

*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

Scotland

Chapter 1: Derivative Claims in England and Wales Or Northern Ireland

Section 261: Application for permission to continue derivative claim

495. This clause provides that, once proceedings have been brought, the member is required to apply to the court for permission to continue the claim. This reflects the current procedure in England and Wales under the Civil Procedure Rules. The applicant is required to establish a *prima facie* case for the grant of permission, and the court will consider the issue on the basis of his evidence alone without requiring evidence to be filed by the defendant. The court must dismiss the application at this stage if what is filed does not show a *prima facie* case, and it may make any consequential order that it considers appropriate (for example, a costs order or a civil restraint order against the applicant). If the application is not dismissed, the court may direct the company to provide evidence and, on hearing the application, may grant permission, refuse permission and dismiss the claim, or adjourn the proceedings and give such directions as it thinks fit. This will enable the courts to dismiss unmeritorious claims at an early stage without involving the defendants or the company.