

These notes refer to the Small Business, Enterprise and Employment Act 2015 (c.26) which received Royal Assent on 26 March 2015

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: COMPANIES: TRANSPARENCY

Shadow directors

Section 89: Application of directors' general duties to shadow directors

602. The general duties of directors are set out in sections 170 to 177 of the CA 2006 and are based on common law rules and equitable principles. They set out how directors are expected to behave.
603. At present the general duties of directors can only apply to shadow directors in the same way as the corresponding common law rules and equitable principles can. In future, the starting point for shadow directors will be that the general duties apply to them unless they are not capable of applying (removing the current restriction). This is achieved by replacing section 170(5) of the CA 2006. This change in default position is neither intended to preclude the courts from looking at the application of the duties on a case by case basis, nor from drawing on existing case law in any given case.
604. Subsection (3) gives the Secretary of State the power to make regulations directly applying or disapplying one or several of the general duties to shadow directors with or without modification, to facilitate their application to shadow directors. The power is subject to the affirmative procedure.