

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### EXISTING LAW

#### *Scotland*

#### **Part 12: Company Secretaries**

##### ***Section 270: Private company not required to have secretary***

508. This section replaces section 283(1) of the 1985 Act insofar as it applies to private companies. It implements the CLR recommendation (Final Report, paragraph 4.7) that the requirement for a private company to have a secretary be abolished. It defines a private company “without a secretary” for the purposes of the Act as a company which has taken advantage of the exemption provided by *subsection (1)* as opposed to one which normally has a secretary but for some reason (for example the death of the office holder) is without a secretary at a given time. *Subsection (3)* makes provision for private companies without a secretary.

##### ***Section 271: Public company required to have secretary***

509. This section replaces section 283(1) of the 1985 Act insofar as it applies to public companies. It retains the requirement that a public company must have a secretary. The secretary may also be one of the directors.

##### ***Section 272: Direction requiring public company to appoint secretary***

510. This section is a new provision, enabling enforcement of the continuing requirement for a public company to have a secretary. It does not apply to private companies. Where it appears that a public company does not have a secretary, the Secretary of State may give a direction to the company. The company must comply with the direction (by making the appropriate appointment and giving notice of it) within the period specified in the direction. The section provides for an offence for failure to comply with a direction.

##### ***Section 273: Qualifications of secretaries of public companies***

511. This section updates section 286 of the 1985 Act. It makes it the duty of the directors of a public company to ensure that the secretary has both the necessary knowledge and experience and one of the qualifications listed in *subsection (2)*. The qualifications specified in this section are the same as in the 1985 Act except that:

- they do not include the qualification of having held the office of the company’s secretary (or assistant or deputy secretary) on 22 December 1980;
- in *subsection (3)(f)*, “Chartered Institute of Management Accountants” replaces “Institute of Cost and Management Accountants” as the Institute changed its name in 1986.

There is no requirement for the company secretary to be a natural person. (Compare the requirement in section 155 that a company must have at least one director who is a natural person.)

***Section 274: Discharge of functions where office vacant or secretary unable to act***

512. This section replaces section 283(3) of the 1985 Act. It provides for the situation where the office of secretary is vacant or there is no secretary capable of acting for any other reason. In these circumstances, if the company has an assistant or deputy secretary, then that person may fill the position of secretary; if not, any person authorised by the directors may do so. This section differs from section 283(3) of the 1985 Act by permitting the directors to authorise any person to act as secretary, rather than only an officer of the company.

***Section 275: Duty to keep register of secretaries***

513. This section replaces the requirement in section 288 of 1985 Act. It requires every company to keep a register of its secretaries containing specified details. *Subsection (3)* provides that the register must be kept available for inspection either at the company's registered office or at a place specified in regulations made under section 1136. *Subsections (5) to (8)* retain the public right of inspection, sanctions and means of enforcement of the right of inspection.

***Section 276: Duty to notify registrar of changes***

514. This section replaces the requirement in section 288(2) of the 1985 Act. It requires notification to the registrar within 14 days of any change in the company's secretary or any change in the particulars contained in the register of secretaries. The consent of the person having become a secretary or joint secretary of a company must accompany the notice. The section retains the existing sanction and ensures that the public record is kept up to date as regards the secretary of every company.

***Section 277: Particulars of secretaries to be registered: individuals***

515. This section replaces section 290 of the 1985 Act insofar as it applies to secretaries who are individuals. It requires a company to enter in its register of secretaries the name and address of any individual who is its secretary. The definition of name is the same as for directors (see section 163): in particular, the register must include any name used or in use for business purposes since the age of 16. The section retains an exception relating to the former names of peers but, as recommended by the CLR, not that for the former names of married women. The address to be registered is a service address: this implements the CLR recommendation (Final Report, paragraph 11.46) that the requirement for home addresses for company secretaries be abolished.

***Section 278: Particulars of secretaries to be registered: corporate secretaries and firms***

516. This section replaces section 290 of the 1985 Act insofar as it applies to secretaries who are not individuals. It sets out the details which must be registered where the secretary of a company is either a body corporate or a firm which is a legal person under the law by which it is governed. The requirements that apply in the case of an EEA company follow the recommendations of the CLR (Final Report, paragraph 11.39).
517. The section also makes provision about the details which must be registered where all the partners in a firm are joint secretaries.

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

***Section 279: Particulars of secretaries to be registered: power to make regulations***

518. This section is a new provision. It provides a 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 secretaries. A similar power is provided by section 166 for directors' particulars.

***Section 280: Acts done by person in dual capacity***

519. This section replaces section 284 of the 1985 Act. It provides that where a provision requires or authorises a thing to be done by or to both a director and a secretary of a company it will not be satisfied if done by the same person acting in both capacities.