

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

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Part 1: General Introductory Provisions

Section 1: Companies

17. This section restates section 735(1)(a) and (b) of the 1985 Act. It defines “company” and provides signposts to provisions in the Act which relate to companies that are registered but not formed under the Act or former Companies Acts, to unregistered companies and to overseas companies.

Section 2: The Companies Acts

18. This section replaces section 744 of the 1985 Act. The Act does not restate or replace all existing companies legislation and section 2 makes it clear that any reference to “Companies Acts” in the Act includes those provisions of the Acts listed in *subsection (1)(c)* that remain in force as well as the company law provisions of the Act and Part 2 of the C(AICE) Act 2004.
19. The CLR recommended that the law should provide for the formation of new companies of each of the types that are currently available (Final Report, paragraph 9.2). This recommendation is taken forward in the following group of sections, which retains all of the current forms of companies.

Section 3: Limited and unlimited companies

20. This section restates section 1(2) of the 1985 Act. It updates the Companies Acts definitions of “limited company” and “unlimited company” to reflect changes to what is to be included in a company’s memorandum of association (see section 8). As now, a company may be limited by shares or by guarantee. Where there is no limit on the liability of the company’s members, a company is an “unlimited company.”

Section 4: Private and public companies

21. This section restates section 1(3) of the 1985 Act. It provides definitions of “private company” and “public company.”
22. A “private company” is any company that is not a public company.
23. A “public company” is a company whose certificate of incorporation states that it is a public company. To obtain this certificate the company will need to comply with the provisions of the Act (or former Companies Acts) as regards registration or re-registration as a public company. There is a minimum share capital requirement (the “authorised minimum”), which is currently set at £50,000, and remains unchanged under the Act. In future the authorised minimum will however be capable of being satisfied in sterling or the euro equivalent to the prescribed sterling amount (see Chapter 2 of Part 20).

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24. **Section 4** also provides a signpost to Part 20 of the Act, which sets out key differences between public and private companies, for example, a private company may not offer shares to the public.

Section 5: Companies limited by guarantee and having share capital

25. This section restates section 1(4) and section 15(2) of the 1985 Act. It makes it clear that a company can no longer be formed (or re-register) as a company limited by guarantee and with a share capital. This provision has been in force in Great Britain since 22nd December 1980 and in Northern Ireland since 1st July 1983.

Section 6: Community interest companies

26. The C(AICE) Act 2004 came fully into force on 1 July 2005. Part 2 of that Act created a new company vehicle, the “community interest company” or “c.i.c.”, which is designed for use by social enterprises.
27. This section provides a signpost to the provisions in the C(AICE) Act, which enable a company to be formed as or become a community interest company. Such companies are registered under the same legislation as other registered companies, but have to complete certain additional formalities and are subject to certain additional elements of regulation. *Subsection (2)* of this section highlights the fact that in some respects the requirements imposed on community interest companies are different from the requirements imposed on other registered companies.