

*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 2: Derivative Proceedings in Scotland

505. Sections 265 to 269 seek to ensure maximum consistency between the position in England and Wales and Northern Ireland and the position in Scotland (although the clauses reflect the different procedural requirements which apply where proceedings are commenced in the Scottish courts, in particular the fact that the leave of court must be obtained before derivative proceedings may be raised). In view of this, they also put the rights of the member to raise actions on behalf of the company on a statutory footing.
506. Section 265 differs from section 260 in its approach in that it confers the right to bring the proceedings in the first place, and then, in the clauses which follow, regulate the proceedings. (By contrast, the sections relating to proceedings in England and Wales and Northern Ireland assume that there is already a right to bring such proceedings in England and Wales and Northern Ireland; they therefore regulate the proceedings rather than confer the right to bring them.)
507. Subsections (4) to (6) of section 268 confer on the Secretary of State a parallel power to that in section 263 to make regulations with regard to the criteria to which the court must have regard in determining whether to grant leave to continue a derivative claim and where leave of the court must be refused.