

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Schedule 13: Supplementary provisions with respect to delegation order

Part 46: General Supplementary Provisions

Sections 1288 to 1292: Regulations and orders

1709. These sections provide how regulations and orders made under the Act are to be made.
1710. [Section 1288](#) provides that, unless the provision in the Act creating the power states otherwise, all regulations and orders are to be made by statutory instrument.
1711. Most of the powers to make regulations or orders are exercisable by the Secretary of State and are to be made by statutory instrument. The Act also confers powers on the registrar of companies to make rules, which are not required to be made by statutory instrument (section 1117(3) requires appropriate publicity). Other non-statutory instrument powers are conferred on the Takeover Panel (see Part 28) and the Financial Services Authority (see Part 43, which inserts new sections into the FSMA).
1712. Virtually all the provisions of the Act conferring power to make regulations or orders by statutory instrument specify one or other of the following three types of Parliamentary procedure:
- negative resolution procedure (defined in section 1289): the statutory instrument containing the regulations or order is laid before Parliament and must be revoked if either House passes a resolution against it within 40 Parliamentary days. An instrument subject to the negative procedure is normally laid at least 21 days before it is to come into effect to ensure scrutiny of the instrument before its provisions come into force;
 - affirmative resolution procedure (defined in section 1290): the statutory instrument containing the regulations or order is laid before Parliament in draft and can only be made when approved by affirmative resolution in each House. This means that they are always subject to debate in each House;
 - approval after being made (defined in section 1291): the statutory instrument containing the regulations or order is laid before Parliament after being made. It ceases to have effect after 28 Parliamentary days unless it is approved by resolution of each House during the 28 day period. Should the regulations or order cease to have effect at the end of the 28 days, anything done under them during the period remains effective and new regulations or a new order may be made.
1713. [Section 1292\(1\)](#) provides that regulations or orders may make different provision for different cases or circumstances, may include supplementary, incidental and consequential provision, and may make transitional provision and savings.

1714. *Subsections (2) to (4)* of section 1292 enable orders or regulations to be made combining provisions in relation to which different procedural requirements apply. A power to make regulations can be exercised by making an order, and a power to make an order can be exercised by making regulations. Provisions subject to the affirmative resolution procedure, provisions subject to the negative resolution procedure and provisions subject to no Parliamentary procedure at all may be included in a single instrument, and subsections (3) and (4) clarify which procedure applies when powers are combined.

Section 1293: Meaning of “enactment”

1715. This clause explains what the term “enactment” includes, when used in the Act, to make it clear that it goes beyond the definition in the [Interpretation Act 1978 \(c.30\)](#). Unless the context in which it is used dictates otherwise, “enactment” includes:

- an enactment contained in subordinate legislation within the meaning of the [Interpretation Act 1978 \(c.30\)](#);
- an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- an enactment contained in, or in an instrument made under, Northern Ireland legislation within the meaning of the Interpretation Act 1978.

Section 1294: Power to make consequential amendments etc

1716. This section confers on the Secretary of State, and on the Treasury, order-making powers to amend enactments in consequence of any provision in the Act. Such amendments and repeals are additional to those made by any other provision of the Act. Orders under this section are subject to the affirmative resolution procedure.

1717. Orders may be made to amend, repeal or revoke any enactment that is:

- passed or made before the passing of the Act;
- contained in the Act or in subordinate legislation made under it;
- passed or made before the end of Parliamentary session 2006-7.

1718. In particular, orders may make provision corresponding to that made in the Act in relation to companies, and may extend provision to other forms of organisation. The provisions of the Act may be applied with any adaptations or other modifications that appear to be necessary or expedient.

Section 1295: Repeals

1719. This section introduces Schedule 16, the repeal Schedule. The repeals include, in addition to purely consequential repeals, repeals of the restated provisions of the 1985 Act and repeals of enactments that are no longer of practical utility.

1720. [Schedule 16](#) repeals a number of Parts and/or sections of a number of pieces of legislation, including most of the 1985 Act, most of the Companies Act 1989 and the whole of the Business Names Act 1985.

Section 1296: Power to make transitional provision and savings

1721. This section gives the Secretary of State and the Treasury order-making powers to make transitional provision and savings in connection with the commencement of any provision made in the Act. Orders are subject to the negative resolution procedure.

Section 1297: Continuity of the law

1722. This section provides that things done under the provisions in the 1985 Act that are repealed and replaced by the Act will continue to be legally effective. Similarly, references to the repealed provisions in enactments, instruments or documents are to be construed as including references to the corresponding new provision.
1723. Articles of association, company resolutions and contracts are all likely to refer to provisions of the Companies Acts or to rely for their effect on the way in which those provisions work. Except where a change is intended, those articles, resolutions and contracts should continue to have effect, not only with old references converted into new but also with their legal effect capable of continuing despite verbal differences between the old and the new.
1724. The section applies automatically in all cases in which it is capable of applying. It is in addition to any more specific transitional provisions, which may be included in commencement orders by use of the power in section 1296.