

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Chapter 1: Appointment and Removal of Directors

Section 154: Companies required to have directors

281. This section replaces section 282 of the 1985 Act. It distinguishes between private and public companies. It retains the requirement for a private company to have at least one director and requires all public companies to have at least two. There will no longer be an exception for public companies registered before 1st November 1929 (or before 1st January 1933 in Northern Ireland).

Section 155: Companies required to have at least one director who is a natural person

282. This section is a new provision. It introduces a requirement that every company have at least one director who is a natural person, ie an individual. Subject to this requirement being satisfied, any legal person, including one that is a company or a firm, can be a director but one company cannot be the sole director of another company. *Subsection (2)* provides that the requirement that the director be a natural person is met if the director is a corporation sole (for example, the Archbishop of Canterbury) or someone appointed on the basis of some other appointment that they hold.

Section 156: Direction requiring company to make appointment

283. This section is a new provision, enabling enforcement of the existing requirement for a private company to have at least one director and a public company to have at least two directors and of the new requirement for every company to have at least one director who is an individual. Where it appears to the Secretary of State that any of these requirements is not met, the Secretary of State will be able to direct the company to comply by issuing a notice. It will be an offence not to comply.

Section 157: Minimum age for appointment as director

284. This section is a new provision. It introduces a minimum age of 16 for a natural person to be a director. *Subsection (2)* provides that prohibition will not prevent the appointment of a younger person provided it is not to take effect until that person is 16. *Subsection (3)* provides that the age limit applies even if the director's appointment is a consequence of some other appointment. *Subsection (5)* provides that this prohibition on under-age directors does not provide protection from criminal prosecution or civil liability if he or she were to act as director, i.e. as a de facto director, or if the company's directors usually act on that young person's instructions.

Section 158: Power to provide for exceptions from minimum age requirement

285. This section is a new provision. It provides for an exception from the prohibition in section 157 on anyone under 16 being appointed a director of a company. It provides a

power for the Secretary of State to make regulations specifying circumstances in which a younger person may be a director. The regulations may differ for different parts of the UK.

Section 159: Existing under-age directors

286. This section is a new transitional provision. *Subsections (1) and (2)* provide that where a person under 16 has been appointed as director (or holds the office of director by virtue of another office or is a corporation sole) prior to the prohibition on under age directors coming into force, that person will cease to be a director when the prohibition in section 157 comes into force. *Subsection (3)* makes it the company's responsibility to amend its register of directors accordingly but the company is not required to notify the registrar of the change. *Subsection (4)* gives the registrar power to amend the register without a notification by the company of the director's removal but rather on the basis of information already held (i.e. the date of birth as provided when the appointment was notified).

Section 160: Appointment of directors of public company to be voted on individually.

287. This restates section 292 of the 1985 Act: the appointment of each proposed director of a public company must be voted on individually unless there is unanimous agreement to a block resolution. Without such consent, any appointment of a director that is not voted on individually is void. This ensures that members can express their disapproval of any particular director without having to reject the entire board.

Section 161: Validity of acts of directors

288. This section, which replaces section 285 of the 1985 Act, provides that a director's actions are valid even if his or her appointment is subsequently found to have been defective or void.

Section 162: Register of directors

289. This section replaces part of section 288 of the 1985 Act. It imposes on every company a requirement to keep a register of its directors (secretaries are dealt with in Part 12). This register need not contain particulars of shadow directors.
290. This section requires the register to be kept available for inspection either at the company's registered office or at a place specified in regulations made under section 1136. It must be available for inspection by members (without charge) or the public (for a prescribed fee, set under powers provided under section 1137). Refusal to permit inspection is an offence for which every officer in default (including a shadow director) can be liable. In addition, the court may compel immediate inspection of the register if the company has refused.

Section 163: Particulars of directors to be registered: individuals

291. This section replaces section 289 of the 1985 Act so far as it applies to individuals. It specifies the particulars that must be entered in the register of directors for each director who is an individual (as opposed to a company or similar entity). The most significant change is the requirement for companies to provide a service address for a director rather than, as now, the director's usual residential address. A director may give the company's registered office as his or her service address; the service address may also be the same as the director's residential address – but this will not be apparent from the public record. In addition, in fulfilment of a Government commitment given in March 1998, the particulars no longer include details of other directorships held. There are also changes to the requirement to provide the director's name. The requirement is now to include any name by which the individual was formerly known for business purposes. As recommended by the CLR (Final Report, paragraph 11.38), there is no longer an

exception for a married woman's former name. However the section retains a protective provision relating to the former names of peers.

Section 164: Particulars of directors to be registered: corporate directors and firms

292. This section replaces section 289(1)(b) of the 1985 Act. It retains the requirement for the corporate or firm name and the registered or principal office to be recorded where the director is either a body corporate or a firm that is a legal person under the law by which it is governed. In addition, as recommended by the CLR (Final Report, paragraph 11.38), it requires for EEA companies the register where the company is registered and its registration number; for all others, particulars of the legal form of the company or firm, the law by which it is governed, and, if applicable, where it is registered and its registration number.

Section 165: Register of directors' residential addresses

293. This section is a new provision. It requires companies to keep a register of the usual residential addresses of directors who are individuals. Provided that a director's service address is not the company's registered office, if his/her residential address is the same as his/her service address, then the register need only contain an entry making that clear. This register is not to be open to public inspection, but can be used in accordance with Chapter 8 of this Part.

Section 166: Particulars of directors to be registered: power to make regulations

294. This section is a new provision. It provides power for the Secretary of State to make regulations that add or remove items from the particulars that have to be entered in a company's register of directors and register of directors' residential addresses.

Section 167: Duty to notify registrar of changes

295. This section replaces section 288(2) of the 1985 Act insofar as it applies to directors. It retains the requirement that the appointment of a director, or a director's ceasing to hold office, and any change in an existing director's particulars, be notified to the registrar within 14 days. This requirement does not extend to shadow directors. Default is an offence. This section also requires a notice of appointment to be accompanied by the appointee's consent. This provision ensures that the public record is kept up to date. There is also a requirement to notify the registrar of changes to information in the register of directors' residential addresses (but this information is not to be open to public inspection at Companies House).

Section 168: Resolution to remove director

296. This section replaces section 303 of the 1985 Act. *Subsection (1)* provides that an ordinary resolution is sufficient to remove a director, but requires that it be at a meeting so as to ensure the director's right to be heard.

Section 169: Director's right to protest removal

297. This section replaces section 304 of the 1985 Act. The only change is to be found in *subsection (5)*; the court need no longer be satisfied that the rights conferred by the section are being abused to secure needless publicity for defamatory matter, so long as it is satisfied that they are being abused