

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

COMPANIES ACT 2006

EXPLANATORY NOTES

EXISTING LAW

England and Wales or Northern Ireland

484. In England and Wales, it is possible as a matter of common law for a member to bring an action, in certain circumstances, on behalf of the company of which he is a member. This is known as a derivative claim. As noted above, a member may bring such an action to enforce liability for a breach by one of the directors of his duties to the company.
485. The law relating to the ability of a member to bring proceedings on behalf of the company is not written down in statute. The general principle – commonly known as the rule in *Foss v Harbottle* – is that it is for the company itself to bring proceedings where a wrong has been done to the company. However, where there has been conduct amounting to a “fraud on the minority”, an exception may be made to the rule, so that a minority shareholder may bring an action to enforce the company’s rights (for example, where there has been an expropriation of company property or dishonest behaviour by a director, and the company is improperly prevented from bringing proceedings against the director by the majority shareholders, perhaps because the wrongdoing director controls the majority of votes).
486. Under the current law, if a wrong has been effectively ratified by the company, this will be a complete bar to a derivative claim. In addition, if a wrong is capable of being ratified, then even if there has been no formal ratification, it may not be possible for a minority shareholder to bring a derivative claim.
487. The law in Northern Ireland in this area is the same as that in England and Wales.