

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Chapter 5: Directors' Service Contracts

Section 227: Directors' service contracts

414. This section is a new provision. It defines what is meant in this Part by references to a director's service contract. The term is used in sections 177, 182, 188 and 190 and in this Chapter. It includes contracts of employment with the company, or with a subsidiary of the company. It also includes contracts for services and letters of appointment to the office of director. The contract may relate to services as a director or to any other services that a director undertakes personally to perform for the company or a subsidiary.

Section 228: Copy of contract or memorandum of terms to be available for inspection

415. This section requires a company to keep available for inspection copies of every director's service contract entered into by the company or by a subsidiary of the company. If the contract is not in writing, the company must keep available for inspection a written memorandum of its terms. This section, together with sections 229 and 230, replace section 318 of the 1985 Act.
416. *Subsection (3)* is new. It requires the service contracts to be retained and kept available for inspection by the company for at least one year after they have expired, but the subsection does not require the copies to be retained thereafter. As a result of the expanded definition of service contract in section 227, this section now applies to contracts for services and letters of appointment, as recommended by the Law Commissions.
417. As recommended by the Law Commissions, the exemption for contracts requiring a director to work outside the UK (section 318(5) of the 1985 Act) and the exemption for contracts with less than 12 months to run (section 318(11) of the 1985 Act) have not been retained.
418. Failure to comply with the requirements of this section is a criminal offence for which every officer of the company who is in default may be held liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000) or in cases of continued contravention a daily default fine not exceeding one-tenth of that. In a change from the current position under section 318 of the 1985 Act, the company will no longer be liable under the criminal offence.

Section 229: Right of member to inspect and request copy

419. This section gives members a right to inspect without charge the copies of service contracts held by the company in accordance with section 228. *Subsection (2)* creates

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

a new right for members to request a copy of the service contracts on payment of a fee set by regulations under section 1137.

Section 230: Directors' service contracts: application of provisions to shadow directors

420. This section applies the requirements of this Chapter to service contracts with shadow directors.