurance in common with any other business or businesses is deemed an **[**F837insurer**]**.

[F838(6) This section does not apply to an insurer which is—

(a) an insurance company which is subject to, and complies with, rules made by the Financial Services Authority under Part 10 of the Financial Services and Markets Act 2000 as to the accounts and balance sheet to be prepared annually and deposited; or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, if the firm complies with the provisions of law of its home State as to the accounts and balance sheets to be prepared annually and deposited.**]**

(7) The Secretary of State may, by regulations in a statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament), alter the form in Schedule 23.

[F839F839(8) For the purposes of this section—

(a) "insurer" means a person who effects or carries out contracts of insurance in the United Kingdom; and

(b) "contract of insurance" includes a contract of insurance under which the benefits provided by the insurer are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle.

F839(9) Subsection (8) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that Schedule; and

(c) Schedule 2 to that Act.**]**

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Textual Amendments

F836 Word in s. 720(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 27(1)(2)
F837 Word in s. 720(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 27(1)(3)
F838 S. 720(6) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 27(1)(4)
F839 S. 720(8)(9) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 27(1)(5)

Modifications etc. (not altering text)

C649 S. 720 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**
C650 S. 720 excluded (1.7.1994) by S.I. 1994/1696, reg. 68, **Sch. 8 Pt. I para. 9(6)**

721 Production and inspection of books where offence suspected.

(1) The following applies if on an application made—

(a) in England and Wales, to a judge of the High Court by the Director of Public Prosecutions, the Secretary of State or a chief officer of police, or

(b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate,

there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company.

(2) An order may be made—

(a) authorising any person named in it to inspect the books or papers in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or

(b) requiring the secretary of the company or such other officer of it as may be named in the order to produce the books or papers (or any of them) to a person named in the order at a place so named.

(3) The above applies also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in subsection (2)(b) shall be made by virtue of this subsection.

(4) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section is not appealable.

Modifications etc. (not altering text)

C651 S. 721 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

722 Form of company registers, etc.

(1) Any register, index, minute book or accounting records required by the Companies Acts to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

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(2) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) If default is made in complying with subsection (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)
C652 S. 722 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
S. 722 applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 paras. 18, 20, **21** (with regs. 39, 45)

723 Use of computers for company records.

(1) The power conferred on a company by section 722(1) to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form.

(2) Any provision of an instrument made by a company before 12th February 1979 which requires a register of holders of the company's debentures to be kept in a legible form is to be read as requiring the register to be kept in a legible or non-legible form.

(3) If any such register or other record of a company as is mentioned in section 722(1), or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by this Act to allow inspection of, or to furnish a copy of, the register or other record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) The Secretary of State may by regulations in a statutory instrument make such provision in addition to subsection (3) as he considers appropriate in connection with such registers or other records as are mentioned in that subsection, and are kept as so mentioned; and the regulations may make modifications of provisions of this Act relating to such registers or other records.

(5) A statutory instrument under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)
C653 S. 723 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
C654 S. 723(1)(2) applied (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 18** (with regs. 39, 45)

[F840 723A Obligations of company as to inspection of registers, &c.

(1) The Secretary of State may make provision by regulations as to the obligations of a company which is required by any provision of this Act—

(a) to make available for inspection any register, index or document, or

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(b) to provide copies of any such register, index or document, or part of it;

and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.

(2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.

(3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.

(4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.

(5) Regulations under this section may make different provision for different classes of case.

(6) Nothing in any provision of this Act or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.

(7) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F840 S. 723A inserted (1. 11. 1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(1)**, 213(2); S.I. 1991/1996, **art. 2(2)(b)**

Modifications etc. (not altering text)

C655 S. 723A applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 26(2)**.
S. 723A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F841 723B Confidentiality orders

(1) Subject to the provisions of this section, an individual may make an application under this section to the Secretary of State where the condition in subsection (2) is satisfied.

(2) That condition is that the individual—

(a) is or proposes to become a director, secretary or permanent representative of a relevant company; and

(b) considers that the availability for inspection by members of the public of particulars of his usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that he or a person who lives with him will be subjected to violence or intimidation.

(3) Where, on an application made by an individual under this section, the Secretary of State is satisfied that the availability for inspection by members of the public of particulars of the individual's usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation, he shall make an order under this section ("a confidentiality order") in relation to him.

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(4) Otherwise, he shall dismiss the application.

(5) An application under this section shall specify, in relation to each company of which the individual is a director, secretary or permanent representative, an address satisfying such conditions as may be prescribed.

(6) The Secretary of State shall give the applicant notice of his decision under subsection (3) or (4); and a notice under this subsection shall be given within the prescribed period after the making of the decision and contain such information as may be prescribed.

(7) Regulations may make provision about applications for confidentiality orders; and the regulations may in particular—

(a) require the payment, on the making of an application, of such fees as may be specified in the regulations;

(b) make provision about the form and manner in which applications are to be made;

(c) provide that applications shall contain such information, and be accompanied by such evidence, as the Secretary of State may from time to time direct.

(8) Regulations may make provision—

(a) about the manner in which determinations are to be made under subsection (3) or (4);

(b) for questions to be referred to such persons as the Secretary of State thinks fit for the purposes of such determinations;

(c) about the review of such determinations;

(d) about the period for which confidentiality orders shall remain in force and the renewal of confidentiality orders.

(9) The Secretary of State may at any time revoke a confidentiality order if he is satisfied that such conditions as may be prescribed are satisfied.

(10) Regulations may make provision about the manner in which a determination under subsection (9) is to be made and notified to the individual concerned.**]**

Textual Amendments

F841 Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, **art. 3**

Modifications etc. (not altering text)

C656 Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

[F842]723CEffect of confidentiality orders

(1) At any time when a confidentiality order is in force in relation to an individual—

(a) section 709(1) shall not apply to so much of any record kept by the registrar as contains information which is recorded as particulars of the individual's usual residential address that were contained in a document delivered to the registrar after the order came into force;

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(b) section 364 shall have effect in relation to each affected company of which the individual is a director or secretary as if the reference in subsection (4)(a) of that section to the individual's usual residential address were a reference to the address for the time being specified by the individual in relation to that company under section 723B(5) or subsection (7) below.

(2) Regulations may make provision about the inspection and copying of confidential records, and such provision may include—

(a) provision as to the persons by whom, and the circumstances in which, confidential records may be inspected or copies taken of such records;

(b) provision under which the registrar may be required to provide certified copies of, or of extracts from, such records.

(3) Provision under subsection (2) may include provision—

(a) for persons of a prescribed description to be entitled to apply to the court for authority to inspect or take copies of confidential records;

(b) as to the criteria to be used by the court in determining whether an authorisation should be given.

(4) Regulations may make provision for restricting the persons to whom, and the purposes for which, relevant information may be disclosed.

(5) In subsection (4) "relevant information" means information, relating to the usual residential address of an individual in relation to whom a confidentiality order is in force, which has been obtained in prescribed circumstances.

(6) Regulations may—

(a) provide that, where a confidentiality order is in force in relation to an individual who is a director or secretary of a company, subsections (3) and (5) of section 288 shall not apply in relation to so much of the register kept by the company under that section as contains particulars of the usual residential address of that individual ("the protected part of the register"); and

(b) make provision as to the persons by whom the protected part of the register may be inspected and the conditions (which may include conditions as to the payment of a fee) on which they may inspect it.

(7) Regulations may make provision—

(a) requiring any individual in relation to whom a confidentiality order is in force to specify in the prescribed manner, in relation to each company of which he becomes a director, secretary or permanent representative at a time when the order is in force, an address satisfying such conditions as may be prescribed;

(b) as to the manner in which the address specified in relation to a company under section 723B(5) or this subsection may be changed.

(8) A company is an affected company for the purposes of subsection (1) if—

(a) it is required to deliver annual returns in accordance with section 363; and

(b) the individual has specified an address in relation to it under section 723B(5) or subsection (7) above.

Textual Amendments

F842 Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, **art. 3**

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Modifications etc. (not altering text)

C657 Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

[F843]723D Construction of sections 723B and 723C

(1) In section 723B "relevant company" means—

(a) a company formed and registered under this Act or an existing company; or

(b) an oversea company.

(2) For the purposes of sections 723B and 723C, an individual is a permanent representative of a company if—

(a) the company is a company to which section 690A applies; and

(b) he is authorised to represent the company as a permanent representative of the company for the business of one or more of its branches in Great Britain.

(3) In section 723C "confidential records" means so much of any records kept by the registrar for the purposes of the Companies Acts as contains information—

(a) which relates to an individual in relation to whom a confidentiality order is in force; and

(b) is recorded as particulars of the individual's usual residential address that were contained in a document delivered to the registrar after the order came into force.

(4) In sections 723B and 723C—

"confidentiality order" means an order under section 723B;

"the court" means such court as may be specified in regulations;

"director" and "secretary", in relation to an oversea company, have the same meanings as in Chapter 1 of Part 23 of this Act;

"document" has the same meaning as in Part 24 of this Act;

"prescribed" means prescribed by regulations.

(5) Section 715A(2) applies in relation to sections 723B and 723C as it applies in relation to Part 24 of this Act.

(6) Regulations may provide that in determining for the purposes of sections 723B and 723C whether a document has been delivered after the coming into force of a confidentiality order, any document delivered to the registrar after the latest time permitted for the delivery of that document shall be deemed to have been delivered at that time.

(7) For the purposes of section 723B(2)(a) and subsection (2) above it is immaterial whether or not the company in question has already been incorporated or become a relevant company or a company to which section 690A applies at the time of the application under section 723B.

(8) For the purposes of section 723C(1) and subsection (3) above, it is immaterial whether the record in question consists in the original document concerned.

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Textual Amendments

F843 Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, **art. 3**

Modifications etc. (not altering text)

C658 Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

F844 723E Sections 723B and 723C: offences

(1) Regulations may provide—

(a) that any person who in an application under section 723B makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence;

(b) that any person who discloses information in contravention of regulations under section 723C(4) shall be guilty of an offence.

(2) Regulations may provide that a person guilty of an offence under subsection (1) shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both; and

(b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both.

Textual Amendments

F844 Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, **art. 3**

Modifications etc. (not altering text)

C659 Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

F845 723F Regulations under sections 723B to 723E

(1) In sections 723B to 723E "regulations" means regulations made by the Secretary of State.

(2) Any power of the Secretary of State to make regulations under any of those sections shall be exercisable by statutory instrument.

(3) Regulations under sections 723B to 723E—

(a) may make different provision for different cases;

(b) may contain such incidental, supplemental, consequential and transitional provision, as the Secretary of State thinks fit.

(4) The provision that may be made by virtue of subsection (3)(b) includes provision repealing or modifying any enactment.

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(5) No regulations shall be made under any of sections 723B to 723E unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.

Textual Amendments

F845 Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, **art. 3**

Modifications etc. (not altering text)

C660 Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

[F846]724 . . . . . .

Textual Amendments

F846 S. 724 repealed (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

725 Service of documents.

(1) A document may be served on a company by leaving it at, or sending it by post to, the company's registered office.

(2) Where a company registered in Scotland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company's principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company.

(3) Where process is served on a company under subsection (2), the person issuing out the process shall send a copy of it by post to the company's registered office.

Modifications etc. (not altering text)

C661 S. 725 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 21**

C662 S. 725 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

726 Costs and expenses in actions by certain limited companies.

(1) Where in England and Wales a limited company is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

(2) Where in Scotland a limited company is pursuer in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defender's

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expenses if successful in his defence, order the company to find caution and sist the proceedings until caution is found.

Modifications etc. (not altering text)

C663 S. 726 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

727 Power of court to grant relief in certain cases.

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.

(2) If any such officer or person as above-mentioned has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.

Modifications etc. (not altering text)

C664 S. 727 applied by Building Societies Act 1986 (c. 53, SIF 1), **s. 110(4)**
S. 727 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), **s. 106(4)**, (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**
S. 727 applied (E.W.) (*prosp.*) by Charities Act 1992 (c. 41), **ss. 22(3)**, 24(1)(2), 79(2) (which ss. 22(3), 24(1)(2) were repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), **Sch.7**)
S. 727 extended (E.W.) (1.3.1996) by 1993 c. 10, **s. 44(3)**; S.I. 1995/2695, **art. 2** (subject to arts. 3, 4)
S. 727 modified (27.7.1993) by 1993 c. 37, **s.57**
S. 727 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C665 S. 727 applied by Charities Act 1993 (c. 10), s. 73E (as inserted (27.2.2007 and 1.4.2008 for certain purposes and otherwise prosp.) by Charities Act 2006 (c. 50), **ss. 38**, 79 (with Sch. 10 para. 13); S.I. 2007/309, **art. 2**, Sch. (subject to arts. 4-13); S.I. 2008/945, **art. 2**, Sch. 1 (subject to arts. 4-9))

728 Enforcement of High Court orders.

Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending in that court.

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Modifications etc. (not altering text)
C666 S. 728 applied (with modifications) (19.3.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

729 Annual report by Secretary of State.

The Secretary of State shall cause a general annual report of matters within the Companies Acts to be prepared and laid before both Houses of Parliament.

Modifications etc. (not altering text)
C667 S. 729 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

730 Punishment of offences.

(1) Schedule 24 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.

(2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent summary conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) For the purpose of any enactment in the Companies Acts which provides that an officer of a company **[**F847or other body**]** who is in default is liable to a fine or penalty, the expression "officer who is in default" means any officer of the company **[**F847or other body**]** who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

Textual Amendments
F847 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 17**

Modifications etc. (not altering text)
C668 S. 730 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 22, **23**
C669 S. 730 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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VALID FROM 01/10/2007

730A Meaning of "officer in default"

(1) This section applies to—

(a) offences under this Act (other than an offence under Part 14 or 15),

(b) offences under the insider dealing legislation, and

(c) offences under the Companies Consolidation (Consequential Provisions) Act 1985.

(2) For the purposes of an offence to which this section applies "officer who is in default" means any officer who knowingly and wilfully authorises or permits the default, refusal or contravention in question.

Modifications etc. (not altering text)

C670 S. 730A applied (temp.) (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 4, **Sch. 1 para. 2**

731 Summary proceedings.

(1) Summary proceedings for any offence under the Companies Acts may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in section 127(1) of the [M78]Magistrates' Courts Act 1980, an information relating to an offence under the Companies Acts which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(3) Summary proceedings in Scotland for an offence under the Companies Acts shall not be commenced after the expiration of 3 years from the commission of the offence.

Subject to this (and notwithstanding anything in **[**[F848]section 136 of the Criminal Procedure (Scotland) Act 1995**]**), such proceedings may (in Scotland) be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within 12 months after the date on which it came to the knowledge of the latter; and subsection (3) of that section applies for the purpose of this subsection as it applies for the purpose of that section.

(4) For purposes of this section, a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

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Textual Amendments

F848 Words in s. 731(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 56(3)**

Modifications etc. (not altering text)

C671 S. 731 amended by Business Names Act 1985 (c. 7, SIF 90), **s. 7(6)**(*a*)

C672 S. 731 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 22, **23**

C673 S. 731 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C674 S. 731 applied (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 7(7)**

Marginal Citations

M78 1980 c. 43.

732 Prosecution by public authorities.

(1) In respect of an offence under any of sections 210, 324, 329, 447 to 451 and 455, proceedings shall not, in England and Wales, be instituted except by or with the consent of the appropriate authority.

(2) That authority is—

(a) for an offence under any of sections 210, 324 and 329, the Secretary of State or the Director of Public Prosecutions,

(b) for an offence under any of sections 447 to 451, either one of those two persons or the Industrial Assurance Commissioner, and

(c) for an offence under section 455, the Secretary of State.

(3) Where proceedings are instituted under the Companies Acts against any person by the Director of Public Prosecutions or by or on behalf of the Secretary of State or the Lord Advocate, nothing in those Acts is to be taken to require any person to disclose any information which he is entitled to refuse to disclose on grounds of legal professional privilege.

Modifications etc. (not altering text)

C675 S. 732 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 24**

C676 S. 732 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C677 S. 732(3) amended by Business Names Act 1985 (c. 7, SIF 90), **s. 7(6)**(*b*)

733 Offences by bodies corporate.

(1) The following applies to offences under any of sections 210, 216(3) **[**F849, 394A(1)**]** . . . F850 and 447 to 451.

(2) Where a body corporate is guilty of such an offence and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

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(3) Where the affairs of a body corporate are managed by its members, . . . [F851] subsection (2) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this section "director", in relation to an offence under any of sections 447 to 451, includes a shadow director.

Textual Amendments

F849 Words inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 123(3)**, 213(2)

F850 Words inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 7** and repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

F851 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

Modifications etc. (not altering text)

C678 S. 733 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 24**

C679 S. 733 applied (21.7.1993) by S.I. 1993/1820, **reg. 8(5)(b)**
S. 733 applied (19.12.1993) by S.I. 1993/3245, **reg. 6(5)(b)**
S. 733 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

734 Criminal proceedings against unincorporated bodies.

(1) Proceedings for an offence alleged to have been committed under **[**[F852]section 389A(3) or**][**[F853]section 394A(1) or**]** any of sections 447 to 451 by an unincorporated body shall be brought in the name of that body (and not in that of any of its members), and for the purposes of any such proceedings, any rules of court relating to the service of documents apply as if that body were a corporation.

(2) A fine imposed on an unincorporated body on its conviction of such an offence shall be paid out of the funds of that body.

(3) In a case in which an unincorporated body is charged in England and Wales with such an offence, section 33 of the [M79]Criminal Justice Act 1925 and Schedule 3 to the [M80]Magistrates' Courts Act 1980 (procedure on charge of an offence against a corporation) have effect in like manner as in the case of a corporation so charged.

(4) In relation to proceedings on indictment in Scotland for such an offence alleged to have been committed by an unincorporated body, **[**[F854]section 70 of the Criminal Procedure (Scotland) Act 1995**]** (proceedings on indictment against bodies corporate) has effect as if that body were a body corporate.

[[F855](5) Where such an offence committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) Where such an offence committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.**]**

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Textual Amendments

F852 Words inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4** as amended by S.I. 1990/1707, **art. 8**) by Companies Act 1989 (c. 40, SIF 27), **ss. 120(2)**, 213(2)

F853 Words inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4** as amended by S.I. 1990/1707, **art. 8**) by Companies Act 1989 (c. 40, SIF 27), **ss. 123(4)**, 213(2)

F854 Words in s. 734(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 56(4)**

F855 S. 734(5)(6) added by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 18**

Modifications etc. (not altering text)

C680 S. 734 applied (21.7.1993) by S.I. 1993/1820, **reg. 8(5)(c)**
S. 734 applied (19.12.1993) by S.I. 1993/3245, **reg. 6(5)(c)**
S. 734 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

Marginal Citations

M79 1925 c. 86.

M80 1980 c. 43.

PART XXVI

INTERPRETATION

735 "Company", etc.

(1) In this Act—

(a) "company" means a company formed and registered under this Act, or an existing company;

(b) "existing company" means a company formed and registered under the former Companies Acts, but does not include a company registered under the Joint Stock Companies Acts, the Companies Act 1862or the Companies (Consolidation) Act 1908 in what was then Ireland;

(c) "the former Companies Acts" means the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the [M81]Companies Act 1929 and the Companies Acts 1948 to 1983.

(2) "Public company" and "private company" have the meanings given by section 1(3).

(3) "The Joint Stock Companies Acts" means the [M82] Joint Stock Companies Act 1856 the [M83]Joint Stock Companies Acts 1856, [M84] 1857, the [M85]Joint Stock Banking Companies Act 1857and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts (as the case may require), but does not include the Joint Stock Companies Act 1844

(4) The definitions in this section apply unless the contrary intention appears.

Modifications etc. (not altering text)

C681 S. 735 modified (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 5** (with Sch. 4 para. 11)

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Marginal Citations

M81 1929 c. 23.
M82 1856 20 & 21 Vict. c. 14
M83 1856 20 & 21 Vict. c. 49
M84 1857 21 & 22 Vict. c. 91
M85 1844 7 & 8 Vict. c. 110

[F856 735A Relationship of this Act to Insolvency Act.

(1) In this Act "the Insolvency Act" means the Insolvency Act 1986; and in the following provisions of this Act, namely, sections 375(1)(*b*), 425(6)(*a*), . . . F857, 460(2), 675, 676, 677, 699(1), 728 and Schedule 21, paragraph 6(1), the words "this Act" are to be read as including Parts I to VII of that Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.

(2) In sections **[**F858 Sections 704(5),(7) and (8)**]** 706(1), **[**F859 707B(1)**]**, **[**F860 707A(1),**]** 708(1)(*a*) and (4) **[**F860 709(1) and (3),**][**F861 710A**]**, 713(1), 729 and 732(3) references to the Companies Acts include Parts I to VII of the Insolvency Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.

(3) Subsections (1) and (2) apply unless the contrary intention appears.**]**

Textual Amendments

F856 Part XXVI s. 735A inserted by Insolvency Act 1986 (c. 45, SIF 66), s. 493(1), **Sch. 13 Pt. II**
F857 Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**
F858 Words in s. 735A(2) substituted (3.1.1995) by 1994 c. 40, ss. 76, 81(2)(f), **Sch. 16 para. 9**
F859 Words in s. 735A(2) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(4)(b)**
F860 Words in 735A inserted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(5)**, 213(2), 215(2); S.I. 1991/488, **art. 2(1)**
F861 Word in S.735A substituted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(5)(c)**, 213(2); S.I. 1991/488, **art. 2(1)**

Modifications etc. (not altering text)

C682 S. 735A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F862 735B Relationship of this Act to Parts IV and V of the Financial Services Act 1986.

In **[**F863 sections 704(5), (7) and (8)**]**706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3), 710A and 713(1) references to the Companies Acts include **[**F864 Part 6 of the Financial Services and Markets Act 2000**]**.**]**

Textual Amendments

F862 S. 735B inserted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(6)**, 213(2), 215(2); S.I. 1991/488, **art. 2(1)**
F863 Words in s. 735B substituted (3.1.1995) by 1994 c. 40, ss. 76, 81(2)(f), **Sch. 16 para. 10**
F864 Words in s. 735B substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 28

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[F865 736 "Subsidiary", "holding company" and "wholly-owned subsidiary".

(1) A company is a "subsidiary" of another company, its "holding company", if that other company—

(a) holds a majority of the voting rights in it, or

(b) is a member of it and has the right to appoint or remove a majority of its board of directors, or

(c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,

or if it is a subsidiary of a company which is itself a subsidiary of that other company.

(2) A company is a "wholly-owned subsidiary" of another company if it has no members except that other and that other's wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.

(3) In this section "company" includes any body corporate.**]**

Textual Amendments

F865 S. 736, 736A substituted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**, and see also next two following entries) by Companies Act 1989 (c. 40, SIF 27), **ss. 144(1)**, 213(2)

Modifications etc. (not altering text)

C683 S. 736 applied by Financial Services Act 1986 (c. 60, SIF 69) s. 207(8) and Banking Act 1987 (c. 22, SIF 10), **s. 106(2)**

C684 S. 736 excluded by S.I. 1990/1392, **art. 6**

C685 S. 736: definition of "subsidiary" applied by Heathrow Express Railway (No. 2) Act 1991 (c. ix), **s. 2**.

C686 S. 736: definition of "subsidiary" applied by Heathrow Express Railway Act 1991 (c. vii), **ss. 2(1)**, 40(1)

C687 S. 736: definitions of "subsidiary" and "wholly owned subsidiary" applied by Ports Act 1991 (c. 52, SIF 58), **s. 40(1)**

C688 S. 736 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C689 S. 736 applied (20.6.2003) by Enterprise Act 2002 (c. 40), ss. {79(9)}, 279; S.I. 2003/1397, **art. 2**, Sch.

C690 S. 736 power to apply (with modifications) conferred (10.2.2005 for certain purposes and 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 57(2)(d)**, 322 (with s. 313); S.I. 2005/275, **art. 2(3)**, Sch. Pt. 3

C691 S. 736(2): definition applied by Standard Life Assurance Company Act 1991 (c. iii), s. 14, **Sch. reg. 93(4)** (with s. 21(2)).

[F866 736A Provisions supplementing s. 736.

(1) The provisions of this section explain expressions used in section 736 and otherwise supplement that section.

(2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.

(3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of

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the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—

(a) a company shall be treated as having the right to appoint to a directorship if—

(i) a person's appointment to it follows necessarily from his appointment as director of the company, or

(ii) the directorship is held by the company itself; and

(b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

(4) Rights which are exercisable only in certain circumstances shall be taken into account only—

(a) when the circumstances have arisen, and for so long as they continue to obtain, or

(b) when the circumstances are within the control of the person having the rights;

and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

(5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.

(6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

(7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—

(a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;

(b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

(8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in subsection (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.

(9) For the purposes of subsection (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—

(a) any subsidiary or holding company of that company, or

(b) any subsidiary of a holding company of that company.

(10) The voting rights in a company shall be reduced by any rights held by the company itself.

(11) References in any provision of subsections (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those subsections but not rights which by virtue of any such provision are to be treated as not held by him.

(12) In this section "company" includes any body corporate.**]**

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Textual Amendments

F866 S. 736, 736A substituted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**, and see also next two following entries) by Companies Act 1989 (c. 40, SIF 27), **ss. 144(1)**, 213(2)

Modifications etc. (not altering text)

C692 S. 736A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C693 S. 736A applied (20.6.2003) by Enterprise Act 2002 (c. 40), ss. {79(9)}, 279; S.I. 2003/1397, **art. 2**, Sch.
S. 736A applied (24.8.2004 for certain purposes and 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 37(5)**, 198(2); S.I. 2004/2184, **art. 2(1)**, Sch. 1; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C694 S. 736A(2)–(4) applied by Electricity Act 1989 (c. 29, SIF 44:1), ss. 104, 105, 112(3), Sch. 14 para. 4, Sch. 15 para. 4(2), **Sch. 17 para. 35(1)**

C695 S. 736A(3)–(12) modified (E.W.) (16.1.1990 to the extent mentioned in S.I. 1990/2445, **art. 4** otherwise 7.10.1993) by Local Government and Housing Act 1989 (c. 42, SIF 81:1), **s. 68(4)**; S.I. 1993/2410, **art.3**

[F867 736B Power to amend ss. 736 and 736A.

(1) The Secretary of State may by regulations amend sections 736 and 736A so as to alter the meaning of the expressions "holding company", "subsidiary" or "wholly-owned subsidiary".

(2) The regulations may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.

(5) So much of section 23(3) of the Interpretation Act M86 1978 as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents other than enactments shall not apply in relation to any repeal and re-enactment effected by regulations made under this section.]

Textual Amendments

F867 S. 736B inserted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), **ss. 144(3)**, 213(2)

Marginal Citations

M86 1978 c.30 (**115:1**).

737 "Called-up share capital".

(1) In this Act, "called-up share capital", in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with any share capital paid up without being

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called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares.

(2) "Uncalled share capital" is to be construed accordingly.

(3) The definitions in this section apply unless the contrary intention appears.

Modifications etc. (not altering text)

C696 S. 737 extended (21.8.2002) by S.I. 2001/1060, art. 5A(2) (as inserted by S.I. 2002/2157, **art. 8(2)**)
S. 737 extended (21.8.2002) by S.I. 2001/1335, art. 8A(2) (as inserted by S.I. 2002/2157, **art. 3(2)**)

C697 S. 737 modified (1.7.2005) by The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), **art. 8A(2)** (with art. 10)

738 "Allotment" and "paid up".

(1) In relation to an allotment of shares in a company, the shares are to be taken for the purposes of this Act to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of those shares.

(2) For purposes of this Act, a share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration for the allotment or payment up is cash received by the company, or is a cheque received by it in good faith which the directors have no reason for suspecting will not be paid, or is a release of a liability of the company for a liquidated sum, or is an undertaking to pay cash to the company at a future date.

(3) In relation to the allotment or payment up of any shares in a company, references in this Act (except sections 89 to 94) to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include the payment of, or any undertaking to pay, cash to any person other than the company.

(4) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, "cash" includes foreign currency.

739 "Non-cash asset".

(1) In this Act "non-cash asset" means any property or interest in property other than cash; and for this purpose "cash" includes foreign currency.

(2) A reference to the transfer or acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person's liability, other than a liability for a liquidated sum.

Modifications etc. (not altering text)

C698 S. 739 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

740 "Body corporate" and "corporation".

References in this Act to a body corporate or to a corporation do not include a corporation sole, but include a company incorporated elsewhere than in Great Britain.

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Such references to a body corporate do not include a Scottish firm.

Modifications etc. (not altering text)
C699 S. 740 applied by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **s. 22(6)**
C700 S. 740 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

741 "Director" and "shadow director".

(1) In this Act, "director" includes any person occupying the position of director, by whatever name called.

(2) In relation to a company, "shadow director" means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

However, a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.

(3) For the purposes of the following provisions of this Act, namely—

section 309 (directors' duty to have regard to interests of employees),

section 319 (directors' long-term contracts of employment),

sections 320 to 322 (substantial property transactions involving directors), [F868]

[[F869]section 322B (contracts with sole members who are directors), and**]**

sections 330 to 346 (general restrictions on power of companies to make loans, etc., to directors and others connected with them), (being provisions under which shadow directors are treated as directors), a body corporate is not to be treated as a shadow director of any of its subsidiary companies by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

Textual Amendments
F868 Word "and" in s. 741(3) deleted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 3(2)**.
F869 Words in s. 741(3) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 3(2)**.

Modifications etc. (not altering text)
C701 S. 741 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F870]742 Expressions used in connection with accounts.

(1) In this Act, unless a contrary intention appears, the following expressions have the same meaning as in Part VII (accounts)—

"annual accounts,"

"accounting reference date" and "accounting reference period",

"balance sheet" and "balance sheet date",

"current assets",

"financial year", in relation to a company,

"fixed assets",

"parent company" and "parent undertaking",

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"profit and loss account", and
"subsidiary undertaking".

(2) References in this Act to "realised profits" and "realised losses", in relation to a company's accounts, shall be construed in accordance with section 262(3).**]**

[[F871](2A) References in this Act to sending or sending out copies of any of the documents referred to in section 238(1) include sending or sending out such copies in accordance with section 238(4A) or (4B).**]**

Textual Amendments

F870 S. 742 substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 15**

F871 S. 742(2A) inserted (22.12.2000) by S.I. 2000/3373, **art. 28**

Modifications etc. (not altering text)

C702 S. 742 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[[F872]742A Meaning of "offer to the public"

(1) Any reference in Part IV (allotment of shares and debentures) or Part VII (accounts) to offering shares or debentures to the public is to be read as including a reference to offering them to any section of the public, however selected.

(2) This section does not require an offer to be treated as made to the public if it can properly be regarded, in all the circumstances—

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer; or

(b) as being a domestic concern of the persons receiving and making it.

(3) An offer of shares in or debentures of a private company (other than an offer to which subsection (5) applies) is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if—

(a) it is made to—

(i) an existing member of the company making the offer,

(ii) an existing employee of that company,

(iii) the widow or widower of a person who was a member or employee of that company,

(iv) a member of the family of a person who is or was a member or employee of that company, or

(v) an existing debenture holder; or

(b) it is an offer to subscribe for shares or debentures to be held under an employee's share scheme.

(4) Subsection (5) applies to an offer—

(a) which falls within paragraph (a) or (b) of subsection (3); but

(b) which is made on terms which permit the person to whom it is made to renounce his right to the allotment of shares or issue of debentures.

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(5) The offer is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if the terms are such that the right may be renounced only in favour—

(a) of any person mentioned in subsection (3)(a); or

(b) in the case of an employee's share scheme, of a person entitled to hold shares or debentures under the scheme.

(6) For the purposes of subsection (3)(a)(iv), the members of a person's family are—

(a) the person's spouse and children (including step-children) and their descendants, and

(b) any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person him or herself or of any of those relatives.

(7) Where an application has been made to the competent authority in any EEA State for the admission of any securities to official listing, then an offer of those securities for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not to be regarded as an offer to the public for the purposes of this Part.

(8) For the purposes of subsection (7)—

(a) "competent authority" means a competent authority appointed for the purposes of the Council Directive of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities; and

(b) "official listing" means official listing pursuant to that directive.**]**

Textual Amendments

F872 Ss. 742A-C inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 29

[F873]742B Meaning of "banking company"

(1) Subject to subsection (2), "banking company" means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits.

(2) A banking company does not include—

(a) a person who is not a company, and

(b) a person who has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.

(3) This section must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

Textual Amendments

F873 Ss. 742A-C inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 29

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[F874]742C Meaning of "insurance company" and "authorised insurance company"

(1) For the purposes of this Act, "insurance company" has the meaning given in subsection (2) and "authorised insurance company" has the meaning given in subsection (4).

(2) Subject to subsection (3), "insurance company" means a person (whether incorporated or not)—

(a) who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; or

(b) who carries on insurance market activity; or

(c) who may effect or carry out contracts of insurance under which the benefits provided by that person are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle, and does not fall within paragraph (a).

(3) An insurance company does not include a friendly society, within the meaning of section 116 of the Friendly Societies Act 1992.

(4) An "authorised insurance company" means a person falling within paragraph (a) of subsection (2).

(5) References in this section to contracts of insurance and the effecting or carrying out of such contracts must be read with -

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

Textual Amendments

F874 Ss. 742A-C inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 29

743 "Employees' share scheme".

For purposes of this Act, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—

(a) the bona fide employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company, or

(b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees.

Modifications etc. (not altering text)

C703 S. 743 modified (subject to the transitional provisions in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 37**

[F875]743A Meaning of "office copy" in Scotland.

References in this Act to an office copy of a court order shall be construed, as respects Scotland, as references to a certified copy interlocutor.**]**

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Textual Amendments

F875 S. 743A inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 19**

Modifications etc. (not altering text)

C704 S. 743A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

744 Expressions used generally in this Act.

In this Act, unless the contrary intention appears, the following definitions apply—

"agent" does not include a person's counsel acting as such;

F876 . . . . . .

"articles" means, in relation to a company, its articles of association, as originally framed or as altered by resolution, including (so far as applicable to the company) regulations contained in or annexed to any enactment relating to companies passed before this Act, as altered by or under any such enactment;

. . . . . F877

[F878"authorised minimum" has the meaning given by section 118;**]**

"bank holiday" means a holiday under the M87Banking and Financial Dealings Act 1971;

F879 . . .

"books and papers" and "books or papers" include accounts, deeds, writings and documents;

[F880"communication" means the same as in the Electronic Communications Act 2000;

"the Companies Acts" means this Act, the **[**F881insider dealing legislation**]** and the Consequential Provisions Act;

"the Consequential Provisions Act" means the M88Companies Consolidation (Consequential Provisions) Act 1985;

"the court", in relation to a company, means the court having jurisdiction to wind up the company;

"debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

"document" includes summons, notice, order, and other legal process, and registers;

[F882'EEA State' means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 M89 as adjusted by the Protocol signed at Brussels on 17th March 1993 M90.

[F883"electronic communication" means the same as in the Electronic Communications Act 2000;

"equity share capital" means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

[F884"expert" has the meaning given by section 62;**]**

[F885"floating charge" includes a floating charge within the meaning given by section 462;**]**

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"the Gazette" means, as respects companies registered in England and Wales, the London Gazette and, as respects companies registered in Scotland, the Edinburgh Gazette;

. . . . . F886;

"hire-purchase agreement" has the same meaning as in the M91Consumer Credit Act 1974;

[F887"the insider dealing legislation" means Part V of the Criminal Justice Act 1993 (insider dealing).

[F888"insurance market activity" has the meaning given in section 316(3) of the Financial Services and Markets Act 2000;

F879 . . .

[F889"joint stock company" has the meaning given by section 683;]

"memorandum", in relation to a company, means its memorandum of association, as originally framed or as altered in pursuance of any enactment;

"number", in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

"officer", in relation to a body corporate, includes a director, manager or secretary;

"official seal", in relation to the registrar of companies, means a seal prepared under section 704(4) for the authentication of documents required for or in connection with the registration of companies;

"oversea company" means—

(a) a company incorporated elsewhere than in Great Britain which, after the commencement of this Act, establishes a place of business in Great Britain, and

(b) a company so incorporated which has, before than commencement, established a place of business and continues to have an established place of business in Great Britain at that commencement;

"place of business" includes a share transfer or share registration office;

"prescribed" means—

(a) as respects provisions of this Act relating to winding up, prescribed by general rules . . . F890, and

(b) otherwise, prescribed by statutory instrument made by the Secretaty of State;

"prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares in or debentures of a company;

. . . . . F891;

. . . . . F892;

. . . . . F893;

[F894"regulated activity" has the meaning given in section 22 of the Financial Services and Markets Act 2000;

"the registrar of companies" and "the registrar" means the registrar or other officer performing under this Act the duty of registration of companies in England and Wales or in Scotland, as the case may require;

"share" means share in the share capital of a company, and includes stock (except where a distinction between shares and stock is express or implied); and

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[[F895]"undistributable reserves" has the meaning given by section 264(3).**]]]]]]]**

Textual Amendments

F876 Definition in s. 744 repealed (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**; S.I. 1995/1352, **art. 3(1)**

F877 Definition of "authorised institution" inserted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 18(8)** and is repealed (subject to the transitional and saving provisions in S.I. 1990/355, arts. 5–9, **Sch. 3 para. 1**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 212, 213(2), Sch. 10 para. 16, **Sch. 24**

F878 Definition repealed (*prosp.*) by Companies Act 1989 (c.40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**

F879 Definitions of "banking company" and "insurance company" in s. 744 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 30(a)

F880 S. 744: definition of "communication" inserted (22.12.2000) by S.I. 2000/3373, **art. 29**

F881 Words in s. 744 substituted (1.3.1994) by 1993 c. 36, s. 79(13), **Sch. 5 para. 4(2)**; S.I. 1994/242, **arts. 2**, 3

F882 Definition of "EEA State" in S. 744 inserted (20.10.1997) by S.I. 1997/2306, **reg. 4(1)**

F883 S. 744: definition of "electrical communication" inserted (22.12.2000) by S.I. 2000/3373, **art. 29**

F884 Definition repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**

F885 Definition repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**

F886 Definition of "general rules" repealed by Insolvency Act 1985 (c. 65, SIF 66), s. 235, **Sch. 10 Pt. II**

F887 Definition in s. 744 substituted (1.3.1994) by 1993 c. 36, ss. 79(13), **Sch. 5 para. 4(1)**; S.I. 1994/242, **arts. 2**, 3

F888 Definition of "insurance market activity" in s. 744 inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 30(b)

F889 Definition repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**

F890 Words repealed by Insolvency Act 1985 (c. 65, SIF 66), s. 235, **Sch. 10 Pt. II**

F891 Definition of "prospectus issued generally" repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I**

F892 Definition of "recognised bank" repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(1)(2), Sch. 6, para. 18(8), **Sch. 7 Pt. I**

F893 Definition of "recognised stock exchange" repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I**

F894 Definition of "regulated activity" in s. 744 inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 30(c)

F895 Definition repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**

Modifications etc. (not altering text)

C705 S. 744 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C706 S. 744: definition of "equity share capital" applied by Ports Act 1991 (c. 52, SIF 58), **s. 40(1)**

C707 S. 744 amended (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 2**.

Marginal Citations

M87 1971 c. 80.

M88 1985 c. 9.

M89 O.J. L1, 3.1.94, p. 3.

M90 O.J. L1, 3.1.94, p. 571.

M91 1974 c. 39.

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[F896 744A Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions for the purposes of this Act generally—

accounting reference date, accounting reference period	sections 224 and 742(1)
acquisition (in relation to a non-cash asset)	section 739(2)
agent	section 744
allotment (and related expressions)	section 738
annual accounts	sections 261(2), 262(1) and 742(1)
annual general meeting	section 366
annual return	section 363
articles	section 744
[F897 authorised insurance company	section 742C**]**
authorised minimum	section 118
balance sheet and balance sheet date	sections 261(2), 262(1) and 742(1)
bank holiday	section 744
banking company	**[**F898 section 7 42B**]**
body corporate	section 740
books and papers, books or papers	section 744
called-up share capital	section 737(1)
capital redemption reserve	section 170(1)
[F899 "communication"	F899 section 744**]**
the Companies Acts	section 744
companies charges register	section 397
company	section 735(1)
the Consequential Provisions Act	section 744
corporation	section 740
the court (in relation to a company)	section 744
current assets	sections 262(1) and 742(1)
debenture	section 744
director	section 741(1)
document	section 744
[F900 EEA State**]**	**[**F900 section 744**]**
elective resolution	section 379A
[F901 "electronic communication"	F901 section 744**]**

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employees' share scheme	section 743
equity share capital	section 744
existing company	section 735(1)
extraordinary general meeting	section 368
extraordinary resolution	section 378(1)
financial year (of a company)	sections 223 and 742(1)
fixed assets	sections 262(1) and 742(1)
floating charge (in Scotland)	section 462
the former Companies Acts	section 735(1)
the Gazette	section 744
hire-purchase agreement	section 744
holding company	section 736
the Insider Dealing Act	section 744
the Insolvency Act	section 735A(1)
insurance company	**[**F902sectio n 742C**]**
[F903insurance mar ket activity	F903section 7 44**]**
the Joint Stock Companies Acts	section 735(3)
limited company	section 1(2)
member (of a company)	section 22
memorandum (in relation to a company)	section 744
non-cash asset	section 739(1)
number (in relation to shares)	section 744
office copy (in relation to a court order in Scotland)	section 743A
officer (in relation to a body corporate)	section 744
official seal (in relation to the registrar of companies)	section 744
oversea company	section 744
overseas branch register	section 362
paid up (and related expressions)	section 738
parent company and parent undertaking	sections 258 and 742(1)
place of business	section 744
prescribed	section 744
private company	section 1(3)
profit and loss account	sections 261(2), 262(1) and 742(1)
prospectus	section 744

Status: *Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

public company	section 1(3)
realised profits or losses	sections 262(3) and 742(2)
registered number (of a company)	section 705(1)
registered office (of a company)	section 287
registrar and registrar of companies	section 744
[F904regula ted activity	F904secti on 744**]**
resolution for reducing share capital	section 135(3)
shadow director	section 741(2) and (3)
share	section 744
share premium account	section 130(1)
share warrant	section 188
special notice (in relation to a resolution)	section 379
special resolution	section 378(2)
subsidiary	section 736
subsidiary undertaking	sections 258 and 742(1)
transfer (in relation to a non-cash asset)	section 739(2)
uncalled share capital	section 737(2)
undistributable reserves	section 264(3)
unlimited company	section 1(2)
unregistered company	section 718
wholly-owned subsidiary	section 736(2)**]**

Textual Amendments

F896 S. 744A inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), 215(2), **Sch. 19 para. 20**; S.I. 1995/1352, **art. 3(b)**

F897 S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 31(a)

F898 S. 744A: words in entry relating to "banking company" substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 31(b)

F899 S. 744A: entry inserted (22.12.2000) by S.I. 2000/3373, **art. 30**

F900 Entry in s. 744A inserted (20.10.1997) by S.I. 1997/2306, **reg. 4(3)**

F901 S. 744A: entry inserted (22.12.2000) by S.I. 2000/3373, **art. 30**

F902 S. 744A: words in entry relating to "insurance company" substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 31(c)

F903 S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 31(d)

F904 S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 31(e)

Modifications etc. (not altering text)

C708 S. 744A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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PART XXVII

FINAL PROVISIONS

745 Northern Ireland.

(1) Except where otherwise expressly provided, nothing in this Act (except provisions relating expressly to companies registered or incorporated in Northern Ireland or outside Great Britain) applies to or in relation to companies so registered or incorporated.

(2) Subject to any such provision, and to any express provision as to extent, this Act does not extend to Northern Ireland.

F905 746 Commencement.

. . . . . .

Textual Amendments

F905 Words repealed (subject to the transitional and saving provisions as mentioned in S.I. 1990/355, **art. 5**) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

747 Citation.

This Act may be cited as the Companies Act 1985.

Status:
Point in time view as at 01/06/2002. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
Companies Act 1985 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.