



Companies Act 2006

CHAPTER 46

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Companies Act 2006

2006 CHAPTER 46

An Act to reform company law and restate the greater part of the enactments relating to companies; to make other provision relating to companies and other forms of business organisation; to make provision about directors' disqualification, business names, auditors and actuaries; to amend Part 9 of the Enterprise Act 2002; and for connected purposes. [8th November 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

GENERAL INTRODUCTORY PROVISIONS

Companies and Companies Acts

1 Companies

- (1) In the Companies Acts, unless the context otherwise requires—
“company” means a company formed and registered under this Act, that is—
- (a) a company so formed and registered after the commencement of this Part, or
 - (b) a company that immediately before the commencement of this Part—
 - (i) was formed and registered under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or
 - (ii) was an existing company for the purposes of that Act or that Order,

(which is to be treated on commencement as if formed and registered under this Act).

- (2) Certain provisions of the Companies Acts apply to—
 - (a) companies registered, but not formed, under this Act (see Chapter 1 of Part 33), and
 - (b) bodies incorporated in the United Kingdom but not registered under this Act (see Chapter 2 of that Part).
- (3) For provisions applying to companies incorporated outside the United Kingdom, see Part 34 (overseas companies).

2 The Companies Acts

- (1) In this Act “the Companies Acts” means—
 - (a) the company law provisions of this Act,
 - (b) Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (community interest companies), and
 - (c) the provisions of the Companies Act 1985 (c. 6) and the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that remain in force.
- (2) The company law provisions of this Act are—
 - (a) the provisions of Parts 1 to 39 of this Act, and
 - (b) the provisions of Parts 45 to 47 of this Act so far as they apply for the purposes of those Parts.

Types of company

3 Limited and unlimited companies

- (1) A company is a “limited company” if the liability of its members is limited by its constitution.
It may be limited by shares or limited by guarantee.
- (2) If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is “limited by shares”.
- (3) If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is “limited by guarantee”.
- (4) If there is no limit on the liability of its members, the company is an “unlimited company”.

4 Private and public companies

- (1) A “private company” is any company that is not a public company.
- (2) A “public company” is a company limited by shares or limited by guarantee and having a share capital—
 - (a) whose certificate of incorporation states that it is a public company, and
 - (b) in relation to which the requirements of this Act, or the former Companies Acts, as to registration or re-registration as a public company have been complied with on or after the relevant date.

- (3) For the purposes of subsection (2)(b) the relevant date is—
 - (a) in relation to registration or re-registration in Great Britain, 22nd December 1980;
 - (b) in relation to registration or re-registration in Northern Ireland, 1st July 1983.
- (4) For the two major differences between private and public companies, see Part 20.

5 Companies limited by guarantee and having share capital

- (1) A company cannot be formed as, or become, a company limited by guarantee with a share capital.
- (2) Provision to this effect has been in force—
 - (a) in Great Britain since 22nd December 1980, and
 - (b) in Northern Ireland since 1st July 1983.
- (3) Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital.
This applies whether or not the nominal value or number of the shares or interests is specified by the provision.

6 Community interest companies

- (1) In accordance with Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)—
 - (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and
 - (b) a company limited by guarantee and having a share capital may become a community interest company.
- (2) The other provisions of the Companies Acts have effect subject to that Part.

PART 2

COMPANY FORMATION

General

7 Method of forming company

- (1) A company is formed under this Act by one or more persons—
 - (a) subscribing their names to a memorandum of association (see section 8), and
 - (b) complying with the requirements of this Act as to registration (see sections 9 to 13).
- (2) A company may not be so formed for an unlawful purpose.

8 Memorandum of association

- (1) A memorandum of association is a memorandum stating that the subscribers –
 - (a) wish to form a company under this Act, and
 - (b) agree to become members of the company and, in the case of a company that is to have a share capital, to take at least one share each.
- (2) The memorandum must be in the prescribed form and must be authenticated by each subscriber.

Requirements for registration

9 Registration documents

- (1) The memorandum of association must be delivered to the registrar together with an application for registration of the company, the documents required by this section and a statement of compliance.
- (2) The application for registration must state –
 - (a) the company's proposed name,
 - (b) whether the company's registered office is to be situated in England and Wales (or in Wales), in Scotland or in Northern Ireland,
 - (c) whether the liability of the members of the company is to be limited, and if so whether it is to be limited by shares or by guarantee, and
 - (d) whether the company is to be a private or a public company.
- (3) If the application is delivered by a person as agent for the subscribers to the memorandum of association, it must state his name and address.
- (4) The application must contain –
 - (a) in the case of a company that is to have a share capital, a statement of capital and initial shareholdings (see section 10);
 - (b) in the case of a company that is to be limited by guarantee, a statement of guarantee (see section 11);
 - (c) a statement of the company's proposed officers (see section 12).
- (5) The application must also contain –
 - (a) a statement of the intended address of the company's registered office; and
 - (b) a copy of any proposed articles of association (to the extent that these are not supplied by the default application of model articles: see section 20).
- (6) The application must be delivered –
 - (a) to the registrar of companies for England and Wales, if the registered office of the company is to be situated in England and Wales (or in Wales);
 - (b) to the registrar of companies for Scotland, if the registered office of the company is to be situated in Scotland;
 - (c) to the registrar of companies for Northern Ireland, if the registered office of the company is to be situated in Northern Ireland.

10 Statement of capital and initial shareholdings

- (1) The statement of capital and initial shareholdings required to be delivered in the case of a company that is to have a share capital must comply with this section.
- (2) It must state –
 - (a) the total number of shares of the company to be taken on formation by the subscribers to the memorandum of association,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) It must contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association.
- (4) It must state, with respect to each subscriber to the memorandum –
 - (a) the number, nominal value (of each share) and class of shares to be taken by him on formation, and
 - (b) the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (5) Where a subscriber to the memorandum is to take shares of more than one class, the information required under subsection (4)(a) is required for each class.

11 Statement of guarantee

- (1) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must comply with this section.
- (2) It must contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association.
- (3) It must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for –
 - (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
 - (b) payment of the costs, charges and expenses of winding up, and
 - (c) adjustment of the rights of the contributories among themselves,not exceeding a specified amount.

12 Statement of proposed officers

- (1) The statement of the company's proposed officers required to be delivered to the registrar must contain the required particulars of –
 - (a) the person who is, or persons who are, to be the first director or directors of the company;

- (b) in the case of a company that is to be a private company, any person who is (or any persons who are) to be the first secretary (or joint secretaries) of the company;
 - (c) in the case of a company that is to be a public company, the person who is (or the persons who are) to be the first secretary (or joint secretaries) of the company.
- (2) The required particulars are the particulars that will be required to be stated –
- (a) in the case of a director, in the company’s register of directors and register of directors’ residential addresses (see sections 162 to 166);
 - (b) in the case of a secretary, in the company’s register of secretaries (see sections 277 to 279).
- (3) The statement must also contain a consent by each of the persons named as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.
- If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

13 Statement of compliance

- (1) The statement of compliance required to be delivered to the registrar is a statement that the requirements of this Act as to registration have been complied with.
- (2) The registrar may accept the statement of compliance as sufficient evidence of compliance.

Registration and its effect

14 Registration

If the registrar is satisfied that the requirements of this Act as to registration are complied with, he shall register the documents delivered to him.

15 Issue of certificate of incorporation

- (1) On the registration of a company, the registrar of companies shall give a certificate that the company is incorporated.
- (2) The certificate must state –
 - (a) the name and registered number of the company,
 - (b) the date of its incorporation,
 - (c) whether it is a limited or unlimited company, and if it is limited whether it is limited by shares or limited by guarantee,
 - (d) whether it is a private or a public company, and
 - (e) whether the company’s registered office is situated in England and Wales (or in Wales), in Scotland or in Northern Ireland.
- (3) The certificate must be signed by the registrar or authenticated by the registrar’s official seal.
- (4) The certificate is conclusive evidence that the requirements of this Act as to registration have been complied with and that the company is duly registered under this Act.

16 Effect of registration

- (1) The registration of a company has the following effects as from the date of incorporation.
- (2) The subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation.
- (3) That body corporate is capable of exercising all the functions of an incorporated company.
- (4) The status and registered office of the company are as stated in, or in connection with, the application for registration.
- (5) In the case of a company having a share capital, the subscribers to the memorandum become holders of the shares specified in the statement of capital and initial shareholdings.
- (6) The persons named in the statement of proposed officers –
 - (a) as director, or
 - (b) as secretary or joint secretary of the company,are deemed to have been appointed to that office.

PART 3

A COMPANY'S CONSTITUTION

CHAPTER 1

INTRODUCTORY

17 A company's constitution

Unless the context otherwise requires, references in the Companies Acts to a company's constitution include –

- (a) the company's articles, and
- (b) any resolutions and agreements to which Chapter 3 applies (see section 29).

CHAPTER 2

ARTICLES OF ASSOCIATION

General

18 Articles of association

- (1) A company must have articles of association prescribing regulations for the company.
- (2) Unless it is a company to which model articles apply by virtue of section 20 (default application of model articles in case of limited company), it must register articles of association.
- (3) Articles of association registered by a company must –

- (a) be contained in a single document, and
 - (b) be divided into paragraphs numbered consecutively.
- (4) References in the Companies Acts to a company’s “articles” are to its articles of association.

19 Power of Secretary of State to prescribe model articles

- (1) The Secretary of State may by regulations prescribe model articles of association for companies.
- (2) Different model articles may be prescribed for different descriptions of company.
- (3) A company may adopt all or any of the provisions of model articles.
- (4) Any amendment of model articles by regulations under this section does not affect a company registered before the amendment takes effect.
“Amendment” here includes addition, alteration or repeal.
- (5) Regulations under this section are subject to negative resolution procedure.

20 Default application of model articles

- (1) On the formation of a limited company –
 - (a) if articles are not registered, or
 - (b) if articles are registered, in so far as they do not exclude or modify the relevant model articles,the relevant model articles (so far as applicable) form part of the company’s articles in the same manner and to the same extent as if articles in the form of those articles had been duly registered.
- (2) The “relevant model articles” means the model articles prescribed for a company of that description as in force at the date on which the company is registered.

Alteration of articles

21 Amendment of articles

- (1) A company may amend its articles by special resolution.
- (2) In the case of a company that is a charity, this is subject to –
 - (a) in England and Wales, section 64 of the Charities Act 1993 (c. 10);
 - (b) in Northern Ireland, Article 9 of the Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19)).
- (3) In the case of a company that is registered in the Scottish Charity Register, this is subject to –
 - (a) section 112 of the Companies Act 1989 (c. 40), and
 - (b) section 16 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

22 Entrenched provisions of the articles

- (1) A company's articles may contain provision ("provision for entrenchment") to the effect that specified provisions of the articles may be amended or repealed only if conditions are met, or procedures are complied with, that are more restrictive than those applicable in the case of a special resolution.
- (2) Provision for entrenchment may only be made –
 - (a) in the company's articles on formation, or
 - (b) by an amendment of the company's articles agreed to by all the members of the company.
- (3) Provision for entrenchment does not prevent amendment of the company's articles –
 - (a) by agreement of all the members of the company, or
 - (b) by order of a court or other authority having power to alter the company's articles.
- (4) Nothing in this section affects any power of a court or other authority to alter a company's articles.

23 Notice to registrar of existence of restriction on amendment of articles

- (1) Where a company's articles –
 - (a) on formation contain provision for entrenchment,
 - (b) are amended so as to include such provision, or
 - (c) are altered by order of a court or other authority so as to restrict or exclude the power of the company to amend its articles,the company must give notice of that fact to the registrar.
- (2) Where a company's articles –
 - (a) are amended so as to remove provision for entrenchment, or
 - (b) are altered by order of a court or other authority –
 - (i) so as to remove such provision, or
 - (ii) so as to remove any other restriction on, or any exclusion of, the power of the company to amend its articles,the company must give notice of that fact to the registrar.

24 Statement of compliance where amendment of articles restricted

- (1) This section applies where a company's articles are subject –
 - (a) to provision for entrenchment, or
 - (b) to an order of a court or other authority restricting or excluding the company's power to amend the articles.
- (2) If the company –
 - (a) amends its articles, and
 - (b) is required to send to the registrar a document making or evidencing the amendment,the company must deliver with that document a statement of compliance.
- (3) The statement of compliance required is a statement certifying that the amendment has been made in accordance with the company's articles and, where relevant, any applicable order of a court or other authority.

- (4) The registrar may rely on the statement of compliance as sufficient evidence of the matters stated in it.

25 Effect of alteration of articles on company's members

- (1) A member of a company is not bound by an alteration to its articles after the date on which he became a member, if and so far as the alteration –
- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or
 - (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.
- (2) Subsection (1) does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

26 Registrar to be sent copy of amended articles

- (1) Where a company amends its articles it must send to the registrar a copy of the articles as amended not later than 15 days after the amendment takes effect.
- (2) This section does not require a company to set out in its articles any provisions of model articles that –
- (a) are applied by the articles, or
 - (b) apply by virtue of section 20 (default application of model articles).
- (3) If a company fails to comply with this section an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

27 Registrar's notice to comply in case of failure with respect to amended articles

- (1) If it appears to the registrar that a company has failed to comply with any enactment requiring it –
- (a) to send to the registrar a document making or evidencing an alteration in the company's articles, or
 - (b) to send to the registrar a copy of the company's articles as amended,
- the registrar may give notice to the company requiring it to comply.
- (2) The notice must –
- (a) state the date on which it is issued, and
 - (b) require the company to comply within 28 days from that date.
- (3) If the company complies with the notice within the specified time, no criminal proceedings may be brought in respect of the failure to comply with the enactment mentioned in subsection (1).
- (4) If the company does not comply with the notice within the specified time, it is liable to a civil penalty of £200.
This is in addition to any liability to criminal proceedings in respect of the failure mentioned in subsection (1).

- (5) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.

Supplementary

28 Existing companies: provisions of memorandum treated as provisions of articles

- (1) Provisions that immediately before the commencement of this Part were contained in a company's memorandum but are not provisions of the kind mentioned in section 8 (provisions of new-style memorandum) are to be treated after the commencement of this Part as provisions of the company's articles.
- (2) This applies not only to substantive provisions but also to provision for entrenchment (as defined in section 22).
- (3) The provisions of this Part about provision for entrenchment apply to such provision as they apply to provision made on the company's formation, except that the duty under section 23(1)(a) to give notice to the registrar does not apply.

CHAPTER 3

RESOLUTIONS AND AGREEMENTS AFFECTING A COMPANY'S CONSTITUTION

29 Resolutions and agreements affecting a company's constitution

- (1) This Chapter applies to –
 - (a) any special resolution;
 - (b) any resolution or agreement agreed to by all the members of a company that, if not so agreed to, would not have been effective for its purpose unless passed as a special resolution;
 - (c) any resolution or agreement agreed to by all the members of a class of shareholders that, if not so agreed to, would not have been effective for its purpose unless passed by some particular majority or otherwise in some particular manner;
 - (d) any resolution or agreement that effectively binds all members of a class of shareholders though not agreed to by all those members;
 - (e) any other resolution or agreement to which this Chapter applies by virtue of any enactment.
- (2) References in subsection (1) to a member of a company, or of a class of members of a company, do not include the company itself where it is such a member by virtue only of its holding shares as treasury shares.

30 Copies of resolutions or agreements to be forwarded to registrar

- (1) A copy of every resolution or agreement to which this Chapter applies, or (in the case of a resolution or agreement that is not in writing) a written memorandum setting out its terms, must be forwarded to the registrar within 15 days after it is passed or made.
- (2) If a company fails to comply with this section, an offence is committed by –

- (a) the company, and
 - (b) every officer of it who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) For the purposes of this section, a liquidator of the company is treated as an officer of it.

CHAPTER 4

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Statement of company's objects

31 Statement of company's objects

- (1) Unless a company's articles specifically restrict the objects of the company, its objects are unrestricted.
- (2) Where a company amends its articles so as to add, remove or alter a statement of the company's objects –
- (a) it must give notice to the registrar,
 - (b) on receipt of the notice, the registrar shall register it, and
 - (c) the amendment is not effective until entry of that notice on the register.
- (3) Any such amendment does not affect any rights or obligations of the company or render defective any legal proceedings by or against it.
- (4) In the case of a company that is a charity, the provisions of this section have effect subject to –
- (a) in England and Wales, section 64 of the Charities Act 1993 (c. 10);
 - (b) in Northern Ireland, Article 9 of the Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19)).
- (5) In the case of a company that is entered in the Scottish Charity Register, the provisions of this section have effect subject to the provisions of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Other provisions with respect to a company's constitution

32 Constitutional documents to be provided to members

- (1) A company must, on request by any member, send to him the following documents –
- (a) an up-to-date copy of the company's articles;
 - (b) a copy of any resolution or agreement relating to the company to which Chapter 3 applies (resolutions and agreements affecting a company's constitution) and that is for the time being in force;
 - (c) a copy of any document required to be sent to the registrar under –
 - (i) section 34(2) (notice where company's constitution altered by enactment), or

- (ii) section 35(2)(a) (notice where order of court or other authority alters company's constitution);
 - (d) a copy of any court order under section 899 (order sanctioning compromise or arrangement) or section 900 (order facilitating reconstruction or amalgamation);
 - (e) a copy of any court order under section 996 (protection of members against unfair prejudice: powers of the court) that alters the company's constitution;
 - (f) a copy of the company's current certificate of incorporation, and of any past certificates of incorporation;
 - (g) in the case of a company with a share capital, a current statement of capital;
 - (h) in the case of a company limited by guarantee, a copy of the statement of guarantee.
- (2) The statement of capital required by subsection (1)(g) is a statement of –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) If a company makes default in complying with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

33 Effect of company's constitution

- (1) The provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions.
- (2) Money payable by a member to the company under its constitution is a debt due from him to the company.
In England and Wales and Northern Ireland it is of the nature of an ordinary contract debt.

34 Notice to registrar where company's constitution altered by enactment

- (1) This section applies where a company's constitution is altered by an enactment, other than an enactment amending the general law.
- (2) The company must give notice of the alteration to the registrar, specifying the enactment, not later than 15 days after the enactment comes into force.
In the case of a special enactment the notice must be accompanied by a copy of the enactment.
- (3) If the enactment amends –

- (a) the company’s articles, or
 - (b) a resolution or agreement to which Chapter 3 applies (resolutions and agreements affecting a company’s constitution),
- the notice must be accompanied by a copy of the company’s articles, or the resolution or agreement in question, as amended.
- (4) A “special enactment” means an enactment that is not a public general enactment, and includes –
 - (a) an Act for confirming a provisional order,
 - (b) any provision of a public general Act in relation to the passing of which any of the standing orders of the House of Lords or the House of Commons relating to Private Business applied, or
 - (c) any enactment to the extent that it is incorporated in or applied for the purposes of a special enactment.
 - (5) If a company fails to comply with this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
 - (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

35 Notice to registrar where company’s constitution altered by order

- (1) Where a company’s constitution is altered by an order of a court or other authority, the company must give notice to the registrar of the alteration not later than 15 days after the alteration takes effect.
- (2) The notice must be accompanied by –
 - (a) a copy of the order, and
 - (b) if the order amends –
 - (i) the company’s articles, or
 - (ii) a resolution or agreement to which Chapter 3 applies (resolutions and agreements affecting the company’s constitution),a copy of the company’s articles, or the resolution or agreement in question, as amended.
- (3) If a company fails to comply with this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) This section does not apply where provision is made by another enactment for the delivery to the registrar of a copy of the order in question.

36 Documents to be incorporated in or accompany copies of articles issued by company

- (1) Every copy of a company's articles issued by the company must be accompanied by –
 - (a) a copy of any resolution or agreement relating to the company to which Chapter 3 applies (resolutions and agreements affecting a company's constitution),
 - (b) where the company has been required to give notice to the registrar under section 34(2) (notice where company's constitution altered by enactment), a statement that the enactment in question alters the effect of the company's constitution,
 - (c) where the company's constitution is altered by a special enactment (see section 34(4)), a copy of the enactment, and
 - (d) a copy of any order required to be sent to the registrar under section 35(2)(a) (order of court or other authority altering company's constitution).
- (2) This does not require the articles to be accompanied by a copy of a document or by a statement if –
 - (a) the effect of the resolution, agreement, enactment or order (as the case may be) on the company's constitution has been incorporated into the articles by amendment, or
 - (b) the resolution, agreement, enactment or order (as the case may be) is not for the time being in force.
- (3) If the company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale for each occasion on which copies are issued, or, as the case may be, requested.
- (5) For the purposes of this section, a liquidator of the company is treated as an officer of it.

Supplementary provisions

37 Right to participate in profits otherwise than as member void

In the case of a company limited by guarantee and not having a share capital any provision in the company's articles, or in any resolution of the company, purporting to give a person a right to participate in the divisible profits of the company otherwise than as a member is void.

38 Application to single member companies of enactments and rules of law

Any enactment or rule of law applicable to companies formed by two or more persons or having two or more members applies with any necessary modification in relation to a company formed by one person or having only one person as a member.

PART 4

A COMPANY'S CAPACITY AND RELATED MATTERS

*Capacity of company and power of directors to bind it***39 A company's capacity**

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution.
- (2) This section has effect subject to section 42 (companies that are charities).

40 Power of directors to bind the company

- (1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.
- (2) For this purpose—
 - (a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party,
 - (b) a person dealing with a company—
 - (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so,
 - (ii) is presumed to have acted in good faith unless the contrary is proved, and
 - (iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution.
- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—
 - (a) from a resolution of the company or of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors.
But no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) This section has effect subject to—
 - section 41 (transactions with directors or their associates), and
 - section 42 (companies that are charities).

41 Constitutional limitations: transactions involving directors or their associates

- (1) This section applies to a transaction if or to the extent that its validity depends on section 40 (power of directors deemed to be free of limitations under company's constitution in favour of person dealing with company in good faith).

Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

- (2) Where –
- (a) a company enters into such a transaction, and
 - (b) the parties to the transaction include –
 - (i) a director of the company or of its holding company, or
 - (ii) a person connected with any such director,
- the transaction is voidable at the instance of the company.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (2)(b)(i) or (ii), and any director of the company who authorised the transaction, is liable –
- (a) to account to the company for any gain he has made directly or indirectly by the transaction, and
 - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) The transaction ceases to be voidable if –
- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible, or
 - (b) the company is indemnified for any loss or damage resulting from the transaction, or
 - (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
 - (d) the transaction is affirmed by the company.
- (5) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (6) Nothing in the preceding provisions of this section affects the rights of any party to the transaction not within subsection (2)(b)(i) or (ii).
But the court may, on the application of the company or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the court to be just.
- (7) In this section –
- (a) "transaction" includes any act; and
 - (b) the reference to a person connected with a director has the same meaning as in Part 10 (company directors).

42 Constitutional limitations: companies that are charities

- (1) Sections 39 and 40 (company's capacity and power of directors to bind company) do not apply to the acts of a company that is a charity except in favour of a person who –

- (a) does not know at the time the act is done that the company is a charity, or
 - (b) gives full consideration in money or money's worth in relation to the act in question and does not know (as the case may be) –
 - (i) that the act is not permitted by the company's constitution, or
 - (ii) that the act is beyond the powers of the directors.
- (2) Where a company that is a charity purports to transfer or grant an interest in property, the fact that (as the case may be) –
- (a) the act was not permitted by the company's constitution, or
 - (b) the directors in connection with the act exceeded any limitation on their powers under the company's constitution,
- does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (3) In any proceedings arising out of subsection (1) or (2) the burden of proving –
- (a) that a person knew that the company was a charity, or
 - (b) that a person knew that an act was not permitted by the company's constitution or was beyond the powers of the directors,
- lies on the person asserting that fact.
- (4) In the case of a company that is a charity the affirmation of a transaction to which section 41 applies (transactions with directors or their associates) is ineffective without the prior written consent of –
- (a) in England and Wales, the Charity Commission;
 - (b) in Northern Ireland, the Department for Social Development.
- (5) This section does not extend to Scotland (but see section 112 of the Companies Act 1989 (c. 40)).

Formalities of doing business under the law of England and Wales or Northern Ireland

43 Company contracts

- (1) Under the law of England and Wales or Northern Ireland a contract may be made –
- (a) by a company, by writing under its common seal, or
 - (b) on behalf of a company, by a person acting under its authority, express or implied.
- (2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

44 Execution of documents

- (1) Under the law of England and Wales or Northern Ireland a document is executed by a company –
- (a) by the affixing of its common seal, or
 - (b) by signature in accordance with the following provisions.
- (2) A document is validly executed by a company if it is signed on behalf of the company –

- (a) by two authorised signatories, or
 - (b) by a director of the company in the presence of a witness who attests the signature.
- (3) The following are “authorised signatories” for the purposes of subsection (2) –
- (a) every director of the company, and
 - (b) in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company.
- (4) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) In favour of a purchaser a document is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2).
A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.
- (6) Where a document is to be signed by a person on behalf of more than one company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.
- (7) References in this section to a document being (or purporting to be) signed by a director or secretary are to be read, in a case where that office is held by a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.
- (8) This section applies to a document that is (or purports to be) executed by a company in the name of or on behalf of another person whether or not that person is also a company.

45 Common seal

- (1) A company may have a common seal, but need not have one.
- (2) A company which has a common seal shall have its name engraved in legible characters on the seal.
- (3) If a company fails to comply with subsection (2) an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (4) An officer of a company, or a person acting on behalf of a company, commits an offence if he uses, or authorises the use of, a seal purporting to be a seal of the company on which its name is not engraved as required by subsection (2).
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) This section does not form part of the law of Scotland.

46 Execution of deeds

- (1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34) and for the purposes of the law of Northern Ireland if, and only if –

- (a) it is duly executed by the company, and
 - (b) it is delivered as a deed.
- (2) For the purposes of subsection (1)(b) a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.

47 Execution of deeds or other documents by attorney

- (1) Under the law of England and Wales or Northern Ireland a company may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds or other documents on its behalf.
- (2) A deed or other document so executed, whether in the United Kingdom or elsewhere, has effect as if executed by the company.

Formalities of doing business under the law of Scotland

48 Execution of documents by companies

- (1) The following provisions form part of the law of Scotland only.
- (2) Notwithstanding the provisions of any enactment, a company need not have a company seal.
- (3) For the purposes of any enactment –
- (a) providing for a document to be executed by a company by affixing its common seal, or
 - (b) referring (in whatever terms) to a document so executed,
- a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 (c. 7) has effect as if so executed.

Other matters

49 Official seal for use abroad

- (1) A company that has a common seal may have an official seal for use outside the United Kingdom.
- (2) The official seal must be a facsimile of the company's common seal, with the addition on its face of the place or places where it is to be used.
- (3) The official seal when duly affixed to a document has the same effect as the company's common seal.
This subsection does not extend to Scotland.
- (4) A company having an official seal for use outside the United Kingdom may –
- (a) by writing under its common seal, or
 - (b) as respects Scotland, by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995,
- authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the company is party.

- (5) As between the company and a person dealing with such an agent, the agent's authority continues –
 - (a) during the period mentioned in the instrument conferring the authority, or
 - (b) if no period is mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with him.
- (6) The person affixing the official seal must certify in writing on the deed or other document to which the seal is affixed the date on which, and place at which, it is affixed.

50 Official seal for share certificates etc

- (1) A company that has a common seal may have an official seal for use –
 - (a) for sealing securities issued by the company, or
 - (b) for sealing documents creating or evidencing securities so issued.
- (2) The official seal –
 - (a) must be a facsimile of the company's common seal, with the addition on its face of the word "Securities", and
 - (b) when duly affixed to the document has the same effect as the company's common seal.

51 Pre-incorporation contracts, deeds and obligations

- (1) A contract that purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.
- (2) Subsection (1) applies –
 - (a) to the making of a deed under the law of England and Wales or Northern Ireland, and
 - (b) to the undertaking of an obligation under the law of Scotland, as it applies to the making of a contract.

52 Bills of exchange and promissory notes

A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.

PART 5

A COMPANY'S NAME

CHAPTER 1

GENERAL REQUIREMENTS

Prohibited names

53 Prohibited names

A company must not be registered under this Act by a name if, in the opinion of the Secretary of State –

- (a) its use by the company would constitute an offence, or
- (b) it is offensive.

Sensitive words and expressions

54 Names suggesting connection with government or public authority

- (1) The approval of the Secretary of State is required for a company to be registered under this Act by a name that would be likely to give the impression that the company is connected with –
 - (a) Her Majesty's Government, any part of the Scottish administration or Her Majesty's Government in Northern Ireland,
 - (b) a local authority, or
 - (c) any public authority specified for the purposes of this section by regulations made by the Secretary of State.
- (2) For the purposes of this section –
 - “local authority” means –
 - (a) a local authority within the meaning of the Local Government Act 1972 (c. 70), the Common Council of the City of London or the Council of the Isles of Scilly,
 - (b) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), or
 - (c) a district council in Northern Ireland;
 - “public authority” includes any person or body having functions of a public nature.
- (3) Regulations under this section are subject to affirmative resolution procedure.

55 Other sensitive words or expressions

- (1) The approval of the Secretary of State is required for a company to be registered under this Act by a name that includes a word or expression for the time being specified in regulations made by the Secretary of State under this section.
- (2) Regulations under this section are subject to approval after being made.

56 Duty to seek comments of government department or other specified body

- (1) The Secretary of State may by regulations under –
 - (a) section 54 (name suggesting connection with government or public authority), or
 - (b) section 55 (other sensitive words or expressions),require that, in connection with an application for the approval of the Secretary of State under that section, the applicant must seek the view of a specified Government department or other body.
- (2) Where such a requirement applies, the applicant must request the specified department or other body (in writing) to indicate whether (and if so why) it has any objections to the proposed name.
- (3) Where a request under this section is made in connection with an application for the registration of a company under this Act, the application must –
 - (a) include a statement that a request under this section has been made, and
 - (b) be accompanied by a copy of any response received.
- (4) Where a request under this section is made in connection with a change in a company's name, the notice of the change sent to the registrar must be accompanied by –
 - (a) a statement by a director or secretary of the company that a request under this section has been made, and
 - (b) a copy of any response received.
- (5) In this section “specified” means specified in the regulations.

Permitted characters etc

57 Permitted characters etc

- (1) The Secretary of State may make provision by regulations –
 - (a) as to the letters or other characters, signs or symbols (including accents and other diacritical marks) and punctuation that may be used in the name of a company registered under this Act; and
 - (b) specifying a standard style or format for the name of a company for the purposes of registration.
- (2) The regulations may prohibit the use of specified characters, signs or symbols when appearing in a specified position (in particular, at the beginning of a name).
- (3) A company may not be registered under this Act by a name that consists of or includes anything that is not permitted in accordance with regulations under this section.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) In this section “specified” means specified in the regulations.

CHAPTER 2

INDICATIONS OF COMPANY TYPE OR LEGAL FORM

Required indications for limited companies

58 Public limited companies

- (1) The name of a limited company that is a public company must end with “public limited company” or “p.l.c.”.
- (2) In the case of a Welsh company, its name may instead end with “cwmni cyfyngedig cyhoeddus” or “c.c.c.”.
- (3) This section does not apply to community interest companies (but see section 33(3) and (4) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)).

59 Private limited companies

- (1) The name of a limited company that is a private company must end with “limited” or “ltd.”.
- (2) In the case of a Welsh company, its name may instead end with “cyfyngedig” or “cyf.”.
- (3) Certain companies are exempt from this requirement (see section 60).
- (4) This section does not apply to community interest companies (but see section 33(1) and (2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004).

60 Exemption from requirement as to use of “limited”

- (1) A private company is exempt from section 59 (requirement to have name ending with “limited” or permitted alternative) if –
 - (a) it is a charity,
 - (b) it is exempted from the requirement of that section by regulations made by the Secretary of State, or
 - (c) it meets the conditions specified in –
 - section 61 (continuation of existing exemption: companies limited by shares), or
 - section 62 (continuation of existing exemption: companies limited by guarantee).
- (2) The registrar may refuse to register a private limited company by a name that does not include the word “limited” (or a permitted alternative) unless a statement has been delivered to him that the company meets the conditions for exemption.
- (3) The registrar may accept the statement as sufficient evidence of the matters stated in it.
- (4) Regulations under this section are subject to negative resolution procedure.

61 Continuation of existing exemption: companies limited by shares

- (1) This section applies to a private company limited by shares –
 - (a) that on 25th February 1982 –
 - (i) was registered in Great Britain, and
 - (ii) had a name that, by virtue of a licence under section 19 of the Companies Act 1948 (c. 38) (or corresponding earlier legislation), did not include the word “limited” or any of the permitted alternatives, or
 - (b) that on 30th June 1983 –
 - (i) was registered in Northern Ireland, and
 - (ii) had a name that, by virtue of a licence under section 19 of the Companies Act (Northern Ireland) 1960 (c. 22 (N.I.)) (or corresponding earlier legislation), did not include the word “limited” or any of the permitted alternatives.
- (2) A company to which this section applies is exempt from section 59 (requirement to have name ending with “limited” or permitted alternative) so long as –
 - (a) it continues to meet the following two conditions, and
 - (b) it does not change its name.
- (3) The first condition is that the objects of the company are the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects.
- (4) The second condition is that the company's articles –
 - (a) require its income to be applied in promoting its objects,
 - (b) prohibit the payment of dividends, or any return of capital, to its members, and
 - (c) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either –
 - (i) to another body with objects similar to its own, or
 - (ii) to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,(whether or not the body is a member of the company).

62 Continuation of existing exemption: companies limited by guarantee

- (1) A private company limited by guarantee that immediately before the commencement of this Part –
 - (a) was exempt by virtue of section 30 of the Companies Act 1985 (c. 6) or Article 40 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) from the requirement to have a name including the word “limited” or a permitted alternative, and
 - (b) had a name that did not include the word “limited” or any of the permitted alternatives,is exempt from section 59 (requirement to have name ending with “limited” or permitted alternative) so long as it continues to meet the following two conditions and does not change its name.
- (2) The first condition is that the objects of the company are the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects.

- (3) The second condition is that the company’s articles –
- (a) require its income to be applied in promoting its objects,
 - (b) prohibit the payment of dividends to its members, and
 - (c) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either –
 - (i) to another body with objects similar to its own, or
 - (ii) to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,
 (whether or not the body is a member of the company).

63 Exempt company: restriction on amendment of articles

- (1) A private company –
- (a) that is exempt under section 61 or 62 from the requirement to use “limited” (or a permitted alternative) as part of its name, and
 - (b) whose name does not include “limited” or any of the permitted alternatives,
- must not amend its articles so that it ceases to comply with the conditions for exemption under that section.
- (2) If subsection (1) above is contravened an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (4) Where immediately before the commencement of this section –
- (a) a company was exempt by virtue of section 30 of the Companies Act 1985 (c. 6) or Article 40 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) from the requirement to have a name including the word “limited” (or a permitted alternative), and
 - (b) the company’s memorandum or articles contained provision preventing an alteration of them without the approval of –
 - (i) the Board of Trade or a Northern Ireland department (or any other department or Minister), or
 - (ii) the Charity Commission,
 that provision, and any condition of any such licence as is mentioned in section 61(1)(a)(ii) or (b)(ii) requiring such provision, shall cease to have effect. This does not apply if, or to the extent that, the provision is required by or under any other enactment.
- (5) It is hereby declared that any such provision as is mentioned in subsection (4)(b) formerly contained in a company’s memorandum was at all material times capable, with the appropriate approval, of being altered or removed under section 17 of the Companies Act 1985 or Article 28 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or corresponding earlier enactments).

64 Power to direct change of name in case of company ceasing to be entitled to exemption

- (1) If it appears to the Secretary of State that a company whose name does not include “limited” or any of the permitted alternatives –
 - (a) has ceased to be entitled to exemption under section 60(1)(a) or (b), or
 - (b) in the case of a company within section 61 or 62 (which impose conditions as to the objects and articles of the company) –
 - (i) has carried on any business other than the promotion of any of the objects mentioned in subsection (3) of section 61 or, as the case may be, subsection (2) of section 62, or
 - (ii) has acted inconsistently with the provision required by subsection (4)(a) or (b) of section 61 or, as the case may be, subsection (3)(a) or (b) of section 62,

the Secretary of State may direct the company to change its name so that it ends with “limited” or one of the permitted alternatives.
- (2) The direction must be in writing and must specify the period within which the company is to change its name.
- (3) A change of name in order to comply with a direction under this section may be made by resolution of the directors.

This is without prejudice to any other method of changing the company's name.
- (4) Where a resolution of the directors is passed in accordance with subsection (3), the company must give notice to the registrar of the change.

Sections 80 and 81 apply as regards the registration and effect of the change.
- (5) If the company fails to comply with a direction under this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (7) A company that has been directed to change its name under this section may not, without the approval of the Secretary of State, subsequently change its name so that it does not include “limited” or one of the permitted alternatives.

This does not apply to a change of name on re-registration or on conversion to a community interest company.

Inappropriate use of indications of company type or legal form

65 Inappropriate use of indications of company type or legal form

- (1) The Secretary of State may make provision by regulations prohibiting the use in a company name of specified words, expressions or other indications –
 - (a) that are associated with a particular type of company or form of organisation, or
 - (b) that are similar to words, expressions or other indications associated with a particular type of company or form of organisation.

- (2) The regulations may prohibit the use of words, expressions or other indications –
 - (a) in a specified part, or otherwise than in a specified part, of a company's name;
 - (b) in conjunction with, or otherwise than in conjunction with, such other words, expressions or indications as may be specified.
- (3) A company must not be registered under this Act by a name that consists of or includes anything prohibited by regulations under this section.
- (4) In this section “specified” means specified in the regulations.
- (5) Regulations under this section are subject to negative resolution procedure.

CHAPTER 3

SIMILARITY TO OTHER NAMES

Similarity to other name on registrar's index

66 Name not to be the same as another in the index

- (1) A company must not be registered under this Act by a name that is the same as another name appearing in the registrar's index of company names.
- (2) The Secretary of State may make provision by regulations supplementing this section.
- (3) The regulations may make provision –
 - (a) as to matters that are to be disregarded, and
 - (b) as to words, expressions, signs or symbols that are, or are not, to be regarded as the same,for the purposes of this section.
- (4) The regulations may provide –
 - (a) that registration by a name that would otherwise be prohibited under this section is permitted –
 - (i) in specified circumstances, or
 - (ii) with specified consent, and
 - (b) that if those circumstances obtain or that consent is given at the time a company is registered by a name, a subsequent change of circumstances or withdrawal of consent does not affect the registration.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “specified” means specified in the regulations.

67 Power to direct change of name in case of similarity to existing name

- (1) The Secretary of State may direct a company to change its name if it has been registered in a name that is the same as or, in the opinion of the Secretary of State, too like –
 - (a) a name appearing at the time of the registration in the registrar's index of company names, or
 - (b) a name that should have appeared in that index at that time.

- (2) The Secretary of State may make provision by regulations supplementing this section.
- (3) The regulations may make provision –
 - (a) as to matters that are to be disregarded, and
 - (b) as to words, expressions, signs or symbols that are, or are not, to be regarded as the same,for the purposes of this section.
- (4) The regulations may provide –
 - (a) that no direction is to be given under this section in respect of a name –
 - (i) in specified circumstances, or
 - (ii) if specified consent is given, and
 - (b) that a subsequent change of circumstances or withdrawal of consent does not give rise to grounds for a direction under this section.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “specified” means specified in the regulations.

68 Direction to change name: supplementary provisions

- (1) The following provisions have effect in relation to a direction under section 67 (power to direct change of name in case of similarity to existing name).
- (2) Any such direction –
 - (a) must be given within twelve months of the company’s registration by the name in question, and
 - (b) must specify the period within which the company is to change its name.
- (3) The Secretary of State may by a further direction extend that period. Any such direction must be given before the end of the period for the time being specified.
- (4) A direction under section 67 or this section must be in writing.
- (5) If a company fails to comply with the direction, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Similarity to other name in which person has goodwill

69 Objection to company’s registered name

- (1) A person (“the applicant”) may object to a company’s registered name on the ground –
 - (a) that it is the same as a name associated with the applicant in which he has goodwill, or

- (b) that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant.
- (2) The objection must be made by application to a company names adjudicator (see section 70).
- (3) The company concerned shall be the primary respondent to the application. Any of its members or directors may be joined as respondents.
- (4) If the ground specified in subsection (1)(a) or (b) is established, it is for the respondents to show –
 - (a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or
 - (b) that the company –
 - (i) is operating under the name, or
 - (ii) is proposing to do so and has incurred substantial start-up costs in preparation, or
 - (iii) was formerly operating under the name and is now dormant;or
 - (c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business; or
 - (d) that the name was adopted in good faith; or
 - (e) that the interests of the applicant are not adversely affected to any significant extent.If none of those is shown, the objection shall be upheld.
- (5) If the facts mentioned in subsection (4)(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name.
- (6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.
- (7) In this section “goodwill” includes reputation of any description.

70 Company names adjudicators

- (1) The Secretary of State shall appoint persons to be company names adjudicators.
- (2) The persons appointed must have such legal or other experience as, in the Secretary of State’s opinion, makes them suitable for appointment.
- (3) An adjudicator –
 - (a) holds office in accordance with the terms of his appointment,
 - (b) is eligible for re-appointment when his term of office ends,
 - (c) may resign at any time by notice in writing given to the Secretary of State, and
 - (d) may be dismissed by the Secretary of State on the ground of incapacity or misconduct.
- (4) One of the adjudicators shall be appointed Chief Adjudicator.

He shall perform such functions as the Secretary of State may assign to him.

- (5) The other adjudicators shall undertake such duties as the Chief Adjudicator may determine.
- (6) The Secretary of State may –
 - (a) appoint staff for the adjudicators;
 - (b) pay remuneration and expenses to the adjudicators and their staff;
 - (c) defray other costs arising in relation to the performance by the adjudicators of their functions;
 - (d) compensate persons for ceasing to be adjudicators.

71 Procedural rules

- (1) The Secretary of State may make rules about proceedings before a company names adjudicator.
- (2) The rules may, in particular, make provision –
 - (a) as to how an application is to be made and the form and content of an application or other documents;
 - (b) for fees to be charged;
 - (c) about the service of documents and the consequences of failure to serve them;
 - (d) as to the form and manner in which evidence is to be given;
 - (e) for circumstances in which hearings are required and those in which they are not;
 - (f) for cases to be heard by more than one adjudicator;
 - (g) setting time limits for anything required to be done in connection with the proceedings (and allowing for such limits to be extended, even if they have expired);
 - (h) enabling the adjudicator to strike out an application, or any defence, in whole or in part –
 - (i) on the ground that it is vexatious, has no reasonable prospect of success or is otherwise misconceived, or
 - (ii) for failure to comply with the requirements of the rules;
 - (i) conferring power to order security for costs (in Scotland, caution for expenses);
 - (j) as to how far proceedings are to be held in public;
 - (k) requiring one party to bear the costs (in Scotland, expenses) of another and as to the taxing (or settling) the amount of such costs (or expenses).
- (3) The rules may confer on the Chief Adjudicator power to determine any matter that could be the subject of provision in the rules.
- (4) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

72 Decision of adjudicator to be made available to public

- (1) A company names adjudicator must, within 90 days of determining an application under section 69, make his decision and his reasons for it available to the public.

- (2) He may do so by means of a website or by such other means as appear to him to be appropriate.

73 Order requiring name to be changed

- (1) If an application under section 69 is upheld, the adjudicator shall make an order –
 - (a) requiring the respondent company to change its name to one that is not an offending name, and
 - (b) requiring all the respondents –
 - (i) to take all such steps as are within their power to make, or facilitate the making, of that change, and
 - (ii) not to cause or permit any steps to be taken calculated to result in another company being registered with a name that is an offending name.
- (2) An “offending name” means a name that, by reason of its similarity to the name associated with the applicant in which he claims goodwill, would be likely –
 - (a) to be the subject of a direction under section 67 (power of Secretary of State to direct change of name), or
 - (b) to give rise to a further application under section 69.
- (3) The order must specify a date by which the respondent company’s name is to be changed and may be enforced –
 - (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;
 - (b) in Scotland, in the same way as a decree of the Court of Session.
- (4) If the respondent company’s name is not changed in accordance with the order by the specified date, the adjudicator may determine a new name for the company.
- (5) If the adjudicator determines a new name for the respondent company he must give notice of his determination –
 - (a) to the applicant,
 - (b) to the respondents, and
 - (c) to the registrar.
- (6) For the purposes of this section a company’s name is changed when the change takes effect in accordance with section 81(1) (on the issue of the new certification of incorporation).

74 Appeal from adjudicator’s decision

- (1) An appeal lies to the court from any decision of a company names adjudicator to uphold or dismiss an application under section 69.
- (2) Notice of appeal against a decision upholding an application must be given before the date specified in the adjudicator’s order by which the respondent company’s name is to be changed.
- (3) If notice of appeal is given against a decision upholding an application, the effect of the adjudicator’s order is suspended.
- (4) If on appeal the court –

- (a) affirms the decision of the adjudicator to uphold the application, or
 - (b) reverses the decision of the adjudicator to dismiss the application,
- the court may (as the case may require) specify the date by which the adjudicator's order is to be complied with, remit the matter to the adjudicator or make any order or determination that the adjudicator might have made.
- (5) If the court determines a new name for the company it must give notice of the determination –
 - (a) to the parties to the appeal, and
 - (b) to the registrar.

CHAPTER 4

OTHER POWERS OF THE SECRETARY OF STATE

75 Provision of misleading information etc

- (1) If it appears to the Secretary of State –
 - (a) that misleading information has been given for the purposes of a company's registration by a particular name, or
 - (b) that an undertaking or assurance has been given for that purpose and has not been fulfilled,the Secretary of State may direct the company to change its name.
- (2) Any such direction –
 - (a) must be given within five years of the company's registration by that name, and
 - (b) must specify the period within which the company is to change its name.
- (3) The Secretary of State may by a further direction extend the period within which the company is to change its name.
Any such direction must be given before the end of the period for the time being specified.
- (4) A direction under this section must be in writing.
- (5) If a company fails to comply with a direction under this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

76 Misleading indication of activities

- (1) If in the opinion of the Secretary of State the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the Secretary of State may direct the company to change its name.

- (2) The direction must be in writing.
- (3) The direction must be complied with within a period of six weeks from the date of the direction or such longer period as the Secretary of State may think fit to allow.
 This does not apply if an application is duly made to the court under the following provisions.
- (4) The company may apply to the court to set the direction aside.
 The application must be made within the period of three weeks from the date of the direction.
- (5) The court may set the direction aside or confirm it.
 If the direction is confirmed, the court shall specify the period within which the direction is to be complied with.
- (6) If a company fails to comply with a direction under this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
 For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

CHAPTER 5

CHANGE OF NAME

77 Change of name

- (1) A company may change its name –
 - (a) by special resolution (see section 78), or
 - (b) by other means provided for by the company's articles (see section 79).
- (2) The name of a company may also be changed –
 - (a) by resolution of the directors acting under section 64 (change of name to comply with direction of Secretary of State under that section);
 - (b) on the determination of a new name by a company names adjudicator under section 73 (powers of adjudicator on upholding objection to company name);
 - (c) on the determination of a new name by the court under section 74 (appeal against decision of company names adjudicator);
 - (d) under section 1033 (company's name on restoration to the register).

78 Change of name by special resolution

- (1) Where a change of name has been agreed to by a company by special resolution, the company must give notice to the registrar.
 This is in addition to the obligation to forward a copy of the resolution to the registrar.

- (2) Where a change of name by special resolution is conditional on the occurrence of an event, the notice given to the registrar of the change must –
 - (a) specify that the change is conditional, and
 - (b) state whether the event has occurred.
- (3) If the notice states that the event has not occurred –
 - (a) the registrar is not required to act under section 80 (registration and issue of new certificate of incorporation) until further notice,
 - (b) when the event occurs, the company must give notice to the registrar stating that it has occurred, and
 - (c) the registrar may rely on the statement as sufficient evidence of the matters stated in it.

79 Change of name by means provided for in company’s articles

- (1) Where a change of a company’s name has been made by other means provided for by its articles –
 - (a) the company must give notice to the registrar, and
 - (b) the notice must be accompanied by a statement that the change of name has been made by means provided for by the company’s articles.
- (2) The registrar may rely on the statement as sufficient evidence of the matters stated in it.

80 Change of name: registration and issue of new certificate of incorporation

- (1) This section applies where the registrar receives notice of a change of a company’s name.
- (2) If the registrar is satisfied –
 - (a) that the new name complies with the requirements of this Part, and
 - (b) that the requirements of the Companies Acts, and any relevant requirements of the company’s articles, with respect to a change of name are complied with,the registrar must enter the new name on the register in place of the former name.
- (3) On the registration of the new name, the registrar must issue a certificate of incorporation altered to meet the circumstances of the case.

81 Change of name: effect

- (1) A change of a company’s name has effect from the date on which the new certificate of incorporation is issued.
- (2) The change does not affect any rights or obligations of the company or render defective any legal proceedings by or against it.
- (3) Any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

CHAPTER 6

TRADING DISCLOSURES

82 Requirement to disclose company name etc

- (1) The Secretary of State may by regulations make provision requiring companies—
 - (a) to display specified information in specified locations,
 - (b) to state specified information in specified descriptions of document or communication, and
 - (c) to provide specified information on request to those they deal with in the course of their business.
- (2) The regulations—
 - (a) must in every case require disclosure of the name of the company, and
 - (b) may make provision as to the manner in which any specified information is to be displayed, stated or provided.
- (3) The regulations may provide that, for the purposes of any requirement to disclose a company's name, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words (or vice versa) shall be disregarded.
- (4) In this section “specified” means specified in the regulations.
- (5) Regulations under this section are subject to affirmative resolution procedure.

83 Civil consequences of failure to make required disclosure

- (1) This section applies to any legal proceedings brought by a company to which section 82 applies (requirement to disclose company name etc) to enforce a right arising out of a contract made in the course of a business in respect of which the company was, at the time the contract was made, in breach of regulations under that section.
- (2) The proceedings shall be dismissed if the defendant (in Scotland, the defender) to the proceedings shows—
 - (a) that he has a claim against the claimant (pursuer) arising out of the contract that he has been unable to pursue by reason of the latter's breach of the regulations, or
 - (b) that he has suffered some financial loss in connection with the contract by reason of the claimant's (pursuer's) breach of the regulations,unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.
- (3) This section does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

84 Criminal consequences of failure to make required disclosures

- (1) Regulations under section 82 may provide—
 - (a) that where a company fails, without reasonable excuse, to comply with any specified requirement of regulations under that section an offence is committed by—

- (i) the company, and
 - (ii) every officer of the company who is in default;
 - (b) that a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (2) The regulations may provide that, for the purposes of any provision made under subsection (1), a shadow director of the company is to be treated as an officer of the company.
- (3) In subsection (1)(a) “specified” means specified in the regulations.

85 Minor variations in form of name to be left out of account

- (1) For the purposes of this Chapter, in considering a company's name no account is to be taken of—
- (a) whether upper or lower case characters (or a combination of the two) are used,
 - (b) whether diacritical marks or punctuation are present or absent,
 - (c) whether the name is in the same format or style as is specified under section 57(1)(b) for the purposes of registration,
- provided there is no real likelihood of names differing only in those respects being taken to be different names.
- (2) This does not affect the operation of regulations under section 57(1)(a) permitting only specified characters, diacritical marks or punctuation.

PART 6

A COMPANY'S REGISTERED OFFICE

General

86 A company's registered office

A company must at all times have a registered office to which all communications and notices may be addressed.

87 Change of address of registered office

- (1) A company may change the address of its registered office by giving notice to the registrar.
- (2) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at the address previously registered.
- (3) For the purposes of any duty of a company—
- (a) to keep available for inspection at its registered office any register, index or other document, or
 - (b) to mention the address of its registered office in any document,

a company that has given notice to the registrar of a change in the address of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

- (4) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (3)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the address of its registered office, but—
- (a) resumes performance of that duty at other premises as soon as practicable, and
 - (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,
- it is not to be treated as having failed to comply with that duty.

Welsh companies

88 Welsh companies

- (1) In the Companies Acts a “Welsh company” means a company as to which it is stated in the register that its registered office is to be situated in Wales.
- (2) A company—
- (a) whose registered office is in Wales, and
 - (b) as to which it is stated in the register that its registered office is to be situated in England and Wales,
- may by special resolution require the register to be amended so that it states that the company's registered office is to be situated in Wales.
- (3) A company—
- (a) whose registered office is in Wales, and
 - (b) as to which it is stated in the register that its registered office is to be situated in Wales,
- may by special resolution require the register to be amended so that it states that the company's registered office is to be situated in England and Wales.
- (4) Where a company passes a resolution under this section it must give notice to the registrar, who shall—
- (a) amend the register accordingly, and
 - (b) issue a new certificate of incorporation altered to meet the circumstances of the case.

PART 7

RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS

Introductory

89 Alteration of status by re-registration

A company may by re-registration under this Part alter its status—

- (a) from a private company to a public company (see sections 90 to 96);
- (b) from a public company to a private company (see sections 97 to 101);

- (c) from a private limited company to an unlimited company (see sections 102 to 104);
- (d) from an unlimited private company to a limited company (see sections 105 to 108);
- (e) from a public company to an unlimited private company (see sections 109 to 111).

Private company becoming public

90 Re-registration of private company as public

- (1) A private company (whether limited or unlimited) may be re-registered as a public company limited by shares if—
 - (a) a special resolution that it should be so re-registered is passed,
 - (b) the conditions specified below are met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 94, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The conditions are—
 - (a) that the company has a share capital;
 - (b) that the requirements of section 91 are met as regards its share capital;
 - (c) that the requirements of section 92 are met as regards its net assets;
 - (d) if section 93 applies (recent allotment of shares for non-cash consideration), that the requirements of that section are met; and
 - (e) that the company has not previously been re-registered as unlimited.
- (3) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming a public company.
- (4) If the company is unlimited it must also make such changes in its articles as are necessary in connection with its becoming a company limited by shares.

91 Requirements as to share capital

- (1) The following requirements must be met at the time the special resolution is passed that the company should be re-registered as a public company—
 - (a) the nominal value of the company's allotted share capital must be not less than the authorised minimum;
 - (b) each of the company's allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;
 - (c) if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged;
 - (d) if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, and the

- consideration for the allotment consists of or includes an undertaking to the company (other than one to which paragraph (c) applies), then either –
- (i) the undertaking must have been performed or otherwise discharged, or
 - (ii) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within five years from the time the special resolution is passed.
- (2) For the purpose of determining whether the requirements in subsection (1)(b), (c) and (d) are met, the following may be disregarded –
- (a) shares allotted –
 - (i) before 22nd June 1982 in the case of a company then registered in Great Britain, or
 - (ii) before 31st December 1984 in the case of a company then registered in Northern Ireland;
 - (b) shares allotted in pursuance of an employees' share scheme by reason of which the company would, but for this subsection, be precluded under subsection (1)(b) (but not otherwise) from being re-registered as a public company.
- (3) No more than one-tenth of the nominal value of the company's allotted share capital is to be disregarded under subsection (2)(a).
For this purpose the allotted share capital is treated as not including shares disregarded under subsection (2)(b).
- (4) Shares disregarded under subsection (2) are treated as not forming part of the allotted share capital for the purposes of subsection (1)(a).
- (5) A company must not be re-registered as a public company if it appears to the registrar that –
- (a) the company has resolved to reduce its share capital,
 - (b) the reduction –
 - (i) is made under section 626 (reduction in connection with redenomination of share capital),
 - (ii) is supported by a solvency statement in accordance with section 643, or
 - (iii) has been confirmed by an order of the court under section 648, and
 - (c) the effect of the reduction is, or will be, that the nominal value of the company's allotted share capital is below the authorised minimum.

92 Requirements as to net assets

- (1) A company applying to re-register as a public company must obtain –
- (a) a balance sheet prepared as at a date not more than seven months before the date on which the application is delivered to the registrar,
 - (b) an unqualified report by the company's auditor on that balance sheet, and
 - (c) a written statement by the company's auditor that in his opinion at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

- (2) Between the balance sheet date and the date on which the application for re-registration is delivered to the registrar, there must be no change in the company's financial position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- (3) In subsection (1)(b) an "unqualified report" means –
 - (a) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the requirements of this Act;
 - (b) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been prepared for a financial year of the company.
- (4) For the purposes of an auditor's report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary by reason of that fact.
- (5) For the purposes of subsection (3) a qualification is material unless the auditor states in his report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.
- (6) In this Part "net assets" and "undistributable reserves" have the same meaning as in section 831 (net asset restriction on distributions by public companies).

93 Recent allotment of shares for non-cash consideration

- (1) This section applies where –
 - (a) shares are allotted by the company in the period between the date as at which the balance sheet required by section 92 is prepared and the passing of the resolution that the company should re-register as a public company, and
 - (b) the shares are allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.
- (2) The registrar shall not entertain an application by the company for re-registration as a public company unless –
 - (a) the requirements of section 593(1)(a) and (b) have been complied with (independent valuation of non-cash consideration; valuer's report to company not more than six months before allotment), or
 - (b) the allotment is in connection with –
 - (i) a share exchange (see subsections (3) to (5) below), or
 - (ii) a proposed merger with another company (see subsection (6) below).
- (3) An allotment is in connection with a share exchange if –
 - (a) the shares are allotted in connection with an arrangement under which the whole or part of the consideration for the shares allotted is provided by –

- (i) the transfer to the company allotting the shares of shares (or shares of a particular class) in another company, or
 - (ii) the cancellation of shares (or shares of a particular class) in another company; and
 - (b) the allotment is open to all the holders of the shares of the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of the company's shares of that class) to take part in the arrangement in connection with which the shares are allotted.
- (4) In determining whether a person is a holder of shares for the purposes of subsection (3), there shall be disregarded –
- (a) shares held by, or by a nominee of, the company allotting the shares;
 - (b) shares held by, or by a nominee of –
 - (i) the holding company of the company allotting the shares,
 - (ii) a subsidiary of the company allotting the shares, or
 - (iii) a subsidiary of the holding company of the company allotting the shares.
- (5) It is immaterial, for the purposes of deciding whether an allotment is in connection with a share exchange, whether or not the arrangement in connection with which the shares are allotted involves the issue to the company allotting the shares of shares (or shares of a particular class) in the other company.
- (6) There is a proposed merger with another company if one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of its shares or other securities to shareholders of the other (whether or not accompanied by a cash payment).
“Another company” includes any body corporate.
- (7) For the purposes of this section –
- (a) the consideration for an allotment does not include any amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, that has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares; and
 - (b) “arrangement” means any agreement, scheme or arrangement, (including an arrangement sanctioned in accordance with –
 - (i) Part 26 of this Act (arrangements and reconstructions), or
 - (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company's property)).

94 Application and accompanying documents

- (1) An application for re-registration as a public company must contain –
 - (a) a statement of the company's proposed name on re-registration; and
 - (b) in the case of a company without a secretary, a statement of the company's proposed secretary (see section 95).
- (2) The application must be accompanied by –

- (a) a copy of the special resolution that the company should re-register as a public company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
 - (b) a copy of the company's articles as proposed to be amended;
 - (c) a copy of the balance sheet and other documents referred to in section 92(1); and
 - (d) if section 93 applies (recent allotment of shares for non-cash consideration), a copy of the valuation report (if any) under subsection (2)(a) of that section.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a public company have been complied with.
- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a public company.

95 Statement of proposed secretary

- (1) The statement of the company's proposed secretary must contain the required particulars of the person who is or the persons who are to be the secretary or joint secretaries of the company.
- (2) The required particulars are the particulars that will be required to be stated in the company's register of secretaries (see sections 277 to 279).
- (3) The statement must also contain a consent by the person named as secretary, or each of the persons named as joint secretaries, to act in the relevant capacity. If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

96 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a public company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate –
 - (a) the company by virtue of the issue of the certificate becomes a public company,
 - (b) the changes in the company's name and articles take effect, and
 - (c) where the application contained a statement under section 95 (statement of proposed secretary), the person or persons named in the statement as secretary or joint secretary of the company are deemed to have been appointed to that office.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Public company becoming private***97 Re-registration of public company as private limited company**

- (1) A public company may be re-registered as a private limited company if—
 - (a) a special resolution that it should be so re-registered is passed,
 - (b) the conditions specified below are met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 100, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The conditions are that—
 - (a) where no application under section 98 for cancellation of the resolution has been made—
 - (i) having regard to the number of members who consented to or voted in favour of the resolution, no such application may be made, or
 - (ii) the period within which such an application could be made has expired, or
 - (b) where such an application has been made—
 - (i) the application has been withdrawn, or
 - (ii) an order has been made confirming the resolution and a copy of that order has been delivered to the registrar.
- (3) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming a private company limited by shares or, as the case may be, by guarantee.

98 Application to court to cancel resolution

- (1) Where a special resolution by a public company to be re-registered as a private limited company has been passed, an application to the court for the cancellation of the resolution may be made—
 - (a) by the holders of not less in the aggregate than 5% in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares);
 - (b) if the company is not limited by shares, by not less than 5% of its members; or
 - (c) by not less than 50 of the company's members;but not by a person who has consented to or voted in favour of the resolution.
- (2) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for the purpose.
- (3) On the hearing of the application the court shall make an order either cancelling or confirming the resolution.
- (4) The court may—

- (a) make that order on such terms and conditions as it thinks fit,
 - (b) if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and
 - (c) give such directions, and make such orders, as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court's order may, if the court thinks fit –
- (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital; and
 - (b) make such alteration in the company's articles as may be required in consequence of that provision.
- (6) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments to its articles without the leave of the court.

99 Notice to registrar of court application or order

- (1) On making an application under section 98 (application to court to cancel resolution) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar.
This is without prejudice to any provision of rules of court as to service of notice of the application.
- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.
- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (3) an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

100 Application and accompanying documents

- (1) An application for re-registration as a private limited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by –
- (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3); and
 - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a private limited company have been complied with.

- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private limited company.

101 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a private limited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate –
 - (a) the company by virtue of the issue of the certificate becomes a private limited company, and
 - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

Private limited company becoming unlimited

102 Re-registration of private limited company as unlimited

- (1) A private limited company may be re-registered as an unlimited company if –
 - (a) all the members of the company have assented to its being so re-registered,
 - (b) the condition specified below is met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 103, together with –
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered as limited.
- (3) The company must make such changes in its name and its articles –
 - (a) as are necessary in connection with its becoming an unlimited company; and
 - (b) if it is to have a share capital, as are necessary in connection with its becoming an unlimited company having a share capital.
- (4) For the purposes of this section –
 - (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's becoming unlimited; and
 - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), "a trustee in bankruptcy of a member of the company" includes –

- (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
- (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company.

103 Application and accompanying documents

- (1) An application for re-registration as an unlimited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by –
 - (a) the prescribed form of assent to the company's being registered as an unlimited company, authenticated by or on behalf of all the members of the company;
 - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited company have been complied with.
- (4) The statement must contain a statement by the directors of the company –
 - (a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company, and
 - (b) if any of the members have not authenticated that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited company.

104 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration of a private limited company as an unlimited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate –
 - (a) the company by virtue of the issue of the certificate becomes an unlimited company, and
 - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Unlimited private company becoming limited***105 Re-registration of unlimited company as limited**

- (1) An unlimited company may be re-registered as a private limited company if—
 - (a) a special resolution that it should be so re-registered is passed,
 - (b) the condition specified below is met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 106, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered as unlimited.
- (3) The special resolution must state whether the company is to be limited by shares or by guarantee.
- (4) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming a company limited by shares or, as the case may be, by guarantee.

106 Application and accompanying documents

- (1) An application for re-registration as a limited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—
 - (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
 - (b) if the company is to be limited by guarantee, a statement of guarantee;
 - (c) a copy of the company's articles as proposed to be amended.
- (3) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for—
 - (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
 - (b) payment of the costs, charges and expenses of winding up, and
 - (c) adjustment of the rights of the contributories among themselves,not exceeding a specified amount.
- (4) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a limited company have been complied with.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a limited company.

107 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration of an unlimited company as a limited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is so issued.
- (4) On the issue of the certificate –
 - (a) the company by virtue of the issue of the certificate becomes a limited company, and
 - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

108 Statement of capital required where company already has share capital

- (1) A company which on re-registration under section 107 already has allotted share capital must within 15 days after the re-registration deliver a statement of capital to the registrar.
- (2) This does not apply if the information which would be included in the statement has already been sent to the registrar in –
 - (a) a statement of capital and initial shareholdings (see section 10), or
 - (b) a statement of capital contained in an annual return (see section 856(2)).
- (3) The statement of capital must state with respect to the company's share capital on re-registration –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Public company becoming private and unlimited***109 Re-registration of public company as private and unlimited**

- (1) A public company limited by shares may be re-registered as an unlimited private company with a share capital if—
 - (a) all the members of the company have assented to its being so re-registered,
 - (b) the condition specified below is met, and
 - (c) an application for re-registration is delivered to the registrar in accordance with section 110, together with—
 - (i) the other documents required by that section, and
 - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered—
 - (a) as limited, or
 - (b) as unlimited.
- (3) The company must make such changes—
 - (a) in its name, and
 - (b) in its articles,as are necessary in connection with its becoming an unlimited private company.
- (4) For the purposes of this section—
 - (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's re-registration; and
 - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), "a trustee in bankruptcy of a member of the company" includes—
 - (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
 - (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company.

110 Application and accompanying documents

- (1) An application for re-registration of a public company as an unlimited private company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—
 - (a) the prescribed form of assent to the company's being registered as an unlimited company, authenticated by or on behalf of all the members of the company, and
 - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited private company have been complied with.

- (4) The statement must contain a statement by the directors of the company –
 - (a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company, and
 - (b) if any of the members have not authenticated that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited private company.

111 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration of a public company as an unlimited private company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is so issued.
- (4) On the issue of the certificate –
 - (a) the company by virtue of the issue of the certificate becomes an unlimited private company, and
 - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

PART 8

A COMPANY'S MEMBERS

CHAPTER 1

THE MEMBERS OF A COMPANY

112 The members of a company

- (1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

CHAPTER 2

REGISTER OF MEMBERS

General

113 Register of members

- (1) Every company must keep a register of its members.
- (2) There must be entered in the register –
 - (a) the names and addresses of the members,
 - (b) the date on which each person was registered as a member, and
 - (c) the date at which any person ceased to be a member.
- (3) In the case of a company having a share capital, there must be entered in the register, with the names and addresses of the members, a statement of –
 - (a) the shares held by each member, distinguishing each share –
 - (i) by its number (so long as the share has a number), and
 - (ii) where the company has more than one class of issued shares, by its class, and
 - (b) the amount paid or agreed to be considered as paid on the shares of each member.
- (4) If the company has converted any of its shares into stock, and given notice of the conversion to the registrar, the register of members must show the amount and class of stock held by each member instead of the amount of shares and the particulars relating to shares specified above.
- (5) In the case of joint holders of shares or stock in a company, the company's register of members must state the names of each joint holder.
In other respects joint holders are regarded for the purposes of this Chapter as a single member (so that the register must show a single address).
- (6) In the case of a company that does not have a share capital but has more than one class of members, there must be entered in the register, with the names and addresses of the members, a statement of the class to which each member belongs.
- (7) If a company makes default in complying with this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

114 Register to be kept available for inspection

- (1) A company's register of members must be kept available for inspection –
 - (a) at its registered office, or
 - (b) at a place specified in regulations under section 1136.

- (2) A company must give notice to the registrar of the place where its register of members is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has, at all times since it came into existence (or, in the case of a register in existence on the relevant date, at all times since then) been kept available for inspection at the company’s registered office.
- (4) The relevant date for the purposes of subsection (3) is—
 - (a) 1st July 1948 in the case of a company registered in Great Britain, and
 - (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (5) If a company makes default for 14 days in complying with subsection (2), an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

115 Index of members

- (1) Every company having more than 50 members must keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index.
- (2) The company must make any necessary alteration in the index within 14 days after the date on which any alteration is made in the register of members.
- (3) The index must contain, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.
- (4) The index must be at all times kept available for inspection at the same place as the register of members.
- (5) If default is made in complying with this section, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

116 Rights to inspect and require copies

- (1) The register and the index of members’ names must be open to the inspection—
 - (a) of any member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.
- (2) Any person may require a copy of a company’s register of members, or of any part of it, on payment of such fee as may be prescribed.

- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
- (4) The request must contain the following information –
 - (a) in the case of an individual, his name and address;
 - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
 - (c) the purpose for which the information is to be used; and
 - (d) whether the information will be disclosed to any other person, and if so –
 - (i) where that person is an individual, his name and address,
 - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
 - (iii) the purpose for which the information is to be used by that person.

117 Register of members: response to request for inspection or copy

- (1) Where a company receives a request under section 116 (register of members: right to inspect and require copy), it must within five working days either –
 - (a) comply with the request, or
 - (b) apply to the court.
- (2) If it applies to the court it must notify the person making the request.
- (3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose –
 - (a) it shall direct the company not to comply with the request, and
 - (b) it may further order that the company's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.
- (4) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.
- (5) If on an application under this section the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

118 Register of members: refusal of inspection or default in providing copy

- (1) If an inspection required under section 116 (register of members: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.

- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

119 Register of members: offences in connection with request for or disclosure of information

- (1) It is an offence for a person knowingly or recklessly to make in a request under section 116 (register of members: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section –
 - (a) to do anything that results in the information being disclosed to another person, or
 - (b) to fail to do anything with the result that the information is disclosed to another person,knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

120 Information as to state of register and index

- (1) When a person inspects the register, or the company provides him with a copy of the register or any part of it, the company must inform him of the most recent date (if any) on which alterations were made to the register and there were no further alterations to be made.
- (2) When a person inspects the index of members' names, the company must inform him whether there is any alteration to the register that is not reflected in the index.
- (3) If a company fails to provide the information required under subsection (1) or (2), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

121 Removal of entries relating to former members

An entry relating to a former member of the company may be removed from the register after the expiration of ten years from the date on which he ceased to be a member.

Special cases

122 Share warrants

- (1) On the issue of a share warrant the company must—
 - (a) enter in the register of members—
 - (i) the fact of the issue of the warrant,
 - (ii) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number, and
 - (iii) the date of the issue of the warrant,and
 - (b) amend the register, if necessary, so that no person is named on the register as the holder of the shares specified in the warrant.
- (2) Until the warrant is surrendered, the particulars specified in subsection (1)(a) are deemed to be those required by this Act to be entered in the register of members.
- (3) The bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.
- (4) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.
- (5) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares specified in it without the warrant being surrendered and cancelled.
- (6) On the surrender of a share warrant, the date of the surrender must be entered in the register.

123 Single member companies

- (1) If a limited company is formed under this Act with only one member there shall be entered in the company's register of members, with the name and address of the sole member, a statement that the company has only one member.
- (2) If the number of members of a limited company falls to one, or if an unlimited company with only one member becomes a limited company on re-registration, there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the sole member—
 - (a) a statement that the company has only one member, and

- (b) the date on which the company became a company having only one member.
- (3) If the membership of a limited company increases from one to two or more members, there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the person who was formerly the sole member –
 - (a) a statement that the company has ceased to have only one member, and
 - (b) the date on which that event occurred.
- (4) If a company makes default in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

124 Company holding its own shares as treasury shares

- (1) Where a company purchases its own shares in circumstances in which section 724 (treasury shares) applies –
 - (a) the requirements of section 113 (register of members) need not be complied with if the company cancels all of the shares forthwith after the purchase, and
 - (b) if the company does not cancel all of the shares forthwith after the purchase, any share that is so cancelled shall be disregarded for the purposes of that section.
- (2) Subject to subsection (1), where a company holds shares as treasury shares the company must be entered in the register as the member holding those shares.

Supplementary

125 Power of court to rectify register

- (1) If –
 - (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or
 - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
- (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
- (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand

and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

- (4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

126 Trusts not to be entered on register

No notice of any trust, expressed, implied or constructive, shall be entered on the register of members of a company registered in England and Wales or Northern Ireland, or be receivable by the registrar.

127 Register to be evidence

The register of members is prima facie evidence of any matters which are by this Act directed or authorised to be inserted in it.

128 Time limit for claims arising from entry in register

- (1) Liability incurred by a company –
- (a) from the making or deletion of an entry in the register of members, or
 - (b) from a failure to make or delete any such entry,
- is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

CHAPTER 3

OVERSEAS BRANCH REGISTERS

129 Overseas branch registers

- (1) A company having a share capital may, if it transacts business in a country or territory to which this Chapter applies, cause to be kept there a branch register of members resident there (an “overseas branch register”).
- (2) This Chapter applies to –
- (a) any part of Her Majesty’s dominions outside the United Kingdom, the Channel Islands and the Isle of Man, and
 - (b) the countries or territories listed below.

Bangladesh	Malaysia
Cyprus	Malta
Dominica	Nigeria
The Gambia	Pakistan

Ghana	Seychelles
Guyana	Sierra Leone
The Hong Kong Special Administrative Region of the People's Republic of China	Singapore
India	South Africa
Ireland	Sri Lanka
Kenya	Swaziland
Kiribati	Trinidad and Tobago
Lesotho	Uganda
Malawi	Zimbabwe

- (3) The Secretary of State may make provision by regulations as to the circumstances in which a company is to be regarded as keeping a register in a particular country or territory.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) References –
 - (a) in any Act or instrument (including, in particular, a company's articles) to a dominion register, or
 - (b) in articles registered before 1st November 1929 to a colonial register, are to be read (unless the context otherwise requires) as a reference to an overseas branch register kept under this section.

130 Notice of opening of overseas branch register

- (1) A company that begins to keep an overseas branch register must give notice to the registrar within 14 days of doing so, stating the country or territory in which the register is kept.
- (2) If default is made in complying with subsection (1), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

131 Keeping of overseas branch register

- (1) An overseas branch register is regarded as part of the company's register of members ("the main register").
- (2) The Secretary of State may make provision by regulations modifying any provision of Chapter 2 (register of members) as it applies in relation to an overseas branch register.

- (3) Regulations under this section are subject to negative resolution procedure.
- (4) Subject to the provisions of this Act, a company may by its articles make such provision as it thinks fit as to the keeping of overseas branch registers.

132 Register or duplicate to be kept available for inspection in UK

- (1) A company that keeps an overseas branch register must keep available for inspection –
 - (a) the register, or
 - (b) a duplicate of the register duly entered up from time to time,at the place in the United Kingdom where the company's main register is kept available for inspection.
- (2) Any such duplicate is treated for all purposes of this Act as part of the main register.
- (3) If default is made in complying with subsection (1), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

133 Transactions in shares registered in overseas branch register

- (1) Shares registered in an overseas branch register must be distinguished from those registered in the main register.
- (2) No transaction with respect to shares registered in an overseas branch register may be registered in any other register.
- (3) An instrument of transfer of a share registered in an overseas branch register –
 - (a) is regarded as a transfer of property situated outside the United Kingdom, and
 - (b) unless executed in a part of the United Kingdom, is exempt from stamp duty.

134 Jurisdiction of local courts

- (1) A competent court in a country or territory where an overseas branch register is kept may exercise the same jurisdiction as is exercisable by a court in the United Kingdom –
 - (a) to rectify the register (see section 125), or
 - (b) in relation to a request for inspection or a copy of the register (see section 117).
- (2) The offences –
 - (a) of refusing inspection or failing to provide a copy of the register (see section 118), and
 - (b) of making a false, misleading or deceptive statement in a request for inspection or a copy (see section 119),

may be prosecuted summarily before any tribunal having summary criminal jurisdiction in the country or territory where the register is kept.

- (3) This section extends only to those countries and territories to which paragraph 3 of Schedule 14 to the Companies Act 1985 (c. 6) (which made similar provision) extended immediately before the coming into force of this Chapter.

135 Discontinuance of overseas branch register

- (1) A company may discontinue an overseas branch register.
- (2) If it does so all the entries in that register must be transferred –
 - (a) to some other overseas branch register kept in the same country or territory, or
 - (b) to the main register.
- (3) The company must give notice to the registrar within 14 days of the discontinuance.
- (4) If default is made in complying with subsection (3), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

CHAPTER 4

PROHIBITION ON SUBSIDIARY BEING MEMBER OF ITS HOLDING COMPANY

General prohibition

136 Prohibition on subsidiary being a member of its holding company

- (1) Except as provided by this Chapter –
 - (a) a body corporate cannot be a member of a company that is its holding company, and
 - (b) any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The exceptions are provided for in –
section 138 (subsidiary acting as personal representative or trustee), and
section 141 (subsidiary acting as authorised dealer in securities).

137 Shares acquired before prohibition became applicable

- (1) Where a body corporate became a holder of shares in a company –
 - (a) before the relevant date, or
 - (b) on or after that date and before the commencement of this Chapter in circumstances in which the prohibition in section 23(1) of the Companies Act 1985 or Article 33(1) of the Companies (Northern

- Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or any corresponding earlier enactment), as it then had effect, did not apply, or
- (c) on or after the commencement of this Chapter in circumstances in which the prohibition in section 136 did not apply, it may continue to be a member of the company.
- (2) The relevant date for the purposes of subsection (1)(a) is—
- (a) 1st July 1948 in the case of a company registered in Great Britain, and
- (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (3) So long as it is permitted to continue as a member of a company by virtue of this section, an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company.
- (4) But, so long as the prohibition in section 136 would (apart from this section) apply, it has no right to vote in respect of the shares mentioned in subsection (1) above, or any shares allotted as mentioned in subsection (3) above, on a written resolution or at meetings of the company or of any class of its members.

Subsidiary acting as personal representative or trustee

138 Subsidiary acting as personal representative or trustee

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the subsidiary is concerned only—
- (a) as personal representative, or
- (b) as trustee,
- unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.
- (2) For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—
- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending of money;
- (b) any interest within—
- section 139 (interests to be disregarded: residual interest under pension scheme or employees' share scheme), or
- section 140 (interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme);
- (c) any rights that the company or subsidiary has in its capacity as trustee, including in particular—
- (i) any right to recover its expenses or be remunerated out of the trust property, and
- (ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

139 Interests to be disregarded: residual interest under pension scheme or employees’ share scheme

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees’ share scheme, there shall be disregarded for the purposes of section 138 any residual interest that has not vested in possession.
- (2) A “residual interest” means a right of the company or subsidiary (“the residual beneficiary”) to receive any of the trust property in the event of—
 - (a) all the liabilities arising under the scheme having been satisfied or provided for, or
 - (b) the residual beneficiary ceasing to participate in the scheme, or
 - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In subsection (2)—
 - (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and
 - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession—
 - (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);
 - (b) in a case within subsection (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to him any of the property receivable pursuant to the right.
- (5) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
- (6) In subsection (5)—
 - (a) “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death; and
 - (b) “employee” shall be read as if a director of a company were employed by it.

140 Interests to be disregarded: employer’s rights of recovery under pension scheme or employees’ share scheme

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees’ share scheme, there shall be disregarded for the purposes of section 138 any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member.
- (2) In the case of a trust for the purposes of a pension scheme there shall also be disregarded any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained, under section 61 of the Pension Schemes Act 1993 (c. 48) or section 57 of the Pension

Schemes (Northern Ireland) Act 1993 (c. 49) (deduction of contributions equivalent premium from refund of scheme contributions) or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act.

- (3) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.

“Relevant benefits” here means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

- (4) In this section “employer” and “employee” shall be read as if a director of a company were employed by it.

Subsidiary acting as dealer in securities

141 Subsidiary acting as authorised dealer in securities

- (1) The prohibition in section 136 (prohibition on subsidiary being a member of its holding company) does not apply where the shares are held by the subsidiary in the ordinary course of its business as an intermediary.
- (2) For this purpose a person is an intermediary if he –
- (a) carries on a bona fide business of dealing in securities,
 - (b) is a member of or has access to a regulated market, and
 - (c) does not carry on an excluded business.
- (3) The following are excluded businesses –
- (a) a business that consists wholly or mainly in the making or managing of investments;
 - (b) a business that consists wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;
 - (c) a business that consists in insurance business;
 - (d) a business that consists in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
 - (e) a business that consists in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connection with and for the purposes of the scheme.
- (4) For the purposes of this section –
- (a) the question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988 (c. 1);
 - (b) “collective investment scheme” has the meaning given in section 235 of the Financial Services and Markets Act 2000 (c. 8);
 - (c) “insurance business” means business that consists in the effecting or carrying out of contracts of insurance;
 - (d) “securities” includes –
 - (i) options,
 - (ii) futures, and

- (iii) contracts for differences,
and rights or interests in those investments;
 - (e) “trustee” and “the operator” in relation to a collective investment scheme shall be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000 (c. 8).
- (5) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 have the same meaning here as they do in those provisions.
See section 22 of that Act, orders made under that section and Schedule 2 to that Act.

142 Protection of third parties in other cases where subsidiary acting as dealer in securities

- (1) This section applies where –
- (a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 136, and
 - (b) a person acting in good faith has agreed, for value and without notice of the contravention, to acquire shares in the holding company –
 - (i) from the subsidiary, or
 - (ii) from someone who has purportedly acquired the shares after their disposal by the subsidiary.
- (2) A transfer to that person of the shares mentioned in subsection (1)(a) has the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.

Supplementary

143 Application of provisions to companies not limited by shares

In relation to a company other than a company limited by shares, the references in this Chapter to shares shall be read as references to the interest of its members as such, whatever the form of that interest.

144 Application of provisions to nominees

The provisions of this Chapter apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

PART 9

EXERCISE OF MEMBERS’ RIGHTS

Effect of provisions in company’s articles

145 Effect of provisions of articles as to enjoyment or exercise of members’ rights

- (1) This section applies where provision is made by a company’s articles enabling a member to nominate another person or persons as entitled to enjoy or exercise all or any specified rights of the member in relation to the company.

- (2) So far as is necessary to give effect to that provision, anything required or authorised by any provision of the Companies Acts to be done by or in relation to the member shall instead be done, or (as the case may be) may instead be done, by or in relation to the nominated person (or each of them) as if he were a member of the company.
- (3) This applies, in particular, to the rights conferred by –
 - (a) sections 291 and 293 (right to be sent proposed written resolution);
 - (b) section 292 (right to require circulation of written resolution);
 - (c) section 303 (right to require directors to call general meeting);
 - (d) section 310 (right to notice of general meetings);
 - (e) section 314 (right to require circulation of a statement);
 - (f) section 324 (right to appoint proxy to act at meeting);
 - (g) section 338 (right to require circulation of resolution for AGM of public company); and
 - (h) section 423 (right to be sent a copy of annual accounts and reports).
- (4) This section and any such provision as is mentioned in subsection (1) –
 - (a) do not confer rights enforceable against the company by anyone other than the member, and
 - (b) do not affect the requirements for an effective transfer or other disposition of the whole or part of a member's interest in the company.

Information rights

146 Traded companies: nomination of persons to enjoy information rights

- (1) This section applies to a company whose shares are admitted to trading on a regulated market.
- (2) A member of such a company who holds shares on behalf of another person may nominate that person to enjoy information rights.
- (3) "Information rights" means –
 - (a) the right to receive a copy of all communications that the company sends to its members generally or to any class of its members that includes the person making the nomination, and
 - (b) the rights conferred by –
 - (i) section 431 or 432 (right to require copies of accounts and reports), and
 - (ii) section 1145 (right to require hard copy version of document or information provided in another form).
- (4) The reference in subsection (3)(a) to communications that a company sends to its members generally includes the company's annual accounts and reports. For the application of section 426 (option to provide summary financial statement) in relation to a person nominated to enjoy information rights, see subsection (5) of that section.
- (5) A company need not act on a nomination purporting to relate to certain information rights only.

147 Information rights: form in which copies to be provided

- (1) This section applies as regards the form in which copies are to be provided to a person nominated under section 146 (nomination of person to enjoy information rights).
- (2) If the person to be nominated wishes to receive hard copy communications, he must—
 - (a) request the person making the nomination to notify the company of that fact, and
 - (b) provide an address to which such copies may be sent.This must be done before the nomination is made.
- (3) If having received such a request the person making the nomination—
 - (a) notifies the company that the nominated person wishes to receive hard copy communications, and
 - (b) provides the company with that address,the right of the nominated person is to receive hard copy communications accordingly.
- (4) This is subject to the provisions of Parts 3 and 4 of Schedule 5 (communications by company) under which the company may take steps to enable it to communicate in electronic form or by means of a website.
- (5) If no such notification is given (or no address is provided), the nominated person is taken to have agreed that documents or information may be sent or supplied to him by the company by means of a website.
- (6) That agreement—
 - (a) may be revoked by the nominated person, and
 - (b) does not affect his right under section 1145 to require a hard copy version of a document or information provided in any other form.

148 Termination or suspension of nomination

- (1) The following provisions have effect in relation to a nomination under section 146 (nomination of person to enjoy information rights).
- (2) The nomination may be terminated at the request of the member or of the nominated person.
- (3) The nomination ceases to have effect on the occurrence in relation to the member or the nominated person of any of the following—
 - (a) in the case of an individual, death or bankruptcy;
 - (b) in the case of a body corporate, dissolution or the making of an order for the winding up of the body otherwise than for the purposes of reconstruction.
- (4) In subsection (3)—
 - (a) the reference to bankruptcy includes—
 - (i) the sequestration of a person's estate, and
 - (ii) a person's estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)); and
 - (b) the reference to the making of an order for winding up is to—

- (i) the making of such an order under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (ii) any corresponding proceeding under the law of a country or territory outside the United Kingdom.
- (5) The effect of any nominations made by a member is suspended at any time when there are more nominated persons than the member has shares in the company.
- (6) Where –
 - (a) the member holds different classes of shares with different information rights, and
 - (b) there are more nominated persons than he has shares conferring a particular right,the effect of any nominations made by him is suspended to the extent that they confer that right.
- (7) Where the company –
 - (a) enquires of a nominated person whether he wishes to retain information rights, and
 - (b) does not receive a response within the period of 28 days beginning with the date on which the company's enquiry was sent,the nomination ceases to have effect at the end of that period.
Such an enquiry is not to be made of a person more than once in any twelve-month period.
- (8) The termination or suspension of a nomination means that the company is not required to act on it.
It does not prevent the company from continuing to do so, to such extent or for such period as it thinks fit.

149 Information as to possible rights in relation to voting

- (1) This section applies where a company sends a copy of a notice of a meeting to a person nominated under section 146 (nomination of person to enjoy information rights)
- (2) The copy of the notice must be accompanied by a statement that –
 - (a) he may have a right under an agreement between him and the member by whom he was nominated to be appointed, or to have someone else appointed, as a proxy for the meeting, and
 - (b) if he has no such right or does not wish to exercise it, he may have a right under such an agreement to give instructions to the member as to the exercise of voting rights.
- (3) Section 325 (notice of meeting to contain statement of member's rights in relation to appointment of proxy) does not apply to the copy, and the company must either –
 - (a) omit the notice required by that section, or
 - (b) include it but state that it does not apply to the nominated person.

150 Information rights: status of rights

- (1) This section has effect as regards the rights conferred by a nomination under section 146 (nomination of person to enjoy information rights).
- (2) Enjoyment by the nominated person of the rights conferred by the nomination is enforceable against the company by the member as if they were rights conferred by the company's articles.
- (3) Any enactment, and any provision of the company's articles, having effect in relation to communications with members has a corresponding effect (subject to any necessary adaptations) in relation to communications with the nominated person.
- (4) In particular –
 - (a) where under any enactment, or any provision of the company's articles, the members of a company entitled to receive a document or information are determined as at a date or time before it is sent or supplied, the company need not send or supply it to a nominated person –
 - (i) whose nomination was received by the company after that date or time, or
 - (ii) if that date or time falls in a period of suspension of his nomination; and
 - (b) where under any enactment, or any provision of the company's articles, the right of a member to receive a document or information depends on the company having a current address for him, the same applies to any person nominated by him.
- (5) The rights conferred by the nomination –
 - (a) are in addition to the rights of the member himself, and
 - (b) do not affect any rights exercisable by virtue of any such provision as is mentioned in section 145 (provisions of company's articles as to enjoyment or exercise of members' rights).
- (6) A failure to give effect to the rights conferred by the nomination does not affect the validity of anything done by or on behalf of the company.
- (7) References in this section to the rights conferred by the nomination are to –
 - (a) the rights referred to in section 146(3) (information rights), and
 - (b) where applicable, the rights conferred by section 147(3) (right to hard copy communications) and section 149 (information as to possible voting rights).

151 Information rights: power to amend

- (1) The Secretary of State may by regulations amend the provisions of sections 146 to 150 (information rights) so as to –
 - (a) extend or restrict the classes of companies to which section 146 applies,
 - (b) make other provision as to the circumstances in which a nomination may be made under that section, or
 - (c) extend or restrict the rights conferred by such a nomination.
- (2) The regulations may make such consequential modifications of any other provisions of this Part, or of any other enactment, as appear to the Secretary of State to be necessary.

- (3) Regulations under this section are subject to affirmative resolution procedure.

Exercise of rights where shares held on behalf of others

152 Exercise of rights where shares held on behalf of others: exercise in different ways

- (1) Where a member holds shares in a company on behalf of more than one person—
- (a) rights attached to the shares, and
 - (b) rights under any enactment exercisable by virtue of holding the shares,
- need not all be exercised, and if exercised, need not all be exercised in the same way.
- (2) A member who exercises such rights but does not exercise all his rights, must inform the company to what extent he is exercising the rights.
- (3) A member who exercises such rights in different ways must inform the company of the ways in which he is exercising them and to what extent they are exercised in each way.
- (4) If a member exercises such rights without informing the company—
- (a) that he is not exercising all his rights, or
 - (b) that he is exercising his rights in different ways,
- the company is entitled to assume that he is exercising all his rights and is exercising them in the same way.

153 Exercise of rights where shares held on behalf of others: members' requests

- (1) This section applies for the purposes of—
- (a) section 314 (power to require circulation of statement),
 - (b) section 338 (public companies: power to require circulation of resolution for AGM),
 - (c) section 342 (power to require independent report on poll), and
 - (d) section 527 (power to require website publication of audit concerns).
- (2) A company is required to act under any of those sections if it receives a request in relation to which the following conditions are met—
- (a) it is made by at least 100 persons;
 - (b) it is authenticated by all the persons making it;
 - (c) in the case of any of those persons who is not a member of the company, it is accompanied by a statement—
 - (i) of the full name and address of a person (“the member”) who is a member of the company and holds shares on behalf of that person,
 - (ii) that the member is holding those shares on behalf of that person in the course of a business,
 - (iii) of the number of shares in the company that the member holds on behalf of that person,
 - (iv) of the total amount paid up on those shares,
 - (v) that those shares are not held on behalf of anyone else or, if they are, that the other person or persons are not among the other persons making the request,

- (vi) that some or all of those shares confer voting rights that are relevant for the purposes of making a request under the section in question, and
- (vii) that the person has the right to instruct the member how to exercise those rights;
- (d) in the case of any of those persons who is a member of the company, it is accompanied by a statement –
 - (i) that he holds shares otherwise than on behalf of another person, or
 - (ii) that he holds shares on behalf of one or more other persons but those persons are not among the other persons making the request;
- (e) it is accompanied by such evidence as the company may reasonably require of the matters mentioned in paragraph (c) and (d);
- (f) the total amount of the sums paid up on –
 - (i) shares held as mentioned in paragraph (c), and
 - (ii) shares held as mentioned in paragraph (d),divided by the number of persons making the request, is not less than £100;
- (g) the request complies with any other requirements of the section in question as to contents, timing and otherwise.

PART 10

A COMPANY'S DIRECTORS

CHAPTER 1

APPOINTMENT AND REMOVAL OF DIRECTORS

Requirement to have directors

154 Companies required to have directors

- (1) A private company must have at least one director.
- (2) A public company must have at least two directors.

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

- (1) A company must have at least one director who is a natural person.
- (2) This requirement is met if the office of director is held by a natural person as a corporation sole or otherwise by virtue of an office.

156 Direction requiring company to make appointment

- (1) If it appears to the Secretary of State that a company is in breach of –
 - section 154 (requirements as to number of directors), or
 - section 155 (requirement to have at least one director who is a natural person),the Secretary of State may give the company a direction under this section.

- (2) The direction must specify –
 - (a) the statutory requirement the company appears to be in breach of,
 - (b) what the company must do in order to comply with the direction, and
 - (c) the period within which it must do so.

That period must be not less than one month or more than three months after the date on which the direction is given.
- (3) The direction must also inform the company of the consequences of failing to comply.
- (4) Where the company is in breach of section 154 or 155 it must comply with the direction by –
 - (a) making the necessary appointment or appointments, and
 - (b) giving notice of them under section 167,

before the end of the period specified in the direction.
- (5) If the company has already made the necessary appointment or appointments (or so far as it has done so), it must comply with the direction by giving notice of them under section 167 before the end of the period specified in the direction.
- (6) If a company fails to comply with a direction under this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

Appointment

157 Minimum age for appointment as director

- (1) A person may not be appointed a director of a company unless he has attained the age of 16 years.
- (2) This does not affect the validity of an appointment that is not to take effect until the person appointed attains that age.
- (3) Where the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, the appointment to that other office of a person who has not attained the age of 16 years is not effective also to make him a director of the company until he attains the age of 16 years.
- (4) An appointment made in contravention of this section is void.
- (5) Nothing in this section affects any liability of a person under any provision of the Companies Acts if he –
 - (a) purports to act as director, or
 - (b) acts as a shadow director,

although he could not, by virtue of this section, be validly appointed as a director.

- (6) This section has effect subject to section 158 (power to provide for exceptions from minimum age requirement).

158 Power to provide for exceptions from minimum age requirement

- (1) The Secretary of State may make provision by regulations for cases in which a person who has not attained the age of 16 years may be appointed a director of a company.
- (2) The regulations must specify the circumstances in which, and any conditions subject to which, the appointment may be made.
- (3) If the specified circumstances cease to obtain, or any specified conditions cease to be met, a person who was appointed by virtue of the regulations and who has not since attained the age of 16 years ceases to hold office.
- (4) The regulations may make different provision for different parts of the United Kingdom.
This is without prejudice to the general power to make different provision for different cases.
- (5) Regulations under this section are subject to negative resolution procedure.

159 Existing under-age directors

- (1) This section applies where –
- (a) a person appointed a director of a company before section 157 (minimum age for appointment as director) comes into force has not attained the age of 16 when that section comes into force, or
 - (b) the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, and the person appointed to that other office has not attained the age of 16 years when that section comes into force,
- and the case is not one excepted from that section by regulations under section 158.
- (2) That person ceases to be a director on section 157 coming into force.
- (3) The company must make the necessary consequential alteration in its register of directors but need not give notice to the registrar of the change.
- (4) If it appears to the registrar (from other information) that a person has ceased by virtue of this section to be a director of a company, the registrar shall note that fact on the register.

160 Appointment of directors of public company to be voted on individually

- (1) At a general meeting of a public company a motion for the appointment of two or more persons as directors of the company by a single resolution must not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.
- (2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time.
But where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies.

- (3) For the purposes of this section a motion for approving a person’s appointment, or for nominating a person for appointment, is treated as a motion for his appointment.
- (4) Nothing in this section applies to a resolution amending the company’s articles.

161 Validity of acts of directors

- (1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered –
 - (a) that there was a defect in his appointment;
 - (b) that he was disqualified from holding office;
 - (c) that he had ceased to hold office;
 - (d) that he was not entitled to vote on the matter in question.
- (2) This applies even if the resolution for his appointment is void under section 160 (appointment of directors of public company to be voted on individually).

Register of directors, etc

162 Register of directors

- (1) Every company must keep a register of its directors.
- (2) The register must contain the required particulars (see sections 163, 164 and 166) of each person who is a director of the company.
- (3) The register must be kept available for inspection –
 - (a) at the company’s registered office, or
 - (b) at a place specified in regulations under section 1136.
- (4) The company must give notice to the registrar –
 - (a) of the place at which the register is kept available for inspection, and
 - (b) of any change in that place,unless it has at all times been kept at the company’s registered office.
- (5) The register must be open to the inspection –
 - (a) of any member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.
- (6) If default is made in complying with subsection (1), (2) or (3) or if default is made for 14 days in complying with subsection (4), or if an inspection required under subsection (5) is refused, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (8) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

163 Particulars of directors to be registered: individuals

- (1) A company's register of directors must contain the following particulars in the case of an individual—
 - (a) name and any former name;
 - (b) a service address;
 - (c) the country or state (or part of the United Kingdom) in which he is usually resident;
 - (d) nationality;
 - (e) business occupation (if any);
 - (f) date of birth.
- (2) For the purposes of this section “name” means a person's Christian name (or other forename) and surname, except that in the case of—
 - (a) a peer, or
 - (b) an individual usually known by a title,the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (3) For the purposes of this section a “former name” means a name by which the individual was formerly known for business purposes.
Where a person is or was formerly known by more than one such name, each of them must be stated.
- (4) It is not necessary for the register to contain particulars of a former name in the following cases—
 - (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
 - (b) in the case of any person, where the former name—
 - (i) was changed or disused before the person attained the age of 16 years, or
 - (ii) has been changed or disused for 20 years or more.
- (5) A person's service address may be stated to be “The company's registered office”.

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

A company's register of directors must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—

- (a) corporate or firm name;
- (b) registered or principal office;
- (c) in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of—
 - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
 - (ii) the registration number in that register;
- (d) in any other case, particulars of—
 - (i) the legal form of the company or firm and the law by which it is governed, and

- (ii) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

165 Register of directors’ residential addresses

- (1) Every company must keep a register of directors’ residential addresses.
- (2) The register must state the usual residential address of each of the company’s directors.
- (3) If a director’s usual residential address is the same as his service address (as stated in the company’s register of directors), the register of directors’ residential addresses need only contain an entry to that effect.
This does not apply if his service address is stated to be “The company’s registered office”.
- (4) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (6) This section applies only to directors who are individuals, not where the director is a body corporate or a firm that is a legal person under the law by which it is governed.

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

- (1) The Secretary of State may make provision by regulations amending –
 - section 163 (particulars of directors to be registered: individuals),
 - section 164 (particulars of directors to be registered: corporate directors and firms), or
 - section 165 (register of directors’ residential addresses),so as to add to or remove items from the particulars required to be contained in a company’s register of directors or register of directors’ residential addresses.
- (2) Regulations under this section are subject to affirmative resolution procedure.

167 Duty to notify registrar of changes

- (1) A company must, within the period of 14 days from –
 - (a) a person becoming or ceasing to be a director, or
 - (b) the occurrence of any change in the particulars contained in its register of directors or its register of directors’ residential addresses,give notice to the registrar of the change and of the date on which it occurred.
- (2) Notice of a person having become a director of the company must –
 - (a) contain a statement of the particulars of the new director that are required to be included in the company’s register of directors and its register of directors’ residential addresses, and

- (b) be accompanied by a consent, by that person, to act in that capacity.
- (3) Where –
- (a) a company gives notice of a change of a director's service address as stated in the company's register of directors, and
 - (b) the notice is not accompanied by notice of any resulting change in the particulars contained in the company's register of directors' residential addresses,
- the notice must be accompanied by a statement that no such change is required.
- (4) If default is made in complying with this section, an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

Removal

168 Resolution to remove director

- (1) A company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him.
- (2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.
- (3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
- (4) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (5) This section is not to be taken –
 - (a) as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or
 - (b) as derogating from any power to remove a director that may exist apart from this section.

169 Director's right to protest against removal

- (1) On receipt of notice of an intended resolution to remove a director under section 168, the company must forthwith send a copy of the notice to the director concerned.
- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.

- (3) Where notice is given of an intended resolution to remove a director under that section, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so –
 - (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).
- (4) If a copy of the representations is not sent as required by subsection (3) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.
- (6) The court may order the company's costs (in Scotland, expenses) on an application under subsection (5) to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

CHAPTER 2

GENERAL DUTIES OF DIRECTORS

Introductory

170 Scope and nature of general duties

- (1) The general duties specified in sections 171 to 177 are owed by a director of a company to the company.
- (2) A person who ceases to be a director continues to be subject –
 - (a) to the duty in section 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and
 - (b) to the duty in section 176 (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.

To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.

- (3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.
- (4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.

- (5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

The general duties

171 Duty to act within powers

A director of a company must –

- (a) act in accordance with the company's constitution, and
- (b) only exercise powers for the purposes for which they are conferred.

172 Duty to promote the success of the company

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to –
- (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company's employees,
 - (c) the need to foster the company's business relationships with suppliers, customers and others,
 - (d) the impact of the company's operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

173 Duty to exercise independent judgment

- (1) A director of a company must exercise independent judgment.
- (2) This duty is not infringed by his acting –
- (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or
 - (b) in a way authorised by the company's constitution.

174 Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with –
- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and

- (b) the general knowledge, skill and experience that the director has.

175 Duty to avoid conflicts of interest

- (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).
- (3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.
- (4) This duty is not infringed –
 - (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) if the matter has been authorised by the directors.
- (5) Authorisation may be given by the directors –
 - (a) where the company is a private company and nothing in the company’s constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or
 - (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.
- (6) The authorisation is effective only if –
 - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
 - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
- (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

176 Duty not to accept benefits from third parties

- (1) A director of a company must not accept a benefit from a third party conferred by reason of –
 - (a) his being a director, or
 - (b) his doing (or not doing) anything as director.
- (2) A “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.
- (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.
- (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

- (5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

177 Duty to declare interest in proposed transaction or arrangement

- (1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.
- (2) The declaration may (but need not) be made –
- (a) at a meeting of the directors, or
 - (b) by notice to the directors in accordance with –
 - (i) section 184 (notice in writing), or
 - (ii) section 185 (general notice).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.
- (6) A director need not declare an interest –
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
 - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered –
 - (i) by a meeting of the directors, or
 - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

Supplementary provisions

178 Civil consequences of breach of general duties

- (1) The consequences of breach (or threatened breach) of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied.
- (2) The duties in those sections (with the exception of section 174 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors.

179 Cases within more than one of the general duties

Except as otherwise provided, more than one of the general duties may apply in any given case.

180 Consent, approval or authorisation by members

- (1) In a case where—
 - (a) section 175 (duty to avoid conflicts of interest) is complied with by authorisation by the directors, or
 - (b) section 177 (duty to declare interest in proposed transaction or arrangement) is complied with,the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company.
This is without prejudice to any enactment, or provision of the company's constitution, requiring such consent or approval.
- (2) The application of the general duties is not affected by the fact that the case also falls within Chapter 4 (transactions requiring approval of members), except that where that Chapter applies and—
 - (a) approval is given under that Chapter, or
 - (b) the matter is one as to which it is provided that approval is not needed, it is not necessary also to comply with section 175 (duty to avoid conflicts of interest) or section 176 (duty not to accept benefits from third parties).
- (3) Compliance with the general duties does not remove the need for approval under any applicable provision of Chapter 4 (transactions requiring approval of members).
- (4) The general duties—
 - (a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty, and
 - (b) where the company's articles contain provisions for dealing with conflicts of interest, are not infringed by anything done (or omitted) by the directors, or any of them, in accordance with those provisions.
- (5) Otherwise, the general duties have effect (except as otherwise provided or the context otherwise requires) notwithstanding any enactment or rule of law.

181 Modification of provisions in relation to charitable companies

- (1) In their application to a company that is a charity, the provisions of this Chapter have effect subject to this section.
- (2) Section 175 (duty to avoid conflicts of interest) has effect as if—
 - (a) for subsection (3) (which disapplies the duty to avoid conflicts of interest in the case of a transaction or arrangement with the company) there were substituted—
 - “(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company if or to the extent that the company's articles allow that duty to be so

disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company's articles.”;

- (b) for subsection (5) (which specifies how directors of a company may give authority under that section for a transaction or arrangement) there were substituted –

“(5) Authorisation may be given by the directors where the company's constitution includes provision enabling them to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.”.

- (3) Section 180(2)(b) (which disapplies certain duties under this Chapter in relation to cases excepted from requirement to obtain approval by members under Chapter 4) applies only if or to the extent that the company's articles allow those duties to be so disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company's articles.

- (4) After section 26(5) of the Charities Act 1993 (c. 10) (power of Charity Commission to authorise dealings with charity property etc) insert –

“(5A) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).”.

- (5) This section does not extend to Scotland.

CHAPTER 3

DECLARATION OF INTEREST IN EXISTING TRANSACTION OR ARRANGEMENT

182 Declaration of interest in existing transaction or arrangement

- (1) Where a director of a company is in any way, directly or indirectly, interested in a transaction or arrangement that has been entered into by the company, he must declare the nature and extent of the interest to the other directors in accordance with this section.

This section does not apply if or to the extent that the interest has been declared under section 177 (duty to declare interest in proposed transaction or arrangement).

- (2) The declaration must be made –
- at a meeting of the directors, or
 - by notice in writing (see section 184), or
 - by general notice (see section 185).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made as soon as is reasonably practicable.

Failure to comply with this requirement does not affect the underlying duty to make the declaration.

- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.

- (6) A director need not declare an interest under this section –
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
 - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered –
 - (i) by a meeting of the directors, or
 - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

183 Offence of failure to declare interest

- (1) A director who fails to comply with the requirements of section 182 (declaration of interest in existing transaction or arrangement) commits an offence.
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

184 Declaration made by notice in writing

- (1) This section applies to a declaration of interest made by notice in writing.
- (2) The director must send the notice to the other directors.
- (3) The notice may be sent in hard copy form or, if the recipient has agreed to receive it in electronic form, in an agreed electronic form.
- (4) The notice may be sent –
 - (a) by hand or by post, or
 - (b) if the recipient has agreed to receive it by electronic means, by agreed electronic means.
- (5) Where a director declares an interest by notice in writing in accordance with this section –
 - (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and
 - (b) the provisions of section 248 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.

185 General notice treated as sufficient declaration

- (1) General notice in accordance with this section is a sufficient declaration of interest in relation to the matters to which it relates.

- (2) General notice is notice given to the directors of a company to the effect that the director –
 - (a) has an interest (as member, officer, employee or otherwise) in a specified body corporate or firm and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that body corporate or firm, or
 - (b) is connected with a specified person (other than a body corporate or firm) and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that person.
- (3) The notice must state the nature and extent of the director's interest in the body corporate or firm or, as the case may be, the nature of his connection with the person.
- (4) General notice is not effective unless –
 - (a) it is given at a meeting of the directors, or
 - (b) the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

186 Declaration of interest in case of company with sole director

- (1) Where a declaration of interest under section 182 (duty to declare interest in existing transaction or arrangement) is required of a sole director of a company that is required to have more than one director –
 - (a) the declaration must be recorded in writing,
 - (b) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and
 - (c) the provisions of section 248 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.
- (2) Nothing in this section affects the operation of section 231 (contract with sole member who is also a director: terms to be set out in writing or recorded in minutes).

187 Declaration of interest in existing transaction by shadow director

- (1) The provisions of this Chapter relating to the duty under section 182 (duty to declare interest in existing transaction or arrangement) apply to a shadow director as to a director, but with the following adaptations.
- (2) Subsection (2)(a) of that section (declaration at meeting of directors) does not apply.
- (3) In section 185 (general notice treated as sufficient declaration), subsection (4) (notice to be given at or brought up and read at meeting of directors) does not apply.
- (4) General notice by a shadow director is not effective unless given by notice in writing in accordance with section 184.

CHAPTER 4

TRANSACTIONS WITH DIRECTORS REQUIRING APPROVAL OF MEMBERS

Service contracts

188 Directors' long-term service contracts: requirement of members' approval

- (1) This section applies to provision under which the guaranteed term of a director's employment –
 - (a) with the company of which he is a director, or
 - (b) where he is the director of a holding company, within the group consisting of that company and its subsidiaries,is, or may be, longer than two years.
- (2) A company may not agree to such provision unless it has been approved –
 - (a) by resolution of the members of the company, and
 - (b) in the case of a director of a holding company, by resolution of the members of that company.
- (3) The guaranteed term of a director's employment is –
 - (a) the period (if any) during which the director's employment –
 - (i) is to continue, or may be continued otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), and
 - (ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances, or
 - (b) in the case of employment terminable by the company by notice, the period of notice required to be given,or, in the case of employment having a period within paragraph (a) and a period within paragraph (b), the aggregate of those periods.
- (4) If more than six months before the end of the guaranteed term of a director's employment the company enters into a further service contract (otherwise than in pursuance of a right conferred, by or under the original contract, on the other party to it), this section applies as if there were added to the guaranteed term of the new contract the unexpired period of the guaranteed term of the original contract.
- (5) A resolution approving provision to which this section applies must not be passed unless a memorandum setting out the proposed contract incorporating the provision is made available to members –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (6) No approval is required under this section on the part of the members of a body corporate that –
 - (a) is not a UK-registered company, or

- (b) is a wholly-owned subsidiary of another body corporate.
- (7) In this section “employment” means any employment under a director’s service contract.

189 Directors’ long-term service contracts: civil consequences of contravention

If a company agrees to provision in contravention of section 188 (directors’ long-term service contracts: requirement of members’ approval) –

- (a) the provision is void, to the extent of the contravention, and
- (b) the contract is deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

Substantial property transactions

190 Substantial property transactions: requirement of members’ approval

- (1) A company may not enter into an arrangement under which –
 - (a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset, or
 - (b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected,unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained.
For the meaning of “substantial non-cash asset” see section 191.
- (2) If the director or connected person is a director of the company’s holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company or be conditional on such approval being obtained.
- (3) A company shall not be subject to any liability by reason of a failure to obtain approval required by this section.
- (4) No approval is required under this section on the part of the members of a body corporate that –
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.
- (5) For the purposes of this section –
 - (a) an arrangement involving more than one non-cash asset, or
 - (b) an arrangement that is one of a series involving non-cash assets,shall be treated as if they involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or, as the case may be, the series.
- (6) This section does not apply to a transaction so far as it relates –
 - (a) to anything to which a director of a company is entitled under his service contract, or
 - (b) to payment for loss of office as defined in section 215 (payments requiring members’ approval).

191 Meaning of “substantial”

- (1) This section explains what is meant in section 190 (requirement of approval for substantial property transactions) by a “substantial” non-cash asset.
- (2) An asset is a substantial asset in relation to a company if its value –
 - (a) exceeds 10% of the company’s asset value and is more than £5,000, or
 - (b) exceeds £100,000.
- (3) For this purpose a company’s “asset value” at any time is –
 - (a) the value of the company’s net assets determined by reference to its most recent statutory accounts, or
 - (b) if no statutory accounts have been prepared, the amount of the company’s called-up share capital.
- (4) A company’s “statutory accounts” means its annual accounts prepared in accordance with Part 15, and its “most recent” statutory accounts means those in relation to which the time for sending them out to members (see section 424) is most recent.
- (5) Whether an asset is a substantial asset shall be determined as at the time the arrangement is entered into.

192 Exception for transactions with members or other group companies

Approval is not required under section 190 (requirement of members’ approval for substantial property transactions) –

- (a) for a transaction between a company and a person in his character as a member of that company, or
- (b) for a transaction between –
 - (i) a holding company and its wholly-owned subsidiary, or
 - (ii) two wholly-owned subsidiaries of the same holding company.

193 Exception in case of company in winding up or administration

- (1) This section applies to a company –
 - (a) that is being wound up (unless the winding up is a members’ voluntary winding up), or
 - (b) that is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) Approval is not required under section 190 (requirement of members’ approval for substantial property transactions) –
 - (a) on the part of the members of a company to which this section applies, or
 - (b) for an arrangement entered into by a company to which this section applies.

194 Exception for transactions on recognised investment exchange

- (1) Approval is not required under section 190 (requirement of members’ approval for substantial property transactions) for a transaction on a recognised investment exchange effected by a director, or a person connected

with him, through the agency of a person who in relation to the transaction acts as an independent broker.

- (2) For this purpose –
- (a) “independent broker” means a person who, independently of the director or any person connected with him, selects the person with whom the transaction is to be effected; and
 - (b) “recognised investment exchange” has the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).

195 Property transactions: civil consequences of contravention

- (1) This section applies where a company enters into an arrangement in contravention of section 190 (requirement of members’ approval for substantial property transactions).
- (2) The arrangement, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the instance of the company, unless –
- (a) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible,
 - (b) the company has been indemnified in pursuance of this section by any other persons for the loss or damage suffered by it, or
 - (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the arrangement or transaction would be affected by the avoidance.
- (3) Whether or not the arrangement or any such transaction has been avoided, each of the persons specified in subsection (4) is liable –
- (a) to account to the company for any gain that he has made directly or indirectly by the arrangement or transaction, and
 - (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (4) The persons so liable are –
- (a) any director of the company or of its holding company with whom the company entered into the arrangement in contravention of section 190,
 - (b) any person with whom the company entered into the arrangement in contravention of that section who is connected with a director of the company or of its holding company,
 - (c) the director of the company or of its holding company with whom any such person is connected, and
 - (d) any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections.
- (6) In the case of an arrangement entered into by a company in contravention of section 190 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company’s compliance with that section.
- (7) In any case –

(a) a person so connected is not liable by virtue of subsection (4)(b), and
 (b) a director is not liable by virtue of subsection (4)(d),
 if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the arrangement or transaction may be called in question or any liability to the company may arise.

196 Property transactions: effect of subsequent affirmation

Where a transaction or arrangement is entered into by a company in contravention of section 190 (requirement of members' approval) but, within a reasonable period, it is affirmed—

- (a) in the case of a contravention of subsection (1) of that section, by resolution of the members of the company, and
 (b) in the case of a contravention of subsection (2) of that section, by resolution of the members of the holding company,
 the transaction or arrangement may no longer be avoided under section 195.

Loans, quasi-loans and credit transactions

197 Loans to directors: requirement of members' approval

- (1) A company may not—
 (a) make a loan to a director of the company or of its holding company, or
 (b) give a guarantee or provide security in connection with a loan made by any person to such a director,
 unless the transaction has been approved by a resolution of the members of the company.
- (2) If the director is a director of the company's holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members—
 (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
 (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 (ii) at the meeting itself.
- (4) The matters to be disclosed are—
 (a) the nature of the transaction,
 (b) the amount of the loan and the purpose for which it is required, and
 (c) the extent of the company's liability under any transaction connected with the loan.

- (5) No approval is required under this section on the part of the members of a body corporate that –
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

198 Quasi-loans to directors: requirement of members’ approval

- (1) This section applies to a company if it is –
 - (a) a public company, or
 - (b) a company associated with a public company.
- (2) A company to which this section applies may not –
 - (a) make a quasi-loan to a director of the company or of its holding company, or
 - (b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director,unless the transaction has been approved by a resolution of the members of the company.
- (3) If the director is a director of the company’s holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (5) The matters to be disclosed are –
 - (a) the nature of the transaction,
 - (b) the amount of the quasi-loan and the purpose for which it is required, and
 - (c) the extent of the company’s liability under any transaction connected with the quasi-loan.
- (6) No approval is required under this section on the part of the members of a body corporate that –
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

199 Meaning of “quasi-loan” and related expressions

- (1) A “quasi-loan” is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”) –

- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
 - (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.
- (2) Any reference to the person to whom a quasi-loan is made is a reference to the borrower.
- (3) The liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

200 Loans or quasi-loans to persons connected with directors: requirement of members' approval

- (1) This section applies to a company if it is –
- (a) a public company, or
 - (b) a company associated with a public company.
- (2) A company to which this section applies may not –
- (a) make a loan or quasi-loan to a person connected with a director of the company or of its holding company, or
 - (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to a person connected with such a director, unless the transaction has been approved by a resolution of the members of the company.
- (3) If the connected person is a person connected with a director of the company's holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members –
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (5) The matters to be disclosed are –
- (a) the nature of the transaction,
 - (b) the amount of the loan or quasi-loan and the purpose for which it is required, and
 - (c) the extent of the company's liability under any transaction connected with the loan or quasi-loan.
- (6) No approval is required under this section on the part of the members of a body corporate that –
- (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

201 Credit transactions: requirement of members’ approval

- (1) This section applies to a company if it is –
 - (a) a public company, or
 - (b) a company associated with a public company.
- (2) A company to which this section applies may not –
 - (a) enter into a credit transaction as creditor for the benefit of a director of the company or of its holding company, or a person connected with such a director, or
 - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of such a director, or a person connected with such a director,unless the transaction (that is, the credit transaction, the giving of the guarantee or the provision of security, as the case may be) has been approved by a resolution of the members of the company.
- (3) If the director or connected person is a director of its holding company or a person connected with such a director, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (5) The matters to be disclosed are –
 - (a) the nature of the transaction,
 - (b) the value of the credit transaction and the purpose for which the land, goods or services sold or otherwise disposed of, leased, hired or supplied under the credit transaction are required, and
 - (c) the extent of the company’s liability under any transaction connected with the credit transaction.
- (6) No approval is required under this section on the part of the members of a body corporate that –
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

202 Meaning of “credit transaction”

- (1) A “credit transaction” is a transaction under which one party (“the creditor”) –
 - (a) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement,
 - (b) leases or hires any land or goods in return for periodical payments, or

- (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.
- (2) Any reference to the person for whose benefit a credit transaction is entered into is to the person to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the transaction.
- (3) In this section –
 - “conditional sale agreement” has the same meaning as in the Consumer Credit Act 1974 (c. 39); and
 - “services” means anything other than goods or land.

203 Related arrangements: requirement of members’ approval

- (1) A company may not –
 - (a) take part in an arrangement under which –
 - (i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under section 197, 198, 200 or 201, and
 - (ii) that person, in pursuance of the arrangement, obtains a benefit from the company or a body corporate associated with it, or
 - (b) arrange for the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such approval,unless the arrangement in question has been approved by a resolution of the members of the company.
- (2) If the director or connected person for whom the transaction is entered into is a director of its holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving an arrangement to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –
 - (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (4) The matters to be disclosed are –
 - (a) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates,
 - (b) the nature of the arrangement, and
 - (c) the extent of the company’s liability under the arrangement or any transaction connected with it.
- (5) No approval is required under this section on the part of the members of a body corporate that –

- (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.
- (6) In determining for the purposes of this section whether a transaction is one that would have required approval under section 197, 198, 200 or 201 if it had been entered into by the company, the transaction shall be treated as having been entered into on the date of the arrangement.

204 Exception for expenditure on company business

- (1) Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company –
- (a) to provide a director of the company or of its holding company, or a person connected with any such director, with funds to meet expenditure incurred or to be incurred by him –
 - (i) for the purposes of the company, or
 - (ii) for the purpose of enabling him properly to perform his duties as an officer of the company, or
 - (b) to enable any such person to avoid incurring such expenditure.
- (2) This section does not authorise a company to enter into a transaction if the aggregate of –
- (a) the value of the transaction in question, and
 - (b) the value of any other relevant transactions or arrangements, exceeds £50,000.

205 Exception for expenditure on defending proceedings etc

- (1) Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company –
- (a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by him –
 - (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company, or
 - (ii) in connection with an application for relief (see subsection (5)), or
 - (b) to enable any such director to avoid incurring such expenditure, if it is done on the following terms.
- (2) The terms are –
- (a) that the loan is to be repaid, or (as the case may be) any liability of the company incurred under any transaction connected with the thing done is to be discharged, in the event of –
 - (i) the director being convicted in the proceedings,
 - (ii) judgment being given against him in the proceedings, or
 - (iii) the court refusing to grant him relief on the application; and
 - (b) that it is to be so repaid or discharged not later than –
 - (i) the date when the conviction becomes final,
 - (ii) the date when the judgment becomes final, or
 - (iii) the date when the refusal of relief becomes final.

- (3) For this purpose a conviction, judgment or refusal of relief becomes final –
 - (a) if not appealed against, at the end of the period for bringing an appeal;
 - (b) if appealed against, when the appeal (or any further appeal) is disposed of.
- (4) An appeal is disposed of –
 - (a) if it is determined and the period for bringing any further appeal has ended, or
 - (b) if it is abandoned or otherwise ceases to have effect.
- (5) The reference in subsection (1)(a)(ii) to an application for relief is to an application for relief under –
 - section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee), or
 - section 1157 (general power of court to grant relief in case of honest and reasonable conduct).

206 Exception for expenditure in connection with regulatory action or investigation

Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company –

- (a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by him in defending himself –
 - (i) in an investigation by a regulatory authority, or
 - (ii) against action proposed to be taken by a regulatory authority, in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company, or
- (b) to enable any such director to avoid incurring such expenditure.

207 Exceptions for minor and business transactions

- (1) Approval is not required under section 197, 198 or 200 for a company to make a loan or quasi-loan, or to give a guarantee or provide security in connection with a loan or quasi-loan, if the aggregate of –
 - (a) the value of the transaction, and
 - (b) the value of any other relevant transactions or arrangements,does not exceed £10,000.
- (2) Approval is not required under section 201 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if the aggregate of –
 - (a) the value of the transaction (that is, of the credit transaction, guarantee or security), and
 - (b) the value of any other relevant transactions or arrangements,does not exceed £15,000.
- (3) Approval is not required under section 201 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if –

- (a) the transaction is entered into by the company in the ordinary course of the company’s business, and
- (b) the value of the transaction is not greater, and the terms on which it is entered into are not more favourable, than it is reasonable to expect the company would have offered to, or in respect of, a person of the same financial standing but unconnected with the company.

208 Exceptions for intra-group transactions

- (1) Approval is not required under section 197, 198 or 200 for –
 - (a) the making of a loan or quasi-loan to an associated body corporate, or
 - (b) the giving of a guarantee or provision of security in connection with a loan or quasi-loan made to an associated body corporate.
- (2) Approval is not required under section 201 –
 - (a) to enter into a credit transaction as creditor for the benefit of an associated body corporate, or
 - (b) to give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of an associated body corporate.

209 Exceptions for money-lending companies

- (1) Approval is not required under section 197, 198 or 200 for the making of a loan or quasi-loan, or the giving of a guarantee or provision of security in connection with a loan or quasi-loan, by a money-lending company if –
 - (a) the transaction (that is, the loan, quasi-loan, guarantee or security) is entered into by the company in the ordinary course of the company’s business, and
 - (b) the value of the transaction is not greater, and its terms are not more favourable, than it is reasonable to expect the company would have offered to a person of the same financial standing but unconnected with the company.
- (2) A “money-lending company” means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees or provision of security in connection with loans or quasi-loans.
- (3) The condition specified in subsection (1)(b) does not of itself prevent a company from making a home loan –
 - (a) to a director of the company or of its holding company, or
 - (b) to an employee of the company,if loans of that description are ordinarily made by the company to its employees and the terms of the loan in question are no more favourable than those on which such loans are ordinarily made.
- (4) For the purposes of subsection (3) a “home loan” means a loan –
 - (a) for the purpose of facilitating the purchase, for use as the only or main residence of the person to whom the loan is made, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it,
 - (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it, or

- (c) in substitution for any loan made by any person and falling within paragraph (a) or (b).

210 Other relevant transactions or arrangements

- (1) This section has effect for determining what are “other relevant transactions or arrangements” for the purposes of any exception to section 197, 198, 200 or 201. In the following provisions “the relevant exception” means the exception for the purposes of which that falls to be determined.
- (2) Other relevant transactions or arrangements are those previously entered into, or entered into at the same time as the transaction or arrangement in question in relation to which the following conditions are met.
- (3) Where the transaction or arrangement in question is entered into –
 - (a) for a director of the company entering into it, or
 - (b) for a person connected with such a director,the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by that company or by any of its subsidiaries.
- (4) Where the transaction or arrangement in question is entered into –
 - (a) for a director of the holding company of the company entering into it, or
 - (b) for a person connected with such a director,the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by the holding company or by any of its subsidiaries.
- (5) A transaction or arrangement entered into by a company that at the time it was entered into –
 - (a) was a subsidiary of the company entering into the transaction or arrangement in question, or
 - (b) was a subsidiary of that company’s holding company,is not a relevant transaction or arrangement if, at the time the question arises whether the transaction or arrangement in question falls within a relevant exception, it is no longer such a subsidiary.

211 The value of transactions and arrangements

- (1) For the purposes of sections 197 to 214 (loans etc) –
 - (a) the value of a transaction or arrangement is determined as follows, and
 - (b) the value of any other relevant transaction or arrangement is taken to be the value so determined reduced by any amount by which the liabilities of the person for whom the transaction or arrangement was made have been reduced.
- (2) The value of a loan is the amount of its principal.
- (3) The value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the creditor.
- (4) The value of a credit transaction is the price that it is reasonable to expect could be obtained for the goods, services or land to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the

ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied, under the transaction in question.

- (5) The value of a guarantee or security is the amount guaranteed or secured.
- (6) The value of an arrangement to which section 203 (related arrangements) applies is the value of the transaction to which the arrangement relates.
- (7) If the value of a transaction or arrangement is not capable of being expressed as a specific sum of money –
 - (a) whether because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason, and
 - (b) whether or not any liability under the transaction or arrangement has been reduced,its value is deemed to exceed £50,000.

212 The person for whom a transaction or arrangement is entered into

For the purposes of sections 197 to 214 (loans etc) the person for whom a transaction or arrangement is entered into is –

- (a) in the case of a loan or quasi-loan, the person to whom it is made;
- (b) in the case of a credit transaction, the person to whom goods, land or services are supplied, sold, hired, leased or otherwise disposed of under the transaction;
- (c) in the case of a guarantee or security, the person for whom the transaction is made in connection with which the guarantee or security is entered into;
- (d) in the case of an arrangement within section 203 (related arrangements), the person for whom the transaction is made to which the arrangement relates.

213 Loans etc: civil consequences of contravention

- (1) This section applies where a company enters into a transaction or arrangement in contravention of section 197, 198, 200, 201 or 203 (requirement of members' approval for loans etc).
- (2) The transaction or arrangement is voidable at the instance of the company, unless –
 - (a) restitution of any money or other asset that was the subject matter of the transaction or arrangement is no longer possible,
 - (b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement, or
 - (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the transaction or arrangement would be affected by the avoidance.
- (3) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (4) is liable –
 - (a) to account to the company for any gain that he has made directly or indirectly by the transaction or arrangement, and

- (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the transaction or arrangement.
- (4) The persons so liable are –
 - (a) any director of the company or of its holding company with whom the company entered into the transaction or arrangement in contravention of section 197, 198, 201 or 203,
 - (b) any person with whom the company entered into the transaction or arrangement in contravention of any of those sections who is connected with a director of the company or of its holding company,
 - (c) the director of the company or of its holding company with whom any such person is connected, and
 - (d) any other director of the company who authorised the transaction or arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections.
- (6) In the case of a transaction or arrangement entered into by a company in contravention of section 200, 201 or 203 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company’s compliance with the section concerned.
- (7) In any case –
 - (a) a person so connected is not liable by virtue of subsection (4)(b), and
 - (b) a director is not liable by virtue of subsection (4)(d),if he shows that, at the time the transaction or arrangement was entered into, he did not know the relevant circumstances constituting the contravention.
- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction or arrangement may be called in question or any liability to the company may arise.

214 Loans etc: effect of subsequent affirmation

Where a transaction or arrangement is entered into by a company in contravention of section 197, 198, 200, 201 or 203 (requirement of members’ approval for loans etc) but, within a reasonable period, it is affirmed –

- (a) in the case of a contravention of the requirement for a resolution of the members of the company, by a resolution of the members of the company, and
 - (b) in the case of a contravention of the requirement for a resolution of the members of the company’s holding company, by a resolution of the members of the holding company,
- the transaction or arrangement may no longer be avoided under section 213.

Payments for loss of office

215 Payments for loss of office

- (1) In this Chapter a “payment for loss of office” means a payment made to a director or past director of a company –
 - (a) by way of compensation for loss of office as director of the company,

- (b) by way of compensation for loss, while director of the company or in connection with his ceasing to be a director of it, of—
 - (i) any other office or employment in connection with the management of the affairs of the company, or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,
 - (c) as consideration for or in connection with his retirement from his office as director of the company, or
 - (d) as consideration for or in connection with his retirement, while director of the company or in connection with his ceasing to be a director of it, from—
 - (i) any other office or employment in connection with the management of the affairs of the company, or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (2) The references to compensation and consideration include benefits otherwise than in cash and references in this Chapter to payment have a corresponding meaning.
- (3) For the purposes of sections 217 to 221 (payments requiring members' approval)—
- (a) payment to a person connected with a director, or
 - (b) payment to any person at the direction of, or for the benefit of, a director or a person connected with him,
- is treated as payment to the director.
- (4) References in those sections to payment by a person include payment by another person at the direction of, or on behalf of, the person referred to.

216 Amounts taken to be payments for loss of office

- (1) This section applies where in connection with any such transfer as is mentioned in section 218 or 219 (payment in connection with transfer of undertaking, property or shares) a director of the company—
- (a) is to cease to hold office, or
 - (b) is to cease to be the holder of—
 - (i) any other office or employment in connection with the management of the affairs of the company, or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (2) If in connection with any such transfer—
- (a) the price to be paid to the director for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of like shares, or
 - (b) any valuable consideration is given to the director by a person other than the company,

the excess or, as the case may be, the money value of the consideration is taken for the purposes of those sections to have been a payment for loss of office.

217 Payment by company: requirement of members' approval

- (1) A company may not make a payment for loss of office to a director of the company unless the payment has been approved by a resolution of the members of the company.
- (2) A company may not make a payment for loss of office to a director of its holding company unless the payment has been approved by a resolution of the members of each of those companies.
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both –
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (4) No approval is required under this section on the part of the members of a body corporate that –
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.

218 Payment in connection with transfer of undertaking etc: requirement of members' approval

- (1) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company unless the payment has been approved by a resolution of the members of the company.
- (2) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of a subsidiary of the company unless the payment has been approved by a resolution of the members of each of the companies.
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both –
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (4) No approval is required under this section on the part of the members of a body corporate that –

- (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.
- (5) A payment made in pursuance of an arrangement –
- (a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and
 - (b) to which the company whose undertaking or property is transferred, or any person to whom the transfer is made, is privy,
- is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

219 Payment in connection with share transfer: requirement of members' approval

- (1) No payment for loss of office may be made by any person to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid unless the payment has been approved by a resolution of the relevant shareholders.
- (2) The relevant shareholders are the holders of the shares to which the bid relates and any holders of shares of the same class as any of those shares.
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought –
 - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both –
 - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
 - (ii) at the meeting itself.
- (4) Neither the person making the offer, nor any associate of his (as defined in section 988), is entitled to vote on the resolution, but –
 - (a) where the resolution is proposed as a written resolution, they are entitled (if they would otherwise be so entitled) to be sent a copy of it, and
 - (b) at any meeting to consider the resolution they are entitled (if they would otherwise be so entitled) to be given notice of the meeting, to attend and speak and if present (in person or by proxy) to count towards the quorum.
- (5) If at a meeting to consider the resolution a quorum is not present, and after the meeting has been adjourned to a later date a quorum is again not present, the payment is (for the purposes of this section) deemed to have been approved.
- (6) No approval is required under this section on the part of shareholders in a body corporate that –
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.
- (7) A payment made in pursuance of an arrangement –

- (a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and
 - (b) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy,
- is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

220 Exception for payments in discharge of legal obligations etc

- (1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) for a payment made in good faith –
 - (a) in discharge of an existing legal obligation (as defined below),
 - (b) by way of damages for breach of such an obligation,
 - (c) by way of settlement or compromise of any claim arising in connection with the termination of a person's office or employment, or
 - (d) by way of pension in respect of past services.
- (2) In relation to a payment within section 217 (payment by company) an existing legal obligation means an obligation of the company, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office.
- (3) In relation to a payment within section 218 or 219 (payment in connection with transfer of undertaking, property or shares) an existing legal obligation means an obligation of the person making the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question.
- (4) In the case of a payment within both section 217 and section 218, or within both section 217 and section 219, subsection (2) above applies and not subsection (3).
- (5) A payment part of which falls within subsection (1) above and part of which does not is treated as if the parts were separate payments.

221 Exception for small payments

- (1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) if –
 - (a) the payment in question is made by the company or any of its subsidiaries, and
 - (b) the amount or value of the payment, together with the amount or value of any other relevant payments, does not exceed £200.
- (2) For this purpose "other relevant payments" are payments for loss of office in relation to which the following conditions are met.
- (3) Where the payment in question is one to which section 217 (payment by company) applies, the conditions are that the other payment was or is paid –
 - (a) by the company making the payment in question or any of its subsidiaries,
 - (b) to the director to whom that payment is made, and
 - (c) in connection with the same event.
- (4) Where the payment in question is one to which section 218 or 219 applies (payment in connection with transfer of undertaking, property or shares), the

conditions are that the other payment was (or is) paid in connection with the same transfer –

- (a) to the director to whom the payment in question was made, and
- (b) by the company making the payment or any of its subsidiaries.

222 Payments made without approval: civil consequences

- (1) If a payment is made in contravention of section 217 (payment by company) –
 - (a) it is held by the recipient on trust for the company making the payment, and
 - (b) any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.
- (2) If a payment is made in contravention of section 218 (payment in connection with transfer of undertaking etc), it is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (3) If a payment is made in contravention of section 219 (payment in connection with share transfer) –
 - (a) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
 - (b) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.
- (4) If a payment is in contravention of section 217 and section 218, subsection (2) of this section applies rather than subsection (1).
- (5) If a payment is in contravention of section 217 and section 219, subsection (3) of this section applies rather than subsection (1), unless the court directs otherwise.

Supplementary

223 Transactions requiring members' approval: application of provisions to shadow directors

- (1) For the purposes of –
 - (a) sections 188 and 189 (directors' service contracts),
 - (b) sections 190 to 196 (property transactions),
 - (c) sections 197 to 214 (loans etc), and
 - (d) sections 215 to 222 (payments for loss of office),a shadow director is treated as a director.
- (2) Any reference in those provisions to loss of office as a director does not apply in relation to loss of a person's status as a shadow director.

224 Approval by written resolution: accidental failure to send memorandum

- (1) Where –
 - (a) approval under this Chapter is sought by written resolution, and
 - (b) a memorandum is required under this Chapter to be sent or submitted to every eligible member before the resolution is passed,

any accidental failure to send or submit the memorandum to one or more members shall be disregarded for the purpose of determining whether the requirement has been met.

- (2) Subsection (1) has effect subject to any provision of the company’s articles.

225 Cases where approval is required under more than one provision

- (1) Approval may be required under more than one provision of this Chapter.
 (2) If so, the requirements of each applicable provision must be met.
 (3) This does not require a separate resolution for the purposes of each provision.

226 Requirement of consent of Charity Commission: companies that are charities

For section 66 of the Charities Act 1993 (c. 10) substitute –

“66 Consent of Commission required for approval etc by members of charitable companies

- (1) Where a company is a charity –
- (a) any approval given by the members of the company under any provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors requiring approval by members) listed in subsection (2) below, and
 - (b) any affirmation given by members of the company under section 196 or 214 of that Act (affirmation of unapproved property transactions and loans),
- is ineffective without the prior written consent of the Commission.
- (2) The provisions are –
- (a) section 188 (directors’ long-term service contracts);
 - (b) section 190 (substantial property transactions with directors etc);
 - (c) section 197, 198 or 200 (loans and quasi-loans to directors etc);
 - (d) section 201 (credit transactions for benefit of directors etc);
 - (e) section 203 (related arrangements);
 - (f) section 217 (payments to directors for loss of office);
 - (g) section 218 (payments to directors for loss of office: transfer of undertaking etc).

66A Consent of Commission required for certain acts of charitable company

- (1) A company that is a charity may not do an act to which this section applies without the prior written consent of the Commission.
- (2) This section applies to an act that –
- (a) does not require approval under a listed provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors) by the members of the company, but
 - (b) would require such approval but for an exemption in the provision in question that disapplies the need for approval on the part of the members of a body corporate which is a wholly-owned subsidiary of another body corporate.

- (3) The reference to a listed provision is a reference to a provision listed in section 66(2) above.
- (4) If a company acts in contravention of this section, the exemption referred to in subsection (2)(b) shall be treated as of no effect in relation to the act.”.

CHAPTER 5

DIRECTORS’ SERVICE CONTRACTS

227 Directors’ service contracts

- (1) For the purposes of this Part a director’s “service contract”, in relation to a company, means a contract under which—
 - (a) a director of the company undertakes personally to perform services (as director or otherwise) for the company, or for a subsidiary of the company, or
 - (b) services (as director or otherwise) that a director of the company undertakes personally to perform are made available by a third party to the company, or to a subsidiary of the company.
- (2) The provisions of this Part relating to directors’ service contracts apply to the terms of a person’s appointment as a director of a company.
They are not restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

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

- (1) A company must keep available for inspection—
 - (a) a copy of every director’s service contract with the company or with a subsidiary of the company, or
 - (b) if the contract is not in writing, a written memorandum setting out the terms of the contract.
- (2) All the copies and memoranda must be kept available for inspection at—
 - (a) the company’s registered office, or
 - (b) a place specified in regulations under section 1136.
- (3) The copies and memoranda must be retained by the company for at least one year from the date of termination or expiry of the contract and must be kept available for inspection during that time.
- (4) The company must give notice to the registrar—
 - (a) of the place at which the copies and memoranda are kept available for inspection, and
 - (b) of any change in that place,unless they have at all times been kept at the company’s registered office.
- (5) If default is made in complying with subsection (1), (2) or (3), or default is made for 14 days in complying with subsection (4), an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for

continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

- (7) The provisions of this section apply to a variation of a director's service contract as they apply to the original contract.

229 Right of member to inspect and request copy

- (1) Every copy or memorandum required to be kept under section 228 must be open to inspection by any member of the company without charge.
- (2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.
The copy must be provided within seven days after the request is received by the company.
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

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

A shadow director is treated as a director for the purposes of the provisions of this Chapter.

CHAPTER 6

CONTRACTS WITH SOLE MEMBERS WHO ARE DIRECTORS

231 Contract with sole member who is also a director

- (1) This section applies where –
- (a) a limited company having only one member enters into a contract with the sole member,
 - (b) the sole member is also a director of the company, and
 - (c) the contract is not entered into in the ordinary course of the company's business.
- (2) The company must, unless the contract is in writing, ensure that the terms of the contract are either –
- (a) set out in a written memorandum, or
 - (b) recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

- (3) If a company fails to comply with this section an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) For the purposes of this section a shadow director is treated as a director.
- (6) Failure to comply with this section in relation to a contract does not affect the validity of the contract.
- (7) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of the company.

CHAPTER 7

DIRECTORS' LIABILITIES

Provision protecting directors from liability

232 Provisions protecting directors from liability

- (1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.
- (2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by –
 - (a) section 233 (provision of insurance),
 - (b) section 234 (qualifying third party indemnity provision), or
 - (c) section 235 (qualifying pension scheme indemnity provision).
- (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.
- (4) Nothing in this section prevents a company's articles from making such provision as has previously been lawful for dealing with conflicts of interest.

233 Provision of insurance

Section 232(2) (voidness of provisions for indemnifying directors) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company, insurance against any such liability as is mentioned in that subsection.

234 Qualifying third party indemnity provision

- (1) Section 232(2) (voidness of provisions for indemnifying directors) does not apply to qualifying third party indemnity provision.

- (2) Third party indemnity provision means provision for indemnity against liability incurred by the director to a person other than the company or an associated company.
Such provision is qualifying third party indemnity provision if the following requirements are met.
- (3) The provision must not provide any indemnity against—
- (a) any liability of the director to pay—
 - (i) a fine imposed in criminal proceedings, or
 - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or
 - (b) any liability incurred by the director—
 - (i) in defending criminal proceedings in which he is convicted, or
 - (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
 - (iii) in connection with an application for relief (see subsection (6)) in which the court refuses to grant him relief.
- (4) The references in subsection (3)(b) to a conviction, judgment or refusal of relief are to the final decision in the proceedings.
- (5) For this purpose—
- (a) a conviction, judgment or refusal of relief becomes final—
 - (i) if not appealed against, at the end of the period for bringing an appeal, or
 - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
 - (b) an appeal is disposed of—
 - (i) if it is determined and the period for bringing any further appeal has ended, or
 - (ii) if it is abandoned or otherwise ceases to have effect.
- (6) The reference in subsection (3)(b)(iii) to an application for relief is to an application for relief under—
section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee), or
section 1157 (general power of court to grant relief in case of honest and reasonable conduct).

235 Qualifying pension scheme indemnity provision

- (1) Section 232(2) (voidness of provisions for indemnifying directors) does not apply to qualifying pension scheme indemnity provision.
- (2) Pension scheme indemnity provision means provision indemnifying a director of a company that is a trustee of an occupational pension scheme against liability incurred in connection with the company's activities as trustee of the scheme.
Such provision is qualifying pension scheme indemnity provision if the following requirements are met.
- (3) The provision must not provide any indemnity against—
- (a) any liability of the director to pay—

- (i) a fine imposed in criminal proceedings, or
 - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or
 - (b) any liability incurred by the director in defending criminal proceedings in which he is convicted.
- (4) The reference in subsection (3)(b) to a conviction is to the final decision in the proceedings.
- (5) For this purpose –
- (a) a conviction becomes final –
 - (i) if not appealed against, at the end of the period for bringing an appeal, or
 - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
 - (b) an appeal is disposed of –
 - (i) if it is determined and the period for bringing any further appeal has ended, or
 - (ii) if it is abandoned or otherwise ceases to have effect.
- (6) In this section “occupational pension scheme” means an occupational pension scheme as defined in section 150(5) of the Finance Act 2004 (c. 12) that is established under a trust.

236 Qualifying indemnity provision to be disclosed in directors' report

- (1) This section requires disclosure in the directors' report of –
- (a) qualifying third party indemnity provision, and
 - (b) qualifying pension scheme indemnity provision.
- Such provision is referred to in this section as “qualifying indemnity provision”.
- (2) If when a directors' report is approved any qualifying indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that such provision is in force.
- (3) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of the company, the report must state that such provision was in force.
- (4) If when a directors' report is approved qualifying indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, the report must state that such provision is in force.
- (5) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of an associated company, the report must state that such provision was in force.

237 Copy of qualifying indemnity provision to be available for inspection

- (1) This section has effect where qualifying indemnity provision is made for a director of a company, and applies –
 - (a) to the company of which he is a director (whether the provision is made by that company or an associated company), and
 - (b) where the provision is made by an associated company, to that company.
- (2) That company or, as the case may be, each of them must keep available for inspection –
 - (a) a copy of the qualifying indemnity provision, or
 - (b) if the provision is not in writing, a written memorandum setting out its terms.
- (3) The copy or memorandum must be kept available for inspection at –
 - (a) the company’s registered office, or
 - (b) a place specified in regulations under section 1136.
- (4) The copy or memorandum must be retained by the company for at least one year from the date of termination or expiry of the provision and must be kept available for inspection during that time.
- (5) The company must give notice to the registrar –
 - (a) of the place at which the copy or memorandum is kept available for inspection, and
 - (b) of any change in that place,unless it has at all times been kept at the company’s registered office.
- (6) If default is made in complying with subsection (2), (3) or (4), or default is made for 14 days in complying with subsection (5), an offence is committed by every officer of the company who is in default.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (8) The provisions of this section apply to a variation of a qualifying indemnity provision as they apply to the original provision.
- (9) In this section “qualifying indemnity provision” means –
 - (a) qualifying third party indemnity provision, and
 - (b) qualifying pension scheme indemnity provision.

238 Right of member to inspect and request copy

- (1) Every copy or memorandum required to be kept by a company under section 237 must be open to inspection by any member of the company without charge.
- (2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.

The copy must be provided within seven days after the request is received by the company.

- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

Ratification of acts giving rise to liability

239 Ratification of acts of directors

- (1) This section applies to the ratification by a company of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company.
- (2) The decision of the company to ratify such conduct must be made by resolution of the members of the company.
- (3) Where the resolution is proposed as a written resolution neither the director (if a member of the company) nor any member connected with him is an eligible member.
- (4) Where the resolution is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the director (if a member of the company) and any member connected with him. This does not prevent the director or any such member from attending, being counted towards the quorum and taking part in the proceedings at any meeting at which the decision is considered.
- (5) For the purposes of this section –
 - (a) “conduct” includes acts and omissions;
 - (b) “director” includes a former director;
 - (c) a shadow director is treated as a director; and
 - (d) in section 252 (meaning of “connected person”), subsection (3) does not apply (exclusion of person who is himself a director).
- (6) Nothing in this section affects –
 - (a) the validity of a decision taken by unanimous consent of the members of the company, or
 - (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.
- (7) This section does not affect any other enactment or rule of law imposing additional requirements for valid ratification or any rule of law as to acts that are incapable of being ratified by the company.

CHAPTER 8

DIRECTORS’ RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE

240 Protected information

- (1) This Chapter makes provision for protecting, in the case of a company director who is an individual—
 - (a) information as to his usual residential address;
 - (b) the information that his service address is his usual residential address.
- (2) That information is referred to in this Chapter as “protected information”.
- (3) Information does not cease to be protected information on the individual ceasing to be a director of the company.

References in this Chapter to a director include, to that extent, a former director.

241 Protected information: restriction on use or disclosure by company

- (1) A company must not use or disclose protected information about any of its directors, except—
 - (a) for communicating with the director concerned,
 - (b) in order to comply with any requirement of the Companies Acts as to particulars to be sent to the registrar, or
 - (c) in accordance with section 244 (disclosure under court order).
- (2) Subsection (1) does not prohibit any use or disclosure of protected information with the consent of the director concerned.

242 Protected information: restriction on use or disclosure by registrar

- (1) The registrar must omit protected information from the material on the register that is available for inspection where—
 - (a) it is contained in a document delivered to him in which such information is required to be stated, and
 - (b) in the case of a document having more than one part, it is contained in a part of the document in which such information is required to be stated.
- (2) The registrar is not obliged—
 - (a) to check other documents or (as the case may be) other parts of the document to ensure the absence of protected information, or
 - (b) to omit from the material that is available for public inspection anything registered before this Chapter comes into force.
- (3) The registrar must not use or disclose protected information except—
 - (a) as permitted by section 243 (permitted use or disclosure by registrar), or
 - (b) in accordance with section 244 (disclosure under court order).

243 Permitted use or disclosure by the registrar

- (1) The registrar may use protected information for communicating with the director in question.
- (2) The registrar may disclose protected information –
 - (a) to a public authority specified for the purposes of this section by regulations made by the Secretary of State, or
 - (b) to a credit reference agency.
- (3) The Secretary of State may make provision by regulations –
 - (a) specifying conditions for the disclosure of protected information in accordance with this section, and
 - (b) providing for the charging of fees.
- (4) The Secretary of State may make provision by regulations requiring the registrar, on application, to refrain from disclosing protected information relating to a director to a credit reference agency.
- (5) Regulations under subsection (4) may make provision as to –
 - (a) who may make an application,
 - (b) the grounds on which an application may be made,
 - (c) the information to be included in and documents to accompany an application, and
 - (d) how an application is to be determined.
- (6) Provision under subsection (5)(d) may in particular –
 - (a) confer a discretion on the registrar;
 - (b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application.
- (7) In this section –
 - “credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose; and
 - “public authority” includes any person or body having functions of a public nature.
- (8) Regulations under this section are subject to negative resolution procedure.

244 Disclosure under court order

- (1) The court may make an order for the disclosure of protected information by the company or by the registrar if –
 - (a) there is evidence that service of documents at a service address other than the director’s usual residential address is not effective to bring them to the notice of the director, or
 - (b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the court, and the court is otherwise satisfied that it is appropriate to make the order.
- (2) An order for disclosure by the registrar is to be made only if the company –
 - (a) does not have the director’s usual residential address, or
 - (b) has been dissolved.

- (3) The order may be made on the application of a liquidator, creditor or member of the company, or any other person appearing to the court to have a sufficient interest.
- (4) The order must specify the persons to whom, and purposes for which, disclosure is authorised.

245 Circumstances in which registrar may put address on the public record

- (1) The registrar may put a director's usual residential address on the public record if –
 - (a) communications sent by the registrar to the director and requiring a response within a specified period remain unanswered, or
 - (b) there is evidence that service of documents at a service address provided in place of the director's usual residential address is not effective to bring them to the notice of the director.
- (2) The registrar must give notice of the proposal –
 - (a) to the director, and
 - (b) to every company of which the registrar has been notified that the individual is a director.
- (3) The notice must –
 - (a) state the grounds on which it is proposed to put the director's usual residential address on the public record, and
 - (b) specify a period within which representations may be made before that is done.
- (4) It must be sent to the director at his usual residential address, unless it appears to the registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any service address provided in place of that address.
- (5) The registrar must take account of any representations received within the specified period.
- (6) What is meant by putting the address on the public record is explained in section 246.

246 Putting the address on the public record

- (1) The registrar, on deciding in accordance with section 245 that a director's usual residential address is to be put on the public record, shall proceed as if notice of a change of registered particulars had been given –
 - (a) stating that address as the director's service address, and
 - (b) stating that the director's usual residential address is the same as his service address.
- (2) The registrar must give notice of having done so –
 - (a) to the director, and
 - (b) to the company.
- (3) On receipt of the notice the company must –
 - (a) enter the director's usual residential address in its register of directors as his service address, and

- (b) state in its register of directors' residential addresses that his usual residential address is the same as his service address.
- (4) If the company has been notified by the director in question of a more recent address as his usual residential address, it must –
 - (a) enter that address in its register of directors as the director's service address, and
 - (b) give notice to the registrar as on a change of registered particulars.
- (5) If a company fails to comply with subsection (3) or (4), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (7) A director whose usual residential address has been put on the public record by the registrar under this section may not register a service address other than his usual residential address for a period of five years from the date of the registrar's decision.

CHAPTER 9

SUPPLEMENTARY PROVISIONS

Provision for employees on cessation or transfer of business

247 Power to make provision for employees on cessation or transfer of business

- (1) The powers of the directors of a company include (if they would not otherwise do so) power to make provision for the benefit of persons employed or formerly employed by the company, or any of its subsidiaries, in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.
- (2) This power is exercisable notwithstanding the general duty imposed by section 172 (duty to promote the success of the company).
- (3) In the case of a company that is a charity it is exercisable notwithstanding any restrictions on the directors' powers (or the company's capacity) flowing from the objects of the company.
- (4) The power may only be exercised if sanctioned –
 - (a) by a resolution of the company, or
 - (b) by a resolution of the directors,in accordance with the following provisions.
- (5) A resolution of the directors –
 - (a) must be authorised by the company's articles, and
 - (b) is not sufficient sanction for payments to or for the benefit of directors, former directors or shadow directors.

- (6) Any other requirements of the company’s articles as to the exercise of the power conferred by this section must be complied with.
- (7) Any payment under this section must be made –
 - (a) before the commencement of any winding up of the company, and
 - (b) out of profits of the company that are available for dividend.

Records of meetings of directors

248 Minutes of directors’ meetings

- (1) Every company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) The records must be kept for at least ten years from the date of the meeting.
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

249 Minutes as evidence

- (1) Minutes recorded in accordance with section 248, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors’ meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting.
- (2) Where minutes have been made in accordance with that section of the proceedings of a meeting of directors, then, until the contrary is proved –
 - (a) the meeting is deemed duly held and convened,
 - (b) all proceedings at the meeting are deemed to have duly taken place, and
 - (c) all appointments at the meeting are deemed valid.

Meaning of "director" and "shadow director"

250 “Director”

In the Companies Acts “director” includes any person occupying the position of director, by whatever name called.

251 “Shadow director”

- (1) In the Companies Acts “shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.
- (2) A person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity.

- (3) A body corporate is not to be regarded as a shadow director of any of its subsidiary companies for the purposes of –
Chapter 2 (general duties of directors),
Chapter 4 (transactions requiring members' approval), or
Chapter 6 (contract with sole member who is also a director),
by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

Other definitions

252 Persons connected with a director

- (1) This section defines what is meant by references in this Part to a person being “connected” with a director of a company (or a director being “connected” with a person).
- (2) The following persons (and only those persons) are connected with a director of a company –
- (a) members of the director's family (see section 253);
 - (b) a body corporate with which the director is connected (as defined in section 254);
 - (c) a person acting in his capacity as trustee of a trust –
 - (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him, or
 - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,other than a trust for the purposes of an employees' share scheme or a pension scheme;
 - (d) a person acting in his capacity as partner –
 - (i) of the director, or
 - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;
 - (e) a firm that is a legal person under the law by which it is governed and in which –
 - (i) the director is a partner,
 - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the director, or
 - (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.
- (3) References in this Part to a person connected with a director of a company do not include a person who is himself a director of the company.

253 Members of a director's family

- (1) This section defines what is meant by references in this Part to members of a director's family.
- (2) For the purposes of this Part the members of a director's family are –
- (a) the director's spouse or civil partner;

- (b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship;
 - (c) the director’s children or step-children;
 - (d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18;
 - (e) the director’s parents.
- (3) Subsection (2)(b) does not apply if the other person is the director’s grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece.

254 Director “connected with” a body corporate

- (1) This section defines what is meant by references in this Part to a director being “connected with” a body corporate.
- (2) A director is connected with a body corporate if, but only if, he and the persons connected with him together –
 - (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
 - (b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.
- (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- (6) For the avoidance of circularity in the application of section 252 (meaning of “connected person”) –
 - (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
 - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

255 Director “controlling” a body corporate

- (1) This section defines what is meant by references in this Part to a director “controlling” a body corporate.
- (2) A director of a company is taken to control a body corporate if, but only if –
 - (a) he or any person connected with him –
 - (i) is interested in any part of the equity share capital of that body, or

- (ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body, and
- (b) he, the persons connected with him and the other directors of that company, together –
 - (i) are interested in more than 50% of that share capital, or
 - (ii) are entitled to exercise or control the exercise of more than 50% of that voting power.
- (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- (6) For the avoidance of circularity in the application of section 252 (meaning of “connected person”) –
 - (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
 - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

256 Associated bodies corporate

For the purposes of this Part –

- (a) bodies corporate are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

257 References to company's constitution

- (1) References in this Part to a company's constitution include –
 - (a) any resolution or other decision come to in accordance with the constitution, and
 - (b) any decision by the members of the company, or a class of members, that is treated by virtue of any enactment or rule of law as equivalent to a decision by the company.
- (2) This is in addition to the matters mentioned in section 17 (general provision as to matters contained in company's constitution).

General

258 Power to increase financial limits

- (1) The Secretary of State may by order substitute for any sum of money specified in this Part a larger sum specified in the order.
- (2) An order under this section is subject to negative resolution procedure.
- (3) An order does not have effect in relation to anything done or not done before it comes into force.

Accordingly, proceedings in respect of any liability incurred before that time may be continued or instituted as if the order had not been made.

259 Transactions under foreign law

For the purposes of this Part it is immaterial whether the law that (apart from this Act) governs an arrangement or transaction is the law of the United Kingdom, or a part of it, or not.

PART 11

DERIVATIVE CLAIMS AND PROCEEDINGS BY MEMBERS

CHAPTER 1

DERIVATIVE CLAIMS IN ENGLAND AND WALES OR NORTHERN IRELAND

260 Derivative claims

- (1) This Chapter applies to proceedings in England and Wales or Northern Ireland by a member of a company –
 - (a) in respect of a cause of action vested in the company, and
 - (b) seeking relief on behalf of the company.

This is referred to in this Chapter as a “derivative claim”.

- (2) A derivative claim may only be brought –
 - (a) under this Chapter, or
 - (b) in pursuance of an order of the court in proceedings under section 994 (proceedings for protection of members against unfair prejudice).

- (3) A derivative claim under this Chapter may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

The cause of action may be against the director or another person (or both).

- (4) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.

- (5) For the purposes of this Chapter –
 - (a) “director” includes a former director;
 - (b) a shadow director is treated as a director; and

- (c) references to a member of a company include a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

261 Application for permission to continue derivative claim

- (1) A member of a company who brings a derivative claim under this Chapter must apply to the court for permission (in Northern Ireland, leave) to continue it.
- (2) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court—
 - (a) must dismiss the application, and
 - (b) may make any consequential order it considers appropriate.
- (3) If the application is not dismissed under subsection (2), the court—
 - (a) may give directions as to the evidence to be provided by the company, and
 - (b) may adjourn the proceedings to enable the evidence to be obtained.
- (4) On hearing the application, the court may—
 - (a) give permission (or leave) to continue the claim on such terms as it thinks fit,
 - (b) refuse permission (or leave) and dismiss the claim, or
 - (c) adjourn the proceedings on the application and give such directions as it thinks fit.

262 Application for permission to continue claim as a derivative claim

- (1) This section applies where—
 - (a) a company has brought a claim, and
 - (b) the cause of action on which the claim is based could be pursued as a derivative claim under this Chapter.
- (2) A member of the company may apply to the court for permission (in Northern Ireland, leave) to continue the claim as a derivative claim on the ground that—
 - (a) the manner in which the company commenced or continued the claim amounts to an abuse of the process of the court,
 - (b) the company has failed to prosecute the claim diligently, and
 - (c) it is appropriate for the member to continue the claim as a derivative claim.
- (3) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court—
 - (a) must dismiss the application, and
 - (b) may make any consequential order it considers appropriate.
- (4) If the application is not dismissed under subsection (3), the court—
 - (a) may give directions as to the evidence to be provided by the company, and
 - (b) may adjourn the proceedings to enable the evidence to be obtained.

- (5) On hearing the application, the court may –
- (a) give permission (or leave) to continue the claim as a derivative claim on such terms as it thinks fit,
 - (b) refuse permission (or leave) and dismiss the application, or
 - (c) adjourn the proceedings on the application and give such directions as it thinks fit.

263 Whether permission to be given

- (1) The following provisions have effect where a member of a company applies for permission (in Northern Ireland, leave) under section 261 or 262.
- (2) Permission (or leave) must be refused if the court is satisfied –
- (a) that a person acting in accordance with section 172 (duty to promote the success of the company) would not seek to continue the claim, or
 - (b) where the cause of action arises from an act or omission that is yet to occur, that the act or omission has been authorised by the company, or
 - (c) where the cause of action arises from an act or omission that has already occurred, that the act or omission –
 - (i) was authorised by the company before it occurred, or
 - (ii) has been ratified by the company since it occurred.
- (3) In considering whether to give permission (or leave) the court must take into account, in particular –
- (a) whether the member is acting in good faith in seeking to continue the claim;
 - (b) the importance that a person acting in accordance with section 172 (duty to promote the success of the company) would attach to continuing it;
 - (c) where the cause of action results from an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be –
 - (i) authorised by the company before it occurs, or
 - (ii) ratified by the company after it occurs;
 - (d) where the cause of action arises from an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company;
 - (e) whether the company has decided not to pursue the claim;
 - (f) whether the act or omission in respect of which the claim is brought gives rise to a cause of action that the member could pursue in his own right rather than on behalf of the company.
- (4) In considering whether to give permission (or leave) the court shall have particular regard to any evidence before it as to the views of members of the company who have no personal interest, direct or indirect, in the matter.
- (5) The Secretary of State may by regulations –
- (a) amend subsection (2) so as to alter or add to the circumstances in which permission (or leave) is to be refused;
 - (b) amend subsection (3) so as to alter or add to the matters that the court is required to take into account in considering whether to give permission (or leave).

- (6) Before making any such regulations the Secretary of State shall consult such persons as he considers appropriate.
- (7) Regulations under this section are subject to affirmative resolution procedure.

264 Application for permission to continue derivative claim brought by another member

- (1) This section applies where a member of a company (“the claimant”) –
 - (a) has brought a derivative claim,
 - (b) has continued as a derivative claim a claim brought by the company, or
 - (c) has continued a derivative claim under this section.
- (2) Another member of the company (“the applicant”) may apply to the court for permission (in Northern Ireland, leave) to continue the claim on the ground that –
 - (a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the court,
 - (b) the claimant has failed to prosecute the claim diligently, and
 - (c) it is appropriate for the applicant to continue the claim as a derivative claim.
- (3) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court –
 - (a) must dismiss the application, and
 - (b) may make any consequential order it considers appropriate.
- (4) If the application is not dismissed under subsection (3), the court –
 - (a) may give directions as to the evidence to be provided by the company, and
 - (b) may adjourn the proceedings to enable the evidence to be obtained.
- (5) On hearing the application, the court may –
 - (a) give permission (or leave) to continue the claim on such terms as it thinks fit,
 - (b) refuse permission (or leave) and dismiss the application, or
 - (c) adjourn the proceedings on the application and give such directions as it thinks fit.

CHAPTER 2

DERIVATIVE PROCEEDINGS IN SCOTLAND

265 Derivative proceedings

- (1) In Scotland, a member of a company may raise proceedings in respect of an act or omission specified in subsection (3) in order to protect the interests of the company and obtain a remedy on its behalf.
- (2) A member of a company may raise such proceedings only under subsection (1).

- (3) The act or omission referred to in subsection (1) is any actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.
- (4) Proceedings may be raised under subsection (1) against (either or both) –
 - (a) the director referred to in subsection (3), or
 - (b) another person.
- (5) It is immaterial whether the act or omission in respect of which the proceedings are to be raised or, in the case of continuing proceedings under section 267 or 269, are raised, arose before or after the person seeking to raise or continue them became a member of the company.
- (6) This section does not affect –
 - (a) any right of a member of a company to raise proceedings in respect of an act or omission specified in subsection (3) in order to protect his own interests and obtain a remedy on his own behalf, or
 - (b) the court’s power to make an order under section 996(2)(c) or anything done under such an order.
- (7) In this Chapter –
 - (a) proceedings raised under subsection (1) are referred to as “derivative proceedings”,
 - (b) the act or omission in respect of which they are raised is referred to as the “cause of action”,
 - (c) “director” includes a former director,
 - (d) references to a director include a shadow director, and
 - (e) references to a member of a company include a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

266 Requirement for leave and notice

- (1) Derivative proceedings may be raised by a member of a company only with the leave of the court.
- (2) An application for leave must –
 - (a) specify the cause of action, and
 - (b) summarise the facts on which the derivative proceedings are to be based.
- (3) If it appears to the court that the application and the evidence produced by the applicant in support of it do not disclose a prima facie case for granting it, the court –
 - (a) must refuse the application, and
 - (b) may make any consequential order it considers appropriate.
- (4) If the application is not refused under subsection (3) –
 - (a) the applicant must serve the application on the company,
 - (b) the court –
 - (i) may make an order requiring evidence to be produced by the company, and
 - (ii) may adjourn the proceedings on the application to enable the evidence to be obtained, and

- (c) the company is entitled to take part in the further proceedings on the application.
- (5) On hearing the application, the court may –
 - (a) grant the application on such terms as it thinks fit,
 - (b) refuse the application, or
 - (c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

267 Application to continue proceedings as derivative proceedings

- (1) This section applies where –
 - (a) a company has raised proceedings, and
 - (b) the proceedings are in respect of an act or omission which could be the basis for derivative proceedings.
- (2) A member of the company may apply to the court to be substituted for the company in the proceedings, and for the proceedings to continue in consequence as derivative proceedings, on the ground that –
 - (a) the manner in which the company commenced or continued the proceedings amounts to an abuse of the process of the court,
 - (b) the company has failed to prosecute the proceedings diligently, and
 - (c) it is appropriate for the member to be substituted for the company in the proceedings.
- (3) If it appears to the court that the application and the evidence produced by the applicant in support of it do not disclose a prima facie case for granting it, the court –
 - (a) must refuse the application, and
 - (b) may make any consequential order it considers appropriate.
- (4) If the application is not refused under subsection (3) –
 - (a) the applicant must serve the application on the company,
 - (b) the court –
 - (i) may make an order requiring evidence to be produced by the company, and
 - (ii) may adjourn the proceedings on the application to enable the evidence to be obtained, and
 - (c) the company is entitled to take part in the further proceedings on the application.
- (5) On hearing the application, the court may –
 - (a) grant the application on such terms as it thinks fit,
 - (b) refuse the application, or
 - (c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

268 Granting of leave

- (1) The court must refuse leave to raise derivative proceedings or an application under section 267 if satisfied –

- (a) that a person acting in accordance with section 172 (duty to promote the success of the company) would not seek to raise or continue the proceedings (as the case may be), or
 - (b) where the cause of action is an act or omission that is yet to occur, that the act or omission has been authorised by the company, or
 - (c) where the cause of action is an act or omission that has already occurred, that the act or omission—
 - (i) was authorised by the company before it occurred, or
 - (ii) has been ratified by the company since it occurred.
- (2) In considering whether to grant leave to raise derivative proceedings or an application under section 267, the court must take into account, in particular—
- (a) whether the member is acting in good faith in seeking to raise or continue the proceedings (as the case may be),
 - (b) the importance that a person acting in accordance with section 172 (duty to promote the success of the company) would attach to raising or continuing them (as the case may be),
 - (c) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
 - (i) authorised by the company before it occurs, or
 - (ii) ratified by the company after it occurs,
 - (d) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company,
 - (e) whether the company has decided not to raise proceedings in respect of the same cause of action or to persist in the proceedings (as the case may be),
 - (f) whether the cause of action is one which the member could pursue in his own right rather than on behalf of the company.
- (3) In considering whether to grant leave to raise derivative proceedings or an application under section 267, the court shall have particular regard to any evidence before it as to the views of members of the company who have no personal interest, direct or indirect, in the matter.
- (4) The Secretary of State may by regulations—
- (a) amend subsection (1) so as to alter or add to the circumstances in which leave or an application is to be refused,
 - (b) amend subsection (2) so as to alter or add to the matters that the court is required to take into account in considering whether to grant leave or an application.
- (5) Before making any such regulations the Secretary of State shall consult such persons as he considers appropriate.
- (6) Regulations under this section are subject to affirmative resolution procedure.

269 Application by member to be substituted for member pursuing derivative proceedings

- (1) This section applies where a member of a company (“the claimant”)—
- (a) has raised derivative proceedings,
 - (b) has continued as derivative proceedings raised by the company, or

- (c) has continued derivative proceedings under this section.
- (2) Another member of the company (“the applicant”) may apply to the court to be substituted for the claimant in the action on the ground that—
 - (a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the court,
 - (b) the claimant has failed to prosecute the proceedings diligently, and
 - (c) it is appropriate for the applicant to be substituted for the claimant in the proceedings.
- (3) If it appears to the court that the application and the evidence produced by the applicant in support of it do not disclose a prima facie case for granting it, the court—
 - (a) must refuse the application, and
 - (b) may make any consequential order it considers appropriate.
- (4) If the application is not refused under subsection (3)—
 - (a) the applicant must serve the application on the company,
 - (b) the court—
 - (i) may make an order requiring evidence to be produced by the company, and
 - (ii) may adjourn the proceedings on the application to enable the evidence to be obtained, and
 - (c) the company is entitled to take part in the further proceedings on the application.
- (5) On hearing the application, the court may—
 - (a) grant the application on such terms as it thinks fit,
 - (b) refuse the application, or
 - (c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

PART 12

COMPANY SECRETARIES

Private companies

270 Private company not required to have secretary

- (1) A private company is not required to have a secretary.
- (2) References in the Companies Acts to a private company “without a secretary” are to a private company that for the time being is taking advantage of the exemption in subsection (1); and references to a private company “with a secretary” shall be construed accordingly.
- (3) In the case of a private company without a secretary—
 - (a) anything authorised or required to be given or sent to, or served on, the company by being sent to its secretary—
 - (i) may be given or sent to, or served on, the company itself, and
 - (ii) if addressed to the secretary shall be treated as addressed to the company; and

- (b) anything else required or authorised to be done by or to the secretary of the company may be done by or to –
 - (i) a director, or
 - (ii) a person authorised generally or specifically in that behalf by the directors.

Public companies

271 Public company required to have secretary

A public company must have a secretary.

272 Direction requiring public company to appoint secretary

- (1) If it appears to the Secretary of State that a public company is in breach of section 271 (requirement to have secretary), the Secretary of State may give the company a direction under this section.
- (2) The direction must state that the company appears to be in breach of that section and specify –
 - (a) what the company must do in order to comply with the direction, and
 - (b) the period within which it must do so.That period must be not less than one month or more than three months after the date on which the direction is given.
- (3) The direction must also inform the company of the consequences of failing to comply.
- (4) Where the company is in breach of section 271 it must comply with the direction by –
 - (a) making the necessary appointment, and
 - (b) giving notice of it under section 276,before the end of the period specified in the direction.
- (5) If the company has already made the necessary appointment, it must comply with the direction by giving notice of it under section 276 before the end of the period specified in the direction.
- (6) If a company fails to comply with a direction under this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

273 Qualifications of secretaries of public companies

- (1) It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company –

- (a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, and
 - (b) has one or more of the following qualifications.
- (2) The qualifications are –
- (a) that he has held the office of secretary of a public company for at least three of the five years immediately preceding his appointment as secretary;
 - (b) that he is a member of any of the bodies specified in subsection (3);
 - (c) that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom;
 - (d) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging the functions of secretary of the company.
- (3) The bodies referred to in subsection (2)(b) are –
- (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Association of Chartered Certified Accountants;
 - (d) the Institute of Chartered Accountants in Ireland;
 - (e) the Institute of Chartered Secretaries and Administrators;
 - (f) the Chartered Institute of Management Accountants;
 - (g) the Chartered Institute of Public Finance and Accountancy.

Provisions applying to private companies with a secretary and to public companies

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

Where in the case of any company the office of secretary is vacant, or there is for any other reason no secretary capable of acting, anything required or authorised to be done by or to the secretary may be done –

- (a) by or to an assistant or deputy secretary (if any), or
- (b) if there is no assistant or deputy secretary or none capable of acting, by or to any person authorised generally or specifically in that behalf by the directors.

275 Duty to keep register of secretaries

- (1) A company must keep a register of its secretaries.
- (2) The register must contain the required particulars (see sections 277 to 279) of the person who is, or persons who are, the secretary or joint secretaries of the company.
- (3) The register must be kept available for inspection –
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (4) The company must give notice to the registrar –
 - (a) of the place at which the register is kept available for inspection, and
 - (b) of any change in that place,unless it has at all times been kept at the company's registered office.

- (5) The register must be open to the inspection –
 - (a) of any member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.
- (6) If default is made in complying with subsection (1), (2) or (3), or if default is made for 14 days in complying with subsection (4), or if an inspection required under subsection (5) is refused, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (8) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

276 Duty to notify registrar of changes

- (1) A company must, within the period of 14 days from –
 - (a) a person becoming or ceasing to be its secretary or one of its joint secretaries, or
 - (b) the occurrence of any change in the particulars contained in its register of secretaries,give notice to the registrar of the change and of the date on which it occurred.
- (2) Notice of a person having become secretary, or one of joint secretaries, of the company must be accompanied by a consent by that person to act in the relevant capacity.
- (3) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.
For this purpose a shadow director is treated as an officer of the company.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

277 Particulars of secretaries to be registered: individuals

- (1) A company's register of secretaries must contain the following particulars in the case of an individual –
 - (a) name and any former name;
 - (b) address.
- (2) For the purposes of this section "name" means a person's Christian name (or other forename) and surname, except that in the case of –
 - (a) a peer, or
 - (b) an individual usually known by a title,the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.

- (3) For the purposes of this section a “former name” means a name by which the individual was formerly known for business purposes.
Where a person is or was formerly known by more than one such name, each of them must be stated.
- (4) It is not necessary for the register to contain particulars of a former name in the following cases –
 - (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
 - (b) in the case of any person, where the former name –
 - (i) was changed or disused before the person attained the age of 16 years, or
 - (ii) has been changed or disused for 20 years or more.
- (5) The address required to be stated in the register is a service address.
This may be stated to be “The company’s registered office”.

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

- (1) A company’s register of secretaries must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed –
 - (a) corporate or firm name;
 - (b) registered or principal office;
 - (c) in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of –
 - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
 - (ii) the registration number in that register;
 - (d) in any other case, particulars of –
 - (i) the legal form of the company or firm and the law by which it is governed, and
 - (ii) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.
- (2) If all the partners in a firm are joint secretaries it is sufficient to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

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

- (1) The Secretary of State may make provision by regulations amending –
section 277 (particulars of secretaries to be registered: individuals), or
section 278 (particulars of secretaries to be registered: corporate secretaries and firms),
so as to add to or remove items from the particulars required to be contained in a company’s register of secretaries.
- (2) Regulations under this section are subject to affirmative resolution procedure.

280 Acts done by person in dual capacity

A provision requiring or authorising a thing to be done by or to a director and the secretary of a company is not satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

PART 13

RESOLUTIONS AND MEETINGS

CHAPTER 1

GENERAL PROVISIONS ABOUT RESOLUTIONS

281 Resolutions

- (1) A resolution of the members (or of a class of members) of a private company must be passed –
 - (a) as a written resolution in accordance with Chapter 2, or
 - (b) at a meeting of the members (to which the provisions of Chapter 3 apply).
- (2) A resolution of the members (or of a class of members) of a public company must be passed at a meeting of the members (to which the provisions of Chapter 3 and, where relevant, Chapter 4 apply).
- (3) Where a provision of the Companies Acts –
 - (a) requires a resolution of a company, or of the members (or a class of members) of a company, and
 - (b) does not specify what kind of resolution is required,what is required is an ordinary resolution unless the company's articles require a higher majority (or unanimity).
- (4) Nothing in this Part affects any enactment or rule of law as to –
 - (a) things done otherwise than by passing a resolution,
 - (b) circumstances in which a resolution is or is not treated as having been passed, or
 - (c) cases in which a person is precluded from alleging that a resolution has not been duly passed.

282 Ordinary resolutions

- (1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.
- (2) A written resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of eligible members (see Chapter 2).
- (3) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of –
 - (a) the members who, being entitled to do so, vote in person on the resolution, and
 - (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

- (4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who (being entitled to do so) vote in person or by proxy on the resolution.
- (5) Anything that may be done by ordinary resolution may also be done by special resolution.

283 Special resolutions

- (1) A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%.
- (2) A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members (see Chapter 2).
- (3) Where a resolution of a private company is passed as a written resolution –
 - (a) the resolution is not a special resolution unless it stated that it was proposed as a special resolution, and
 - (b) if the resolution so stated, it may only be passed as a special resolution.
- (4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 75% if it is passed by not less than 75% of –
 - (a) the members who, being entitled to do so, vote in person on the resolution, and
 - (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.
- (5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.
- (6) Where a resolution is passed at a meeting –
 - (a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution, and
 - (b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

284 Votes: general rules

- (1) On a vote on a written resolution –
 - (a) in the case of a company having a share capital, every member has one vote in respect of each share or each £10 of stock held by him, and
 - (b) in any other case, every member has one vote.
- (2) On a vote on a resolution on a show of hands at a meeting –
 - (a) every member present in person has one vote, and
 - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (3) On a vote on a resolution on a poll taken at a meeting –
 - (a) in the case of a company having a share capital, every member has one vote in respect of each share or each £10 of stock held by him, and

- (b) in any other case, every member has one vote.
- (4) The provisions of this section have effect subject to any provision of the company's articles.

285 Votes: specific requirements

- (1) Where a member entitled to vote on a resolution has appointed one proxy only, and the company's articles provide that the proxy has fewer votes in a vote on a resolution on a show of hands taken at a meeting than the member would have if he were present in person –
 - (a) the provision about how many votes the proxy has on a show of hands is void, and
 - (b) the proxy has the same number of votes on a show of hands as the member who appointed him would have if he were present at the meeting.
- (2) Where a member entitled to vote on a resolution has appointed more than one proxy, subsection (1) applies as if the references to the proxy were references to the proxies taken together.
- (3) In relation to a resolution required or authorised by an enactment, if a private company's articles provide that a member has a different number of votes in relation to a resolution when it is passed as a written resolution and when it is passed on a poll taken at a meeting –
 - (a) the provision about how many votes a member has in relation to the resolution passed on a poll is void, and
 - (b) a member has the same number of votes in relation to the resolution when it is passed on a poll as he has when it is passed as a written resolution.

286 Votes of joint holders of shares

- (1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorised by him) may be counted by the company.
- (2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.
- (3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

287 Saving for provisions of articles as to determination of entitlement to vote

Nothing in this Chapter affects –

- (a) any provision of a company's articles –
 - (i) requiring an objection to a person's entitlement to vote on a resolution to be made in accordance with the articles, and
 - (ii) for the determination of any such objection to be final and conclusive, or
- (b) the grounds on which such a determination may be questioned in legal proceedings.

CHAPTER 2

WRITTEN RESOLUTIONS

General provisions about written resolutions

288 Written resolutions of private companies

- (1) In the Companies Acts a “written resolution” means a resolution of a private company proposed and passed in accordance with this Chapter.
- (2) The following may not be passed as a written resolution –
 - (a) a resolution under section 168 removing a director before the expiration of his period of office;
 - (b) a resolution under section 510 removing an auditor before the expiration of his term of office.
- (3) A resolution may be proposed as a written resolution –
 - (a) by the directors of a private company (see section 291), or
 - (b) by the members of a private company (see sections 292 to 295).
- (4) References in enactments passed or made before this Chapter comes into force to –
 - (a) a resolution of a company in general meeting, or
 - (b) a resolution of a meeting of a class of members of the company,have effect as if they included references to a written resolution of the members, or of a class of members, of a private company (as appropriate).
- (5) A written resolution of a private company has effect as if passed (as the case may be) –
 - (a) by the company in general meeting, or
 - (b) by a meeting of a class of members of the company,and references in enactments passed or made before this section comes into force to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

289 Eligible members

- (1) In relation to a resolution proposed as a written resolution of a private company, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution (see section 290).
- (2) If the persons entitled to vote on a written resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent or submitted to a member for his agreement.

Circulation of written resolutions

290 Circulation date

References in this Part to the circulation date of a written resolution are to the date on which copies of it are sent or submitted to members in accordance with

this Chapter (or if copies are sent or submitted to members on different days, to the first of those days).

291 Circulation of written resolutions proposed by directors

- (1) This section applies to a resolution proposed as a written resolution by the directors of the company.
- (2) The company must send or submit a copy of the resolution to every eligible member.
- (3) The company must do so –
 - (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or
 - (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).
- (4) The copy of the resolution must be accompanied by a statement informing the member –
 - (a) how to signify agreement to the resolution (see section 296), and
 - (b) as to the date by which the resolution must be passed if it is not to lapse (see section 297).
- (5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

292 Members' power to require circulation of written resolution

- (1) The members of a private company may require the company to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution.
- (2) Any resolution may properly be moved as a written resolution unless –
 - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),
 - (b) it is defamatory of any person, or
 - (c) it is frivolous or vexatious.
- (3) Where the members require a company to circulate a resolution they may require the company to circulate with it a statement of not more than 1,000 words on the subject matter of the resolution.

- (4) A company is required to circulate the resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.
- (5) The “requisite percentage” is 5% or such lower percentage as is specified for this purpose in the company’s articles.
- (6) A request –
 - (a) may be in hard copy form or in electronic form,
 - (b) must identify the resolution and any accompanying statement, and
 - (c) must be authenticated by the person or persons making it.

293 Circulation of written resolution proposed by members

- (1) A company that is required under section 292 to circulate a resolution must send or submit to every eligible member –
 - (a) a copy of the resolution, and
 - (b) a copy of any accompanying statement.

This is subject to section 294(2) (deposit or tender of sum in respect of expenses of circulation) and section 295 (application not to circulate members’ statement).
- (2) The company must do so –
 - (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or
 - (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),

or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).
- (3) The company must send or submit the copies (or, if copies are sent or submitted to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under section 292 to circulate the resolution.
- (4) The copy of the resolution must be accompanied by guidance as to –
 - (a) how to signify agreement to the resolution (see section 296), and
 - (b) the date by which the resolution must be passed if it is not to lapse (see section 297).
- (5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

294 Expenses of circulation

- (1) The expenses of the company in complying with section 293 must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.
- (2) Unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

295 Application not to circulate members' statement

- (1) A company is not required to circulate a members' statement under section 293 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 292 and that section are being abused.
- (2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

Agreeing to written resolutions

296 Procedure for signifying agreement to written resolution

- (1) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) an authenticated document—
 - (a) identifying the resolution to which it relates, and
 - (b) indicating his agreement to the resolution.
- (2) The document must be sent to the company in hard copy form or in electronic form.
- (3) A member's agreement to a written resolution, once signified, may not be revoked.
- (4) A written resolution is passed when the required majority of eligible members have signified their agreement to it.

297 Period for agreeing to written resolution

- (1) A proposed written resolution lapses if it is not passed before the end of—
 - (a) the period specified for this purpose in the company's articles, or
 - (b) if none is specified, the period of 28 days beginning with the circulation date.
- (2) The agreement of a member to a written resolution is ineffective if signified after the expiry of that period.

Supplementary

298 Sending documents relating to written resolutions by electronic means

- (1) Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document).
- (2) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means.

299 Publication of written resolution on website

- (1) This section applies where a company sends –
 - (a) a written resolution, or
 - (b) a statement relating to a written resolution,to a person by means of a website.
- (2) The resolution or statement is not validly sent for the purposes of this Chapter unless the resolution is available on the website throughout the period beginning with the circulation date and ending on the date on which the resolution lapses under section 297.

300 Relationship between this Chapter and provisions of company’s articles

A provision of the articles of a private company is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.

CHAPTER 3

RESOLUTIONS AT MEETINGS

General provisions about resolutions at meetings

301 Resolutions at general meetings

A resolution of the members of a company is validly passed at a general meeting if –

- (a) notice of the meeting and of the resolution is given, and
- (b) the meeting is held and conducted,

in accordance with the provisions of this Chapter (and, where relevant, Chapter 4) and the company’s articles.

Calling meetings

302 Directors’ power to call general meetings

The directors of a company may call a general meeting of the company.

303 Members' power to require directors to call general meeting

- (1) The members of a company may require the directors to call a general meeting of the company.
- (2) The directors are required to call a general meeting once the company has received requests to do so from—
 - (a) members representing at least the required percentage of such of the paid-up capital of the company as carries the right of voting at general meetings of the company (excluding any paid-up capital held as treasury shares); or
 - (b) in the case of a company not having a share capital, members who represent at least the required percentage of the total voting rights of all the members having a right to vote at general meetings.
- (3) The required percentage is 10% unless, in the case of a private company, more than twelve months has elapsed since the end of the last general meeting—
 - (a) called in pursuance of a requirement under this section, or
 - (b) in relation to which any members of the company had (by virtue of an enactment, the company's articles or otherwise) rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been so called at their request,in which case the required percentage is 5%.
- (4) A request—
 - (a) must state the general nature of the business to be dealt with at the meeting, and
 - (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (5) A resolution may properly be moved at a meeting unless—
 - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),
 - (b) it is defamatory of any person, or
 - (c) it is frivolous or vexatious.
- (6) A request—
 - (a) may be in hard copy form or in electronic form, and
 - (b) must be authenticated by the person or persons making it.

304 Directors' duty to call meetings required by members

- (1) Directors required under section 303 to call a general meeting of the company must call a meeting—
 - (a) within 21 days from the date on which they become subject to the requirement, and
 - (b) to be held on a date not more than 28 days after the date of the notice convening the meeting.
- (2) If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.
- (3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

- (4) If the resolution is to be proposed as a special resolution, the directors are treated as not having duly called the meeting if they do not give the required notice of the resolution in accordance with section 283.

305 Power of members to call meeting at company's expense

- (1) If the directors –
 - (a) are required under section 303 to call a meeting, and
 - (b) do not do so in accordance with section 304,the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.
- (2) Where the requests received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.
- (3) The meeting must be called for a date not more than three months after the date on which the directors become subject to the requirement to call a meeting.
- (4) The meeting must be called in the same manner, as nearly as possible, as that in which meetings are required to be called by directors of the company.
- (5) The business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.
- (6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors duly to call a meeting must be reimbursed by the company.
- (7) Any sum so reimbursed shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of the services of such of the directors as were in default.

306 Power of court to order meeting

- (1) This section applies if for any reason it is impracticable –
 - (a) to call a meeting of a company in any manner in which meetings of that company may be called, or
 - (b) to conduct the meeting in the manner prescribed by the company's articles or this Act.
- (2) The court may, either of its own motion or on the application –
 - (a) of a director of the company, or
 - (b) of a member of the company who would be entitled to vote at the meeting,order a meeting to be called, held and conducted in any manner the court thinks fit.
- (3) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient.
- (4) Such directions may include a direction that one member of the company present at the meeting be deemed to constitute a quorum.

- (5) A meeting called, held and conducted in accordance with an order under this section is deemed for all purposes to be a meeting of the company duly called, held and conducted.

Notice of meetings

307 Notice required of general meeting

- (1) A general meeting of a private company (other than an adjourned meeting) must be called by notice of at least 14 days.
- (2) A general meeting of a public company (other than an adjourned meeting) must be called by notice of—
- (a) in the case of an annual general meeting, at least 21 days, and
 - (b) in any other case, at least 14 days.
- (3) The company's articles may require a longer period of notice than that specified in subsection (1) or (2).
- (4) A general meeting may be called by shorter notice than that otherwise required if shorter notice is agreed by the members.
- (5) The shorter notice must be agreed to by a majority in number of the members having a right to attend and vote at the meeting, being a majority who—
- (a) together hold not less than the requisite percentage in nominal value of the shares giving a right to attend and vote at the meeting (excluding any shares in the company held as treasury shares), or
 - (b) in the case of a company not having a share capital, together represent not less than the requisite percentage of the total voting rights at that meeting of all the members.
- (6) The requisite percentage is—
- (a) in the case of a private company, 90% or such higher percentage (not exceeding 95%) as may be specified in the company's articles;
 - (b) in the case of a public company, 95%.
- (7) Subsections (5) and (6) do not apply to an annual general meeting of a public company (see instead section 337(2)).

308 Manner in which notice to be given

Notice of a general meeting of a company must be given—

- (a) in hard copy form,
 - (b) in electronic form, or
 - (c) by means of a website (see section 309),
- or partly by one such means and partly by another.

309 Publication of notice of meeting on website

- (1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section.
- (2) When the company notifies a member of the presence of the notice on the website the notification must—
- (a) state that it concerns a notice of a company meeting,

- (b) specify the place, date and time of the meeting, and
 - (c) in the case of a public company, state whether the meeting will be an annual general meeting.
- (3) The notice must be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

310 Persons entitled to receive notice of meetings

- (1) Notice of a general meeting of a company must be sent to –
 - (a) every member of the company, and
 - (b) every director.
- (2) In subsection (1), the reference to members includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of their entitlement.
- (3) In subsection (2), the reference to the bankruptcy of a member includes –
 - (a) the sequestration of the estate of a member;
 - (b) a member’s estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)).
- (4) This section has effect subject to –
 - (a) any enactment, and
 - (b) any provision of the company’s articles.

311 Contents of notices of meetings

- (1) Notice of a general meeting of a company must state –
 - (a) the time and date of the meeting, and
 - (b) the place of the meeting.
- (2) Notice of a general meeting of a company must state the general nature of the business to be dealt with at the meeting.
This subsection has effect subject to any provision of the company’s articles.

312 Resolution requiring special notice

- (1) Where by any provision of the Companies Acts special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.
- (2) The company must, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.
- (3) Where that is not practicable, the company must give its members notice at least 14 days before the meeting –
 - (a) by advertisement in a newspaper having an appropriate circulation, or
 - (b) in any other manner allowed by the company’s articles.
- (4) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been

given, the notice is deemed to have been properly given, though not given within the time required.

313 Accidental failure to give notice of resolution or meeting

- (1) Where a company gives notice of –
 - (a) a general meeting, or
 - (b) a resolution intended to be moved at a general meeting,any accidental failure to give notice to one or more persons shall be disregarded for the purpose of determining whether notice of the meeting or resolution (as the case may be) is duly given.
- (2) Except in relation to notice given under –
 - (a) section 304 (notice of meetings required by members),
 - (b) section 305 (notice of meetings called by members), or
 - (c) section 339 (notice of resolutions at AGMs proposed by members),subsection (1) has effect subject to any provision of the company's articles.

Members' statements

314 Members' power to require circulation of statements

- (1) The members of a company may require the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than 1,000 words with respect to –
 - (a) a matter referred to in a proposed resolution to be dealt with at that meeting, or
 - (b) other business to be dealt with at that meeting.
- (2) A company is required to circulate a statement once it has received requests to do so from –
 - (a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or
 - (b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.See also section 153 (exercise of rights where shares held on behalf of others).
- (3) In subsection (2), a "relevant right to vote" means –
 - (a) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate, and
 - (b) in relation to any other statement, a right to vote at the meeting to which the requests relate.
- (4) A request –
 - (a) may be in hard copy form or in electronic form,
 - (b) must identify the statement to be circulated,
 - (c) must be authenticated by the person or persons making it, and
 - (d) must be received by the company at least one week before the meeting to which it relates.

315 Company's duty to circulate members' statement

- (1) A company that is required under section 314, to circulate a statement must send a copy of it to each member of the company entitled to receive notice of the meeting –
 - (a) in the same manner as the notice of the meeting, and
 - (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.
- (2) Subsection (1) has effect subject to section 316(2) (deposit or tender of sum in respect of expenses of circulation) and section 317 (application not to circulate members' statement).
- (3) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

316 Expenses of circulating members' statement

- (1) The expenses of the company in complying with section 315 need not be paid by the members who requested the circulation of the statement if –
 - (a) the meeting to which the requests relate is an annual general meeting of a public company, and
 - (b) requests sufficient to require the company to circulate the statement are received before the end of the financial year preceding the meeting.
- (2) Otherwise –
 - (a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the statement unless the company resolves otherwise, and
 - (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

317 Application not to circulate members' statement

- (1) A company is not required to circulate a members' statement under section 315 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 314 and that section are being abused.
- (2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

Procedure at meetings

318 Quorum at meetings

- (1) In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum.
- (2) In any other case, subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum, unless –
 - (a) each is a qualifying person only because he is authorised under section 323 to act as the representative of a corporation in relation to the meeting, and they are representatives of the same corporation; or
 - (b) each is a qualifying person only because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.
- (3) For the purposes of this section a “qualifying person” means –
 - (a) an individual who is a member of the company,
 - (b) a person authorised under section 323 (representation of corporations at meetings) to act as the representative of a corporation in relation to the meeting, or
 - (c) a person appointed as proxy of a member in relation to the meeting.

319 Chairman of meeting

- (1) A member may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting.
- (2) Subsection (1) is subject to any provision of the company's articles that states who may or may not be chairman.

320 Declaration by chairman on a show of hands

- (1) On a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution –
 - (a) has or has not been passed, or
 - (b) passed with a particular majority,is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (2) An entry in respect of such a declaration in minutes of the meeting recorded in accordance with section 355 is also conclusive evidence of that fact without such proof.
- (3) This section does not have effect if a poll is demanded in respect of the resolution (and the demand is not subsequently withdrawn).

321 Right to demand a poll

- (1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than –
 - (a) the election of the chairman of the meeting, or
 - (b) the adjournment of the meeting.

- (2) A provision of a company's articles is void in so far as it would have the effect of making ineffective a demand for a poll on any such question which is made—
- (a) by not less than 5 members having the right to vote on the resolution; or
 - (b) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote on the resolution (excluding any voting rights attached to any shares in the company held as treasury shares); or
 - (c) by a member or members holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right (excluding shares in the company conferring a right to vote on the resolution which are held as treasury shares).

322 Voting on a poll

On a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

323 Representation of corporations at meetings

- (1) If a corporation (whether or not a company within the meaning of this Act) is a member of a company, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives at any meeting of the company.
- (2) Where the corporation authorises only one person, he is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.
- (3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.
- (4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under subsection (3)—
 - (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way,
 - (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Proxies

324 Rights to appoint proxies

- (1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.
- (2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him, or (as the case may be) to a different £10, or multiple of £10, of stock held by him.

325 Notice of meeting to contain statement of rights

- (1) In every notice calling a meeting of a company there must appear, with reasonable prominence, a statement informing the member of—
 - (a) his rights under section 324, and
 - (b) any more extensive rights conferred by the company's articles to appoint more than one proxy.
- (2) Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting.
- (3) If this section is not complied with as respects any meeting, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

326 Company-sponsored invitations to appoint proxies

- (1) If for the purposes of a meeting there are issued at the company's expense invitations to members to appoint as proxy a specified person or a number of specified persons, the invitations must be issued to all members entitled to vote at the meeting.
- (2) Subsection (1) is not contravened if—
 - (a) there is issued to a member at his request a form of appointment naming the proxy or a list of persons willing to act as proxy, and
 - (b) the form or list is available on request to all members entitled to vote at the meeting.
- (3) If subsection (1) is contravened as respects a meeting, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

327 Notice required of appointment of proxy etc

- (1) This section applies to—
 - (a) the appointment of a proxy, and
 - (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.
- (2) Any provision of the company's articles is void in so far as it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than the following time—
 - (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;
 - (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
 - (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.
- (3) In calculating the periods mentioned in subsection (2) no account shall be taken of any part of a day that is not a working day.

328 Chairing meetings

- (1) A proxy may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting.
- (2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairman.

329 Right of proxy to demand a poll

- (1) The appointment of a proxy to vote on a matter at a meeting of a company authorises the proxy to demand, or join in demanding, a poll on that matter.
- (2) In applying the provisions of section 321(2) (requirements for effective demand), a demand by a proxy counts –
 - (a) for the purposes of paragraph (a), as a demand by the member;
 - (b) for the purposes of paragraph (b), as a demand by a member representing the voting rights that the proxy is authorised to exercise;
 - (c) for the purposes of paragraph (c), as a demand by a member holding the shares to which those rights are attached.

330 Notice required of termination of proxy's authority

- (1) This section applies to notice that the authority of a person to act as proxy is terminated ("notice of termination").
- (2) The termination of the authority of a person to act as proxy does not affect –
 - (a) whether he counts in deciding whether there is a quorum at a meeting,
 - (b) the validity of anything he does as chairman of a meeting, or
 - (c) the validity of a poll demanded by him at a meeting,unless the company receives notice of the termination before the commencement of the meeting.
- (3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination –
 - (a) before the commencement of the meeting or adjourned meeting at which the vote is given, or
 - (b) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for taking the poll.
- (4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references above to the company receiving notice have effect as if they were or (as the case may be) included a reference to that person.
- (5) Subsections (2) and (3) have effect subject to any provision of the company's articles which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.
This is subject to subsection (6).
- (6) Any provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time –

- (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;
 - (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
 - (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.
- (7) In calculating the periods mentioned in subsections (3)(b) and (6) no account shall be taken of any part of a day that is not a working day.

331 Saving for more extensive rights conferred by articles

Nothing in sections 324 to 330 (proxies) prevents a company's articles from conferring more extensive rights on members or proxies than are conferred by those sections.

Adjourned meetings

332 Resolution passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Electronic communications

333 Sending documents relating to meetings etc in electronic form

- (1) Where a company has given an electronic address in a notice calling a meeting, it is deemed to have agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).
- (2) Where a company has given an electronic address –
- (a) in an instrument of proxy sent out by the company in relation to the meeting, or
 - (b) in an invitation to appoint a proxy issued by the company in relation to the meeting,
- it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).
- (3) In subsection (2), documents relating to proxies include –
- (a) the appointment of a proxy in relation to a meeting,
 - (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and
 - (c) notice of the termination of the authority of a proxy.
- (4) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means.

Application to class meetings

334 Application to class meetings

- (1) The provisions of this Chapter apply (with necessary modifications) in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting.
This is subject to subsections (2) and (3).
- (2) The following provisions of this Chapter do not apply in relation to a meeting of holders of a class of shares –
 - (a) sections 303 to 305 (members’ power to require directors to call general meeting), and
 - (b) section 306 (power of court to order meeting).
- (3) The following provisions (in addition to those mentioned in subsection (2)) do not apply in relation to a meeting in connection with the variation of rights attached to a class of shares (a “variation of class rights meeting”) –
 - (a) section 318 (quorum), and
 - (b) section 321 (right to demand a poll).
- (4) The quorum for a variation of class rights meeting is –
 - (a) for a meeting other than an adjourned meeting, two persons present holding at least one-third in nominal value of the issued shares of the class in question (excluding any shares of that class held as treasury shares);
 - (b) for an adjourned meeting, one person present holding shares of the class in question.
- (5) For the purposes of subsection (4), where a person is present by proxy or proxies, he is treated as holding only the shares in respect of which those proxies are authorised to exercise voting rights.
- (6) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.
- (7) For the purposes of this section –
 - (a) any amendment of a provision contained in a company’s articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
 - (b) references to the variation of rights attached to a class of shares include references to their abrogation.

335 Application to class meetings: companies without a share capital

- (1) The provisions of this Chapter apply (with necessary modifications) in relation to a meeting of a class of members of a company without a share capital as they apply in relation to a general meeting.
This is subject to subsections (2) and (3).
- (2) The following provisions of this Chapter do not apply in relation to a meeting of a class of members –
 - (a) sections 303 to 305 (members’ power to require directors to call general meeting), and

- (b) section 306 (power of court to order meeting).
- (3) The following provisions (in addition to those mentioned in subsection (2)) do not apply in relation to a meeting in connection with the variation of the rights of a class of members (a “variation of class rights meeting”) –
 - (a) section 318 (quorum), and
 - (b) section 321 (right to demand a poll).
- (4) The quorum for a variation of class rights meeting is –
 - (a) for a meeting other than an adjourned meeting, two members of the class present (in person or by proxy) who together represent at least one-third of the voting rights of the class;
 - (b) for an adjourned meeting, one member of the class present (in person or by proxy).
- (5) At a variation of class rights meeting, any member present (in person or by proxy) may demand a poll.
- (6) For the purposes of this section –
 - (a) any amendment of a provision contained in a company’s articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
 - (b) references to the variation of rights of a class of members include references to their abrogation.

CHAPTER 4

PUBLIC COMPANIES: ADDITIONAL REQUIREMENTS FOR AGMS

336 Public companies: annual general meeting

- (1) Every public company must hold a general meeting as its annual general meeting in each period of 6 months beginning with the day following its accounting reference date (in addition to any other meetings held during that period).
- (2) A company that fails to comply with subsection (1) as a result of giving notice under section 392 (alteration of accounting reference date) –
 - (a) specifying a new accounting reference date, and
 - (b) stating that the current accounting reference period or the previous accounting reference period is to be shortened,shall be treated as if it had complied with subsection (1) if it holds a general meeting as its annual general meeting within 3 months of giving that notice.
- (3) If a company fails to comply with subsection (1), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

337 Public companies: notice of AGM

- (1) A notice calling an annual general meeting of a public company must state that the meeting is an annual general meeting.
- (2) An annual general meeting may be called by shorter notice than that required by section 307(2) or by the company's articles (as the case may be), if all the members entitled to attend and vote at the meeting agree to the shorter notice.

338 Public companies: members' power to require circulation of resolutions for AGMs

- (1) The members of a public company may require the company to give, to members of the company entitled to receive notice of the next annual general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting.
- (2) A resolution may properly be moved at an annual general meeting unless –
 - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),
 - (b) it is defamatory of any person, or
 - (c) it is frivolous or vexatious.
- (3) A company is required to give notice of a resolution once it has received requests that it do so from –
 - (a) members representing at least 5% of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate (excluding any voting rights attached to any shares in the company held as treasury shares), or
 - (b) at least 100 members who have a right to vote on the resolution at the annual general meeting to which the requests relate and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

- (4) A request –
 - (a) may be in hard copy form or in electronic form,
 - (b) must identify the resolution of which notice is to be given,
 - (c) must be authenticated by the person or persons making it, and
 - (d) must be received by the company not later than –
 - (i) 6 weeks before the annual general meeting to which the requests relate, or
 - (ii) if later, the time at which notice is given of that meeting.

339 Public companies: company's duty to circulate members' resolutions for AGMs

- (1) A company that is required under section 338 to give notice of a resolution must send a copy of it to each member of the company entitled to receive notice of the annual general meeting –
 - (a) in the same manner as notice of the meeting, and
 - (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

- (2) Subsection (1) has effect subject to section 340(2) (deposit or tender of sum in respect of expenses of circulation).
- (3) The business which may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with this section.
- (4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

340 Public companies: expenses of circulating members' resolutions for AGM

- (1) The expenses of the company in complying with section 339 need not be paid by the members who requested the circulation of the resolution if requests sufficient to require the company to circulate it are received before the end of the financial year preceding the meeting.
- (2) Otherwise –
 - (a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise, and
 - (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than –
 - (i) six weeks before the annual general meeting to which the requests relate, or
 - (ii) if later, the time at which notice is given of that meeting,a sum reasonably sufficient to meet its expenses in complying with that section.

CHAPTER 5

ADDITIONAL REQUIREMENTS FOR QUOTED COMPANIES

Website publication of poll results

341 Results of poll to be made available on website

- (1) Where a poll is taken at a general meeting of a quoted company, the company must ensure that the following information is made available on a website –
 - (a) the date of the meeting,
 - (b) the text of the resolution or, as the case may be, a description of the subject matter of the poll,
 - (c) the number of votes cast in favour, and
 - (d) the number of votes cast against.
- (2) The provisions of section 353 (requirements as to website availability) apply.

- (3) In the event of default in complying with this section (or with the requirements of section 353 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Failure to comply with this section (or the requirements of section 353) does not affect the validity of—
 - (a) the poll, or
 - (b) the resolution or other business (if passed or agreed to) to which the poll relates.
- (6) This section only applies to polls taken after this section comes into force.

Independent report on poll

342 Members’ power to require independent report on poll

- (1) The members of a quoted company may require the directors to obtain an independent report on any poll taken, or to be taken, at a general meeting of the company.
- (2) The directors are required to obtain an independent report if they receive requests to do so from—
 - (a) members representing not less than 5% of the total voting rights of all the members who have a right to vote on the matter to which the poll relates (excluding any voting rights attached to any shares in the company held as treasury shares), or
 - (b) not less than 100 members who have a right to vote on the matter to which the poll relates and hold shares in the company on which there has been paid up an average sum, per member, of not less than £100.See also section 153 (exercise of rights where shares held on behalf of others).
- (3) Where the requests relate to more than one poll, subsection (2) must be satisfied in relation to each of them.
- (4) A request—
 - (a) may be in hard copy form or in electronic form,
 - (b) must identify the poll or polls to which it relates,
 - (c) must be authenticated by the person or persons making it, and
 - (d) must be received by the company not later than one week after the date on which the poll is taken.

343 Appointment of independent assessor

- (1) Directors who are required under section 342 to obtain an independent report on a poll or polls must appoint a person they consider to be appropriate (an “independent assessor”) to prepare a report for the company on it or them.
- (2) The appointment must be made within one week after the company being required to obtain the report.
- (3) The directors must not appoint a person who—
 - (a) does not meet the independence requirement in section 344, or

- (b) has another role in relation to any poll on which he is to report (including, in particular, a role in connection with collecting or counting votes or with the appointment of proxies).
- (4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) If at the meeting no poll on which a report is required is taken—
 - (a) the directors are not required to obtain a report from the independent assessor, and
 - (b) his appointment ceases (but without prejudice to any right to be paid for work done before the appointment ceased).

344 Independence requirement

- (1) A person may not be appointed as an independent assessor—
 - (a) if he is—
 - (i) an officer or employee of the company, or
 - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
 - (b) if he is—
 - (i) an officer or employee of an associated undertaking of the company, or
 - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
 - (c) if there exists between—
 - (i) the person or an associate of his, and
 - (ii) the company or an associated undertaking of the company,a connection of any such description as may be specified by regulations made by the Secretary of State.
- (2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.
- (3) In this section—
 - “associated undertaking” means—
 - (a) a parent undertaking or subsidiary undertaking of the company, or
 - (b) a subsidiary undertaking of a parent undertaking of the company; and
 - “associate” has the meaning given by section 345.
- (4) Regulations under this section are subject to negative resolution procedure.

345 Meaning of “associate”

- (1) This section defines “associate” for the purposes of section 344 (independence requirement).
- (2) In relation to an individual, “associate” means—
 - (a) that individual’s spouse or civil partner or minor child or step-child,

- (b) any body corporate of which that individual is a director, and
 - (c) any employee or partner of that individual.
- (3) In relation to a body corporate, “associate” means –
 - (a) any body corporate of which that body is a director,
 - (b) any body corporate in the same group as that body, and
 - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means –
 - (a) any body corporate of which that partnership is a director,
 - (b) any employee or partner in that partnership, and
 - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

346 Effect of appointment of a partnership

- (1) This section applies where a partnership that is not a legal person under the law by which it is governed is appointed as an independent assessor.
- (2) Unless a contrary intention appears, the appointment is of the partnership as such and not of the partners.
- (3) Where the partnership ceases, the appointment is to be treated as extending to –
 - (a) any partnership that succeeds to the practice of that partnership, or
 - (b) any other person who succeeds to that practice having previously carried it on in partnership.
- (4) For the purposes of subsection (3) –
 - (a) a partnership is regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership, and
 - (b) a partnership or other person is regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) Where the partnership ceases and the appointment is not treated under subsection (3) as extending to any partnership or other person, the appointment may with the consent of the company be treated as extending to a partnership, or other person, who succeeds to –
 - (a) the business of the former partnership, or
 - (b) such part of it as is agreed by the company is to be treated as comprising the appointment.

347 The independent assessor’s report

- (1) The report of the independent assessor must state his opinion whether –

- (a) the procedures adopted in connection with the poll or polls were adequate;
 - (b) the votes cast (including proxy votes) were fairly and accurately recorded and counted;
 - (c) the validity of members' appointments of proxies was fairly assessed;
 - (d) the notice of the meeting complied with section 325 (notice of meeting to contain statement of rights to appoint proxy);
 - (e) section 326 (company-sponsored invitations to appoint proxies) was complied with in relation to the meeting.
- (2) The report must give his reasons for the opinions stated.
 - (3) If he is unable to form an opinion on any of those matters, the report must record that fact and state the reasons for it.
 - (4) The report must state the name of the independent assessor.

348 Rights of independent assessor: right to attend meeting etc

- (1) Where an independent assessor has been appointed to report on a poll, he is entitled to attend –
 - (a) the meeting at which the poll may be taken, and
 - (b) any subsequent proceedings in connection with the poll.
- (2) He is also entitled to be provided by the company with a copy of –
 - (a) the notice of the meeting, and
 - (b) any other communication provided by the company in connection with the meeting to persons who have a right to vote on the matter to which the poll relates.
- (3) The rights conferred by this section are only to be exercised to the extent that the independent assessor considers necessary for the preparation of his report.
- (4) If the independent assessor is a firm, the right under subsection (1) to attend the meeting and any subsequent proceedings in connection with the poll is exercisable by an individual authorised by the firm in writing to act as its representative for that purpose.

349 Rights of independent assessor: right to information

- (1) The independent assessor is entitled to access to the company's records relating to –
 - (a) any poll on which he is to report;
 - (b) the meeting at which the poll or polls may be, or were, taken.
- (2) The independent assessor may require anyone who at any material time was –
 - (a) a director or secretary of the company,
 - (b) an employee of the company,
 - (c) a person holding or accountable for any of the company's records,
 - (d) a member of the company, or
 - (e) an agent of the company,to provide him with information or explanations for the purpose of preparing his report.

- (3) For this purpose “agent” includes the company’s bankers, solicitors and auditor.
- (4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 350 (offences relating to provision of information).
- (5) A person is not required by this section to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

350 Offences relating to provision of information

- (1) A person who fails to comply with a requirement under section 349 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanation.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person commits an offence who knowingly or recklessly makes to an independent assessor a statement (oral or written) that –
 - (a) conveys or purports to convey any information or explanations which the independent assessor requires, or is entitled to require, under section 349, and
 - (b) is misleading, false or deceptive in a material particular.
- (4) A person guilty of an offence under subsection (3) is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (5) Nothing in this section affects any right of an independent assessor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 348 or 349.

351 Information to be made available on website

- (1) Where an independent assessor has been appointed to report on a poll, the company must ensure that the following information is made available on a website –
 - (a) the fact of his appointment,
 - (b) his identity,
 - (c) the text of the resolution or, as the case may be, a description of the subject matter of the poll to which his appointment relates, and
 - (d) a copy of a report by him which complies with section 347.
- (2) The provisions of section 353 (requirements as to website availability) apply.

- (3) In the event of default in complying with this section (or with the requirements of section 353 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Failure to comply with this section (or the requirements of section 353) does not affect the validity of—
 - (a) the poll, or
 - (b) the resolution or other business (if passed or agreed to) to which the poll relates.

Supplementary

352 Application of provisions to class meetings

- (1) The provisions of—
 - section 341 (results of poll to be made available on website), and
 - sections 342 to 351 (independent report on poll),apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.
- (2) For the purposes of this section—
 - (a) any amendment of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
 - (b) references to the variation of rights attached to a class of shares include references to their abrogation.

353 Requirements as to website availability

- (1) The following provisions apply for the purposes of—
 - section 341 (results of poll to be made available on website), and
 - section 351 (report of independent observer to be made available on website).
- (2) The information must be made available on a website that—
 - (a) is maintained by or on behalf of the company, and
 - (b) identifies the company in question.
- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted.
- (4) The information—
 - (a) must be made available as soon as reasonably practicable, and
 - (b) must be kept available throughout the period of two years beginning with the date on which it is first made available on a website in accordance with this section.

- (5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if –
- (a) the information is made available on the website for part of that period, and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

354 Power to limit or extend the types of company to which provisions of this Chapter apply

- (1) The Secretary of State may by regulations –
- (a) limit the types of company to which some or all of the provisions of this Chapter apply, or
 - (b) extend some or all of the provisions of this Chapter to additional types of company.
- (2) Regulations under this section extending the application of any provision of this Chapter are subject to affirmative resolution procedure.
- (3) Any other regulations under this section are subject to negative resolution procedure.
- (4) Regulations under this section may –
- (a) amend the provisions of this Chapter (apart from this section);
 - (b) repeal and re-enact provisions of this Chapter with modifications of form or arrangement, whether or not they are modified in substance;
 - (c) contain such consequential, incidental and supplementary provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State thinks fit.

CHAPTER 6

RECORDS OF RESOLUTIONS AND MEETINGS

355 Records of resolutions and meetings etc

- (1) Every company must keep records comprising –
- (a) copies of all resolutions of members passed otherwise than at general meetings,
 - (b) minutes of all proceedings of general meetings, and
 - (c) details provided to the company in accordance with section 357 (decisions of sole member).
- (2) The records must be kept for at least ten years from the date of the resolution, meeting or decision (as appropriate).
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

356 Records as evidence of resolutions etc

- (1) This section applies to the records kept in accordance with section 355.
- (2) The record of a resolution passed otherwise than at a general meeting, if purporting to be signed by a director of the company or by the company secretary, is evidence (in Scotland, sufficient evidence) of the passing of the resolution.
- (3) Where there is a record of a written resolution of a private company, the requirements of this Act with respect to the passing of the resolution are deemed to be complied with unless the contrary is proved.
- (4) The minutes of proceedings of a general meeting, if purporting to be signed by the chairman of that meeting or by the chairman of the next general meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting.
- (5) Where there is a record of proceedings of a general meeting of a company, then, until the contrary is proved—
 - (a) the meeting is deemed duly held and convened,
 - (b) all proceedings at the meeting are deemed to have duly taken place, and
 - (c) all appointments at the meeting are deemed valid.

357 Records of decisions by sole member

- (1) This section applies to a company limited by shares or by guarantee that has only one member.
- (2) Where the member takes any decision that—
 - (a) may be taken by the company in general meeting, and
 - (b) has effect as if agreed by the company in general meeting,he must (unless that decision is taken by way of a written resolution) provide the company with details of that decision.
- (3) If a person fails to comply with this section he commits an offence.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) Failure to comply with this section does not affect the validity of any decision referred to in subsection (2).

358 Inspection of records of resolutions and meetings

- (1) The records referred to in section 355 (records of resolutions etc) relating to the previous ten years must be kept available for inspection—
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (2) The company must give notice to the registrar—
 - (a) of the place at which the records are kept available for inspection, and
 - (b) of any change in that place,unless they have at all times been kept at the company's registered office.

- (3) The records must be open to the inspection of any member of the company without charge.
- (4) Any member may require a copy of any of the records on payment of such fee as may be prescribed.
- (5) If default is made for 14 days in complying with subsection (2) or an inspection required under subsection (3) is refused, or a copy requested under subsection (4) is not sent, an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) In a case in which an inspection required under subsection (3) is refused or a copy requested under subsection (4) is not sent, the court may by order compel an immediate inspection of the records or direct that the copies required be sent to the persons who requested them.

359 Records of resolutions and meetings of class of members

The provisions of this Chapter apply (with necessary modifications) in relation to resolutions and meetings of –

- (a) holders of a class of shares, and
- (b) in the case of a company without a share capital, a class of members, as they apply in relation to resolutions of members generally and to general meetings.

CHAPTER 7

SUPPLEMENTARY PROVISIONS

360 Computation of periods of notice etc: clear day rule

- (1) This section applies for the purposes of the following provisions of this Part –
section 307(1) and (2) (notice required of general meeting),
section 312(1) and (3) (resolution requiring special notice),
section 314(4)(d) (request to circulate members' statement),
section 316(2)(b) (expenses of circulating statement to be deposited or tendered before meeting),
section 338(4)(d)(i) (request to circulate member's resolution at AGM of public company), and
section 340(2)(b)(i) (expenses of circulating statement to be deposited or tendered before meeting).
- (2) Any reference in those provisions to a period of notice, or to a period before a meeting by which a request must be received or sum deposited or tendered, is to a period of the specified length excluding –
 - (a) the day of the meeting, and
 - (b) the day on which the notice is given, the request received or the sum deposited or tendered.

361 Meaning of “quoted company”

In this Part “quoted company” has the same meaning as in Part 15 of this Act.

PART 14

CONTROL OF POLITICAL DONATIONS AND EXPENDITURE

Introductory

362 Introductory

This Part has effect for controlling—

- (a) political donations made by companies to political parties, to other political organisations and to independent election candidates, and
- (b) political expenditure incurred by companies.

Donations and expenditure to which this Part applies

363 Political parties, organisations etc to which this Part applies

- (1) This Part applies to a political party if—
 - (a) it is registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41), or
 - (b) it carries on, or proposes to carry on, activities for the purposes of or in connection with the participation of the party in any election or elections to public office held in a member State other than the United Kingdom.
- (2) This Part applies to an organisation (a “political organisation”) if it carries on, or proposes to carry on, activities that are capable of being reasonably regarded as intended—
 - (a) to affect public support for a political party to which, or an independent election candidate to whom, this Part applies, or
 - (b) to influence voters in relation to any national or regional referendum held under the law of the United Kingdom or another member State.
- (3) This Part applies to an independent election candidate at any election to public office held in the United Kingdom or another member State.
- (4) Any reference in the following provisions of this Part to a political party, political organisation or independent election candidate, or to political expenditure, is to a party, organisation, independent candidate or expenditure to which this Part applies.

364 Meaning of “political donation”

- (1) The following provisions have effect for the purposes of this Part as regards the meaning of “political donation”.
- (2) In relation to a political party or other political organisation—
 - (a) “political donation” means anything that in accordance with sections 50 to 52 of the Political Parties, Elections and Referendums Act 2000—

- (i) constitutes a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties), or
 - (ii) would constitute such a donation reading references in those sections to a registered party as references to any political party or other political organisation,and
 - (b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.
- (3) In relation to an independent election candidate –
- (a) “political donation” means anything that, in accordance with sections 50 to 52 of that Act, would constitute a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties) reading references in those sections to a registered party as references to the independent election candidate,
- and
- (b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.
- (4) For the purposes of this section, sections 50 and 53 of the Political Parties, Elections and Referendums Act 2000 (c. 41) (definition of “donation” and value of donations) shall be treated as if the amendments to those sections made by the Electoral Administration Act 2006 (which remove from the definition of “donation” loans made otherwise than on commercial terms) had not been made.

365 Meaning of “political expenditure”

- (1) In this Part “political expenditure”, in relation to a company, means expenditure incurred by the company on –
- (a) the preparation, publication or dissemination of advertising or other promotional or publicity material –
 - (i) of whatever nature, and
 - (ii) however published or otherwise disseminated,that, at the time of publication or dissemination, is capable of being reasonably regarded as intended to affect public support for a political party or other political organisation, or an independent election candidate, or
 - (b) activities on the part of the company that are capable of being reasonably regarded as intended –
 - (i) to affect public support for a political party or other political organisation, or an independent election candidate, or
 - (ii) to influence voters in relation to any national or regional referendum held under the law of a member State.
- (2) For the purposes of this Part a political donation does not count as political expenditure.

Authorisation required for donations or expenditure

366 Authorisation required for donations or expenditure

- (1) A company must not –

- (a) make a political donation to a political party or other political organisation, or to an independent election candidate, or
 - (b) incur any political expenditure,
- unless the donation or expenditure is authorised in accordance with the following provisions.
- (2) The donation or expenditure must be authorised –
 - (a) in the case of a company that is not a subsidiary of another company, by a resolution of the members of the company;
 - (b) in the case of a company that is a subsidiary of another company by –
 - (i) a resolution of the members of the company, and
 - (ii) a resolution of the members of any relevant holding company.
 - (3) No resolution is required on the part of a company that is a wholly-owned subsidiary of a UK-registered company.
 - (4) For the purposes of subsection (2)(b)(ii) a “relevant holding company” means a company that, at the time the donation was made or the expenditure was incurred –
 - (a) was a holding company of the company by which the donation was made or the expenditure was incurred,
 - (b) was a UK-registered company, and
 - (c) was not a subsidiary of another UK-registered company.
 - (5) The resolution or resolutions required by this section –
 - (a) must comply with section 367 (form of authorising resolution), and
 - (b) must be passed before the donation is made or the expenditure incurred.
 - (6) Nothing in this section enables a company to be authorised to do anything that it could not lawfully do apart from this section.

367 Form of authorising resolution

- (1) A resolution conferring authorisation for the purposes of this Part may relate to –
 - (a) the company passing the resolution,
 - (b) one or more subsidiaries of that company, or
 - (c) the company passing the resolution and one or more subsidiaries of that company.
- (2) A resolution may be expressed to relate to all companies that are subsidiaries of the company passing the resolution –
 - (a) at the time the resolution is passed, or
 - (b) at any time during the period for which the resolution has effect, without identifying them individually.
- (3) The resolution may authorise donations or expenditure under one or more of the following heads –
 - (a) donations to political parties or independent election candidates;
 - (b) donations to political organisations other than political parties;
 - (c) political expenditure.
- (4) The resolution must specify a head or heads –

- (a) in the case of a resolution under subsection (2), for all of the companies to which it relates taken together;
 - (b) in the case of any other resolution, for each company to which it relates.
- (5) The resolution must be expressed in general terms conforming with subsection (2) and must not purport to authorise particular donations or expenditure.
- (6) For each of the specified heads the resolution must authorise donations or, as the case may be, expenditure up to a specified amount in the period for which the resolution has effect (see section 368).
- (7) The resolution must specify such amounts –
- (a) in the case of a resolution under subsection (2), for all of the companies to which it relates taken together;
 - (b) in the case of any other resolution, for each company to which it relates.

368 Period for which resolution has effect

- (1) A resolution conferring authorisation for the purposes of this Part has effect for a period of four years beginning with the date on which it is passed unless the directors determine, or the articles require, that it is to have effect for a shorter period beginning with that date.
- (2) The power of the directors to make a determination under this section is subject to any provision of the articles that operates to prevent them from doing so.

Remedies in case of unauthorised donations or expenditure

369 Liability of directors in case of unauthorised donation or expenditure

- (1) This section applies where a company has made a political donation or incurred political expenditure without the authorisation required by this Part.
- (2) The directors in default are jointly and severally liable –
- (a) to make good to the company the amount of the unauthorised donation or expenditure, with interest, and
 - (b) to compensate the company for any loss or damage sustained by it as a result of the unauthorised donation or expenditure having been made.
- (3) The directors in default are –
- (a) those who, at the time the unauthorised donation was made or the unauthorised expenditure was incurred, were directors of the company by which the donation was made or the expenditure was incurred, and
 - (b) where –
 - (i) that company was a subsidiary of a relevant holding company, and
 - (ii) the directors of the relevant holding company failed to take all reasonable steps to prevent the donation being made or the expenditure being incurred,the directors of the relevant holding company.
- (4) For the purposes of subsection (3)(b) a “relevant holding company” means a company that, at the time the donation was made or the expenditure was incurred –

- (a) was a holding company of the company by which the donation was made or the expenditure was incurred,
 - (b) was a UK-registered company, and
 - (c) was not a subsidiary of another UK-registered company.
- (5) The interest referred to in subsection (2)(a) is interest on the amount of the unauthorised donation or expenditure, so far as not made good to the company –
- (a) in respect of the period beginning with the date when the donation was made or the expenditure was incurred, and
 - (b) at such rate as the Secretary of State may prescribe by regulations.
- Section 379(2) (construction of references to date when donation made or expenditure incurred) does not apply for the purposes of this subsection.
- (6) Where only part of a donation or expenditure was unauthorised, this section applies only to so much of it as was unauthorised.

370 Enforcement of directors' liabilities by shareholder action

- (1) Any liability of a director under section 369 is enforceable –
- (a) in the case of a liability of a director of a company to that company, by proceedings brought under this section in the name of the company by an authorised group of its members;
 - (b) in the case of a liability of a director of a holding company to a subsidiary, by proceedings brought under this section in the name of the subsidiary by –
 - (i) an authorised group of members of the subsidiary, or
 - (ii) an authorised group of members of the holding company.
- (2) This is in addition to the right of the company to which the liability is owed to bring proceedings itself to enforce the liability.
- (3) An “authorised group” of members of a company means –
- (a) the holders of not less than 5% in nominal value of the company's issued share capital,
 - (b) if the company is not limited by shares, not less than 5% of its members, or
 - (c) not less than 50 of the company's members.
- (4) The right to bring proceedings under this section is subject to the provisions of section 371.
- (5) Nothing in this section affects any right of a member of a company to bring or continue proceedings under Part 11 (derivative claims or proceedings).

371 Enforcement of directors' liabilities by shareholder action: supplementary

- (1) A group of members may not bring proceedings under section 370 in the name of a company unless –
- (a) the group has given written notice to the company stating –
 - (i) the cause of action and a summary of the facts on which the proceedings are to be based,
 - (ii) the names and addresses of the members comprising the group, and

- (iii) the grounds on which it is alleged that those members constitute an authorised group; and
 - (b) not less than 28 days have elapsed between the date of the giving of the notice to the company and the bringing of the proceedings.
- (2) Where such a notice is given to a company, any director of the company may apply to the court within the period of 28 days beginning with the date of the giving of the notice for an order directing that the proposed proceedings shall not be brought, on one or more of the following grounds –
 - (a) that the unauthorised amount has been made good to the company;
 - (b) that proceedings to enforce the liability have been brought, and are being pursued with due diligence, by the company;
 - (c) that the members proposing to bring proceedings under this section do not constitute an authorised group.
- (3) Where an application is made on the ground mentioned in subsection (2)(b), the court may as an alternative to directing that the proposed proceedings under section 370 are not to be brought, direct –
 - (a) that such proceedings may be brought on such terms and conditions as the court thinks fit, and
 - (b) that the proceedings brought by the company –
 - (i) shall be discontinued, or
 - (ii) may be continued on such terms and conditions as the court thinks fit.
- (4) The members by whom proceedings are brought under section 370 owe to the company in whose name they are brought the same duties in relation to the proceedings as would be owed by the company’s directors if the proceedings were being brought by the company.

But proceedings to enforce any such duty may be brought by the company only with the permission of the court.
- (5) Proceedings brought under section 370 may not be discontinued or settled by the group except with the permission of the court, which may be given on such terms as the court thinks fit.

372 Costs of shareholder action

- (1) This section applies in relation to proceedings brought under section 370 in the name of a company (“the company”) by an authorised group (“the group”).
- (2) The group may apply to the court for an order directing the company to indemnify the group in respect of costs incurred or to be incurred by the group in connection with the proceedings.

The court may make such an order on such terms as it thinks fit.
- (3) The group is not entitled to be paid any such costs out of the assets of the company except by virtue of such an order.
- (4) If no such order has been made with respect to the proceedings, then –
 - (a) if the company is awarded costs in connection with the proceedings, or it is agreed that costs incurred by the company in connection with the proceedings should be paid by any defendant, the costs shall be paid to the group; and

- (b) if any defendant is awarded costs in connection with the proceedings, or it is agreed that any defendant should be paid costs incurred by him in connection with the proceedings, the costs shall be paid by the group.
- (5) In the application of this section to Scotland for “costs” read “expenses” and for “defendant” read “defender”.

373 Information for purposes of shareholder action

- (1) Where proceedings have been brought under section 370 in the name of a company by an authorised group, the group is entitled to require the company to provide it with all information relating to the subject matter of the proceedings that is in the company’s possession or under its control or which is reasonably obtainable by it.
- (2) If the company, having been required by the group to do so, refuses to provide the group with all or any of that information, the court may, on an application made by the group, make an order directing –
 - (a) the company, and
 - (b) any of its officers or employees specified in the application,to provide the group with the information in question in such form and by such means as the court may direct.

Exemptions

374 Trade unions

- (1) A donation to a trade union, other than a contribution to the union’s political fund, is not a political donation for the purposes of this Part.
- (2) A trade union is not a political organisation for the purposes of section 365 (meaning of “political expenditure”).
- (3) In this section –
 - “trade union” has the meaning given by section 1 of Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or Article 3 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5));
 - “political fund” means the fund from which payments by a trade union in the furtherance of political objects are required to be made by virtue of section 82(1)(a) of that Act or Article 57(2)(a) of that Order.

375 Subscription for membership of trade association

- (1) A subscription paid to a trade association for membership of the association is not a political donation for the purposes of this Part.
- (2) For this purpose –
 - “trade association” means an organisation formed for the purpose of furthering the trade interests of its members, or of persons represented by its members, and
 - “subscription” does not include a payment to the association to the extent that it is made for the purpose of financing any particular activity of the association.

376 All-party parliamentary groups

- (1) An all-party parliamentary group is not a political organisation for the purposes of this Part.
- (2) An “all-party parliamentary group” means an all-party group composed of members of one or both of the Houses of Parliament (or of such members and other persons).

377 Political expenditure exempted by order

- (1) Authorisation under this Part is not needed for political expenditure that is exempt by virtue of an order of the Secretary of State under this section.
- (2) An order may confer an exemption in relation to –
 - (a) companies of any description or category specified in the order, or
 - (b) expenditure of any description or category so specified (whether framed by reference to goods, services or other matters in respect of which such expenditure is incurred or otherwise),or both.
- (3) If or to the extent that expenditure is exempt from the requirement of authorisation under this Part by virtue of an order under this section, it shall be disregarded in determining what donations are authorised by any resolution of the company passed for the purposes of this Part.
- (4) An order under this section is subject to affirmative resolution procedure.

378 Donations not amounting to more than £5,000 in any twelve month period

- (1) Authorisation under this Part is not needed for a donation except to the extent that the total amount of –
 - (a) that donation, and
 - (b) other relevant donations made in the period of 12 months ending with the date on which that donation is made,exceeds £5,000.
- (2) In this section –

“donation” means a donation to a political party or other political organisation or to an independent election candidate; and

“other relevant donations” means –

 - (a) in relation to a donation made by a company that is not a subsidiary, any other donations made by that company or by any of its subsidiaries;
 - (b) in relation to a donation made by a company that is a subsidiary, any other donations made by that company, by any holding company of that company or by any other subsidiary of any such holding company.
- (3) If or to the extent that a donation is exempt by virtue of this section from the requirement of authorisation under this Part, it shall be disregarded in determining what donations are authorised by any resolution passed for the purposes of this Part.

*Supplementary provisions***379 Minor definitions**

- (1) In this Part—
 - “director” includes shadow director; and
 - “organisation” includes any body corporate or unincorporated association and any combination of persons.
- (2) Except as otherwise provided, any reference in this Part to the time at which a donation is made or expenditure is incurred is, in a case where the donation is made or expenditure incurred in pursuance of a contract, any earlier time at which that contract is entered into by the company.

PART 15

ACCOUNTS AND REPORTS

CHAPTER 1

INTRODUCTION

*General***380 Scheme of this Part**

- (1) The requirements of this Part as to accounts and reports apply in relation to each financial year of a company.
- (2) In certain respects different provisions apply to different kinds of company.
- (3) The main distinctions for this purpose are—
 - (a) between companies subject to the small companies regime (see section 381) and companies that are not subject to that regime; and
 - (b) between quoted companies (see section 385) and companies that are not quoted.
- (4) In this Part, where provisions do not apply to all kinds of company—
 - (a) provisions applying to companies subject to the small companies regime appear before the provisions applying to other companies,
 - (b) provisions applying to private companies appear before the provisions applying to public companies, and
 - (c) provisions applying to quoted companies appear after the provisions applying to other companies.

*Companies subject to the small companies regime***381 Companies subject to the small companies regime**

The small companies regime for accounts and reports applies to a company for a financial year in relation to which the company—

- (a) qualifies as small (see sections 382 and 383), and
- (b) is not excluded from the regime (see section 384).

382 Companies qualifying as small: general

- (1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year.
- (2) A company qualifies as small in relation to a subsequent financial year –
 - (a) if the qualifying conditions are met in that year and the preceding financial year;
 - (b) if the qualifying conditions are met in that year and the company qualified as small in relation to the preceding financial year;
 - (c) if the qualifying conditions were met in the preceding financial year and the company qualified as small in relation to that year.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements –

1. Turnover	Not more than £5.6 million
2. Balance sheet total	Not more than £2.8 million
3. Number of employees	Not more than 50

- (4) For a period that is a company's financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted.
- (5) The balance sheet total means the aggregate of the amounts shown as assets in the company's balance sheet.
- (6) The number of employees means the average number of persons employed by the company in the year, determined as follows –
 - (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
 - (b) add together the monthly totals, and
 - (c) divide by the number of months in the financial year.
- (7) This section is subject to section 383 (companies qualifying as small: parent companies).

383 Companies qualifying as small: parent companies

- (1) A parent company qualifies as a small company in relation to a financial year only if the group headed by it qualifies as a small group.
- (2) A group qualifies as small in relation to the parent company's first financial year if the qualifying conditions are met in that year.
- (3) A group qualifies as small in relation to a subsequent financial year of the parent company –
 - (a) if the qualifying conditions are met in that year and the preceding financial year;
 - (b) if the qualifying conditions are met in that year and the group qualified as small in relation to the preceding financial year;
 - (c) if the qualifying conditions were met in the preceding financial year and the group qualified as small in relation to that year.

- (4) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements –

1. Aggregate turnover	Not more than £5.6 million net (or £6.72 million gross)
2. Aggregate balance sheet total	Not more than £2.8 million net (or £3.36 million gross)
3. Aggregate number of employees	Not more than 50

- (5) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 382 for each member of the group.

- (6) In relation to the aggregate figures for turnover and balance sheet total –
“net” means after any set-offs and other adjustments made to eliminate group transactions –

- (a) in the case of Companies Act accounts, in accordance with regulations under section 404,
- (b) in the case of IAS accounts, in accordance with international accounting standards; and

“gross” means without those set-offs and other adjustments.

A company may satisfy any relevant requirement on the basis of either the net or the gross figure.

- (7) The figures for each subsidiary undertaking shall be those included in its individual accounts for the relevant financial year, that is –

- (a) if its financial year ends with that of the parent company, that financial year, and
- (b) if not, its financial year ending last before the end of the financial year of the parent company.

If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

384 Companies excluded from the small companies regime

- (1) The small companies regime does not apply to a company that is, or was at any time within the financial year to which the accounts relate –

- (a) a public company,
- (b) a company that –
 - (i) is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
 - (ii) carries on insurance market activity, or
- (c) a member of an ineligible group.

- (2) A group is ineligible if any of its members is –

- (a) a public company,
- (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA State,
- (c) a person (other than a small company) who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity,

- (d) a small company that is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
 - (e) a person who carries on insurance market activity.
- (3) A company is a small company for the purposes of subsection (2) if it qualified as small in relation to its last financial year ending on or before the end of the financial year to which the accounts relate.

Quoted and unquoted companies

385 Quoted and unquoted companies

- (1) For the purposes of this Part a company is a quoted company in relation to a financial year if it is a quoted company immediately before the end of the accounting reference period by reference to which that financial year was determined.
- (2) A “quoted company” means a company whose equity share capital –
 - (a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8), or
 - (b) is officially listed in an EEA State, or
 - (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

In paragraph (a) “the official list” has the meaning given by section 103(1) of the Financial Services and Markets Act 2000.
- (3) An “unquoted company” means a company that is not a quoted company.
- (4) The Secretary of State may by regulations amend or replace the provisions of subsections (1) to (2) so as to limit or extend the application of some or all of the provisions of this Part that are expressed to apply to quoted companies.
- (5) Regulations under this section extending the application of any such provision of this Part are subject to affirmative resolution procedure.
- (6) Any other regulations under this section are subject to negative resolution procedure.

CHAPTER 2

ACCOUNTING RECORDS

386 Duty to keep accounting records

- (1) Every company must keep adequate accounting records.
- (2) Adequate accounting records means records that are sufficient –
 - (a) to show and explain the company’s transactions,
 - (b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
 - (c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

- (3) Accounting records must, in particular, contain –
 - (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and
 - (b) a record of the assets and liabilities of the company.
- (4) If the company's business involves dealing in goods, the accounting records must contain –
 - (a) statements of stock held by the company at the end of each financial year of the company,
 - (b) all statements of stocktakings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and
 - (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.
- (5) A parent company that has a subsidiary undertaking in relation to which the above requirements do not apply must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

387 Duty to keep accounting records: offence

- (1) If a company fails to comply with any provision of section 386 (duty to keep accounting records), an offence is committed by every officer of the company who is in default.
- (2) It is a defence for a person charged with such an offence to show that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

388 Where and for how long records to be kept

- (1) A company's accounting records –
 - (a) must be kept at its registered office or such other place as the directors think fit, and
 - (b) must at all times be open to inspection by the company's officers.
- (2) If accounting records are kept at a place outside the United Kingdom, accounts and returns with respect to the business dealt with in the accounting records so kept must be sent to, and kept at, a place in the United Kingdom, and must at all times be open to such inspection.

- (3) The accounts and returns to be sent to the United Kingdom must be such as to –
 - (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and
 - (b) enable the directors to ensure that the accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).
- (4) Accounting records that a company is required by section 386 to keep must be preserved by it –
 - (a) in the case of a private company, for three years from the date on which they are made;
 - (b) in the case of a public company, for six years from the date on which they are made.
- (5) Subsection (4) is subject to any provision contained in rules made under section 411 of the Insolvency Act 1986 (c. 45) (company insolvency rules) or Article 359 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

389 Where and for how long records to be kept: offences

- (1) If a company fails to comply with any provision of subsections (1) to (3) of section 388 (requirements as to keeping of accounting records), an offence is committed by every officer of the company who is in default.
- (2) It is a defence for a person charged with such an offence to show that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.
- (3) An officer of a company commits an offence if he –
 - (a) fails to take all reasonable steps for securing compliance by the company with subsection (4) of that section (period for which records to be preserved), or
 - (b) intentionally causes any default by the company under that subsection.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

CHAPTER 3

A COMPANY'S FINANCIAL YEAR

390 A company's financial year

- (1) A company's financial year is determined as follows.
- (2) Its first financial year –

- (a) begins with the first day of its first accounting reference period, and
 - (b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
- (3) Subsequent financial years—
- (a) begin with the day immediately following the end of the company’s previous financial year, and
 - (b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
- (4) In relation to an undertaking that is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.
- (5) The directors of a parent company must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company’s own financial year.

391 Accounting reference periods and accounting reference date

- (1) A company’s accounting reference periods are determined according to its accounting reference date in each calendar year.
- (2) The accounting reference date of a company incorporated in Great Britain before 1st April 1996 is—
- (a) the date specified by notice to the registrar in accordance with section 224(2) of the Companies Act 1985 (c. 6) (notice specifying accounting reference date given within nine months of incorporation), or
 - (b) failing such notice—
 - (i) in the case of a company incorporated before 1st April 1990, 31st March, and
 - (ii) in the case of a company incorporated on or after 1st April 1990, the last day of the month in which the anniversary of its incorporation falls.
- (3) The accounting reference date of a company incorporated in Northern Ireland before 22nd August 1997 is—
- (a) the date specified by notice to the registrar in accordance with article 232(2) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (notice specifying accounting reference date given within nine months of incorporation), or
 - (b) failing such notice—
 - (i) in the case of a company incorporated before the coming into operation of Article 5 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)), 31st March, and
 - (ii) in the case of a company incorporated after the coming into operation of that Article, the last day of the month in which the anniversary of its incorporation falls.
- (4) The accounting reference date of a company incorporated—
- (a) in Great Britain on or after 1st April 1996 and before the commencement of this Act,

- (b) in Northern Ireland on or after 22nd August 1997 and before the commencement of this Act, or
 - (c) after the commencement of this Act,
- is the last day of the month in which the anniversary of its incorporation falls.
- (5) A company’s first accounting reference period is the period of more than six months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date.
 - (6) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
 - (7) This section has effect subject to the provisions of section 392 (alteration of accounting reference date).

392 Alteration of accounting reference date

- (1) A company may by notice given to the registrar specify a new accounting reference date having effect in relation to –
 - (a) the company’s current accounting reference period and subsequent periods, or
 - (b) the company’s previous accounting reference period and subsequent periods.

A company’s “previous accounting reference period” means the one immediately preceding its current accounting reference period.

- (2) The notice must state whether the current or previous accounting reference period –
 - (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or
 - (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.
- (3) A notice extending a company’s current or previous accounting reference period is not effective if given less than five years after the end of an earlier accounting reference period of the company that was extended under this section.

This does not apply –

- (a) to a notice given by a company that is a subsidiary undertaking or parent undertaking of another EEA undertaking if the new accounting reference date coincides with that of the other EEA undertaking or, where that undertaking is not a company, with the last day of its financial year, or
 - (b) where the company is in administration under Part 2 of the Insolvency Act 1986 (c. 45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (c) where the Secretary of State directs that it should not apply, which he may do with respect to a notice that has been given or that may be given.
- (4) A notice under this section may not be given in respect of a previous accounting reference period if the period for filing accounts and reports for the

financial year determined by reference to that accounting reference period has already expired.

- (5) An accounting reference period may not be extended so as to exceed 18 months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

This does not apply where the company is in administration under Part 2 of the Insolvency Act 1986 (c. 45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

- (6) In this section “EEA undertaking” means an undertaking established under the law of any part of the United Kingdom or the law of any other EEA State.

CHAPTER 4

ANNUAL ACCOUNTS

General

393 Accounts to give true and fair view

- (1) The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss –
- (a) in the case of the company’s individual accounts, of the company;
 - (b) in the case of the company’s group accounts, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.
- (2) The auditor of a company in carrying out his functions under this Act in relation to the company’s annual accounts must have regard to the directors’ duty under subsection (1).

Individual accounts

394 Duty to prepare individual accounts

The directors of every company must prepare accounts for the company for each of its financial years.

Those accounts are referred to as the company’s “individual accounts”.

395 Individual accounts: applicable accounting framework

- (1) A company’s individual accounts may be prepared –
- (a) in accordance with section 396 (“Companies Act individual accounts”), or
 - (b) in accordance with international accounting standards (“IAS individual accounts”).

This is subject to the following provisions of this section and to section 407 (consistency of financial reporting within group).

- (2) The individual accounts of a company that is a charity must be Companies Act individual accounts.
- (3) After the first financial year in which the directors of a company prepare IAS individual accounts (“the first IAS year”), all subsequent individual accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.
- (4) There is a relevant change of circumstance if, at any time during or after the first IAS year –
 - (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS individual accounts,
 - (b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA State, or
 - (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA State.
- (5) If, having changed to preparing Companies Act individual accounts following a relevant change of circumstance, the directors again prepare IAS individual accounts for the company, subsections (3) and (4) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

396 Companies Act individual accounts

- (1) Companies Act individual accounts must comprise –
 - (a) a balance sheet as at the last day of the financial year, and
 - (b) a profit and loss account.
- (2) The accounts must –
 - (a) in the case of the balance sheet, give a true and fair view of the state of affairs of the company as at the end of the financial year, and
 - (b) in the case of the profit and loss account, give a true and fair view of the profit or loss of the company for the financial year.
- (3) The accounts must comply with provision made by the Secretary of State by regulations as to –
 - (a) the form and content of the balance sheet and profit and loss account, and
 - (b) additional information to be provided by way of notes to the accounts.
- (4) If compliance with the regulations, and any other provision made by or under this Act as to the matters to be included in a company’s individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.
- (5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

397 IAS individual accounts

Where the directors of a company prepare IAS individual accounts, they must state in the notes to the accounts that the accounts have been prepared in accordance with international accounting standards.

Group accounts: small companies

398 Option to prepare group accounts

If at the end of a financial year a company subject to the small companies regime is a parent company the directors, as well as preparing individual accounts for the year, may prepare group accounts for the year.

Group accounts: other companies

399 Duty to prepare group accounts

- (1) This section applies to companies that are not subject to the small companies regime.
- (2) If at the end of a financial year the company is a parent company the directors, as well as preparing individual accounts for the year, must prepare group accounts for the year unless the company is exempt from that requirement.
- (3) There are exemptions under-
section 400 (company included in EEA accounts of larger group),
section 401 (company included in non-EEA accounts of larger group), and
section 402 (company none of whose subsidiary undertakings need be included in the consolidation).
- (4) A company to which this section applies but which is exempt from the requirement to prepare group accounts, may do so.

400 Exemption for company included in EEA group accounts of larger group

- (1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its immediate parent undertaking is established under the law of an EEA State, in the following cases –
 - (a) where the company is a wholly-owned subsidiary of that parent undertaking;
 - (b) where that parent undertaking holds more than 50% of the allotted shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate –
 - (i) more than half of the remaining allotted shares in the company,
or
 - (ii) 5% of the total allotted shares in the company.Such notice must be served not later than six months after the end of the financial year before that to which it relates.
- (2) Exemption is conditional upon compliance with all of the following conditions –

- (a) the company must be included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of an EEA State;
 - (b) those accounts must be drawn up and audited, and that parent undertaking's annual report must be drawn up, according to that law –
 - (i) in accordance with the provisions of the Seventh Directive (83/349/EEC) (as modified, where relevant, by the provisions of the Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC)), or
 - (ii) in accordance with international accounting standards;
 - (c) the company must disclose in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
 - (d) the company must state in its individual accounts the name of the parent undertaking that draws up the group accounts referred to above and –
 - (i) if it is incorporated outside the United Kingdom, the country in which it is incorporated, or
 - (ii) if it is unincorporated, the address of its principal place of business;
 - (e) the company must deliver to the registrar, within the period for filing its accounts and reports for the financial year in question, copies of –
 - (i) those group accounts, and
 - (ii) the parent undertaking's annual report, together with the auditor's report on them;
 - (f) any requirement of Part 35 of this Act as to the delivery to the registrar of a certified translation into English must be met in relation to any document comprised in the accounts and reports delivered in accordance with paragraph (e).
- (3) For the purposes of subsection (1)(b) shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking.
- (4) The exemption does not apply to a company any of whose securities are admitted to trading on a regulated market in an EEA State.
- (5) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of this section whether the company is a wholly-owned subsidiary.
- (6) In subsection (4) "securities" includes –
- (a) shares and stock,
 - (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
 - (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and
 - (d) certificates or other instruments that confer –
 - (i) property rights in respect of a security falling within paragraph (a), (b) or (c),

- (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or
- (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

401 Exemption for company included in non-EEA group accounts of larger group

- (1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its parent undertaking is not established under the law of an EEA State, in the following cases –
 - (a) where the company is a wholly-owned subsidiary of that parent undertaking;
 - (b) where that parent undertaking holds more than 50% of the allotted shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate –
 - (i) more than half of the remaining allotted shares in the company, or
 - (ii) 5% of the total allotted shares in the company.

Such notice must be served not later than six months after the end of the financial year before that to which it relates.
- (2) Exemption is conditional upon compliance with all of the following conditions –
 - (a) the company and all of its subsidiary undertakings must be included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking;
 - (b) those accounts and, where appropriate, the group's annual report, must be drawn up –
 - (i) in accordance with the provisions of the Seventh Directive (83/349/EEC) (as modified, where relevant, by the provisions of the Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC)), or
 - (ii) in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up;
 - (c) the group accounts must be audited by one or more persons authorised to audit accounts under the law under which the parent undertaking which draws them up is established;
 - (d) the company must disclose in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
 - (e) the company must state in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and –
 - (i) if it is incorporated outside the United Kingdom, the country in which it is incorporated, or
 - (ii) if it is unincorporated, the address of its principal place of business;
 - (f) the company must deliver to the registrar, within the period for filing its accounts and reports for the financial year in question, copies of –
 - (i) the group accounts, and

- (ii) where appropriate, the consolidated annual report, together with the auditor’s report on them;
 - (g) any requirement of Part 35 of this Act as to the delivery to the registrar of a certified translation into English must be met in relation to any document comprised in the accounts and reports delivered in accordance with paragraph (f).
- (3) For the purposes of subsection (1)(b), shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, are attributed to the parent undertaking.
- (4) The exemption does not apply to a company any of whose securities are admitted to trading on a regulated market in an EEA State.
- (5) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of this section whether the company is a wholly-owned subsidiary.
- (6) In subsection (4) “securities” includes –
 - (a) shares and stock,
 - (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
 - (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and
 - (d) certificates or other instruments that confer –
 - (i) property rights in respect of a security falling within paragraph (a), (b) or (c),
 - (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or
 - (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

402 Exemption if no subsidiary undertakings need be included in the consolidation

A parent company is exempt from the requirement to prepare group accounts if under section 405 all of its subsidiary undertakings could be excluded from consolidation in Companies Act group accounts.

Group accounts: general

403 Group accounts: applicable accounting framework

- (1) The group accounts of certain parent companies are required by Article 4 of the IAS Regulation to be prepared in accordance with international accounting standards (“IAS group accounts”).
- (2) The group accounts of other companies may be prepared –
 - (a) in accordance with section 404 (“Companies Act group accounts”), or

- (b) in accordance with international accounting standards (“IAS group accounts”).

This is subject to the following provisions of this section.

- (3) The group accounts of a parent company that is a charity must be Companies Act group accounts.
- (4) After the first financial year in which the directors of a parent company prepare IAS group accounts (“the first IAS year”), all subsequent group accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.
- (5) There is a relevant change of circumstance if, at any time during or after the first IAS year –
 - (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS group accounts,
 - (b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA State, or
 - (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA State.
- (6) If, having changed to preparing Companies Act group accounts following a relevant change of circumstance, the directors again prepare IAS group accounts for the company, subsections (4) and (5) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

404 Companies Act group accounts

- (1) Companies Act group accounts must comprise –
 - (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
 - (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.
- (2) The accounts must give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.
- (3) The accounts must comply with provision made by the Secretary of State by regulations as to –
 - (a) the form and content of the consolidated balance sheet and consolidated profit and loss account, and
 - (b) additional information to be provided by way of notes to the accounts.
- (4) If compliance with the regulations, and any other provision made by or under this Act as to the matters to be included in a company’s group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.
- (5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

405 Companies Act group accounts: subsidiary undertakings included in the consolidation

- (1) Where a parent company prepares Companies Act group accounts, all the subsidiary undertakings of the company must be included in the consolidation, subject to the following exceptions.
- (2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view (but two or more undertakings may be excluded only if they are not material taken together).
- (3) A subsidiary undertaking may be excluded from consolidation where –
 - (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or
 - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or
 - (c) the interest of the parent company is held exclusively with a view to subsequent resale.
- (4) The reference in subsection (3)(a) to the rights of the parent company and the reference in subsection (3)(c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of the definition of “parent undertaking” (see section 1162) in the absence of which it would not be the parent company.

406 IAS group accounts

Where the directors of a company prepare IAS group accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards.

407 Consistency of financial reporting within group

- (1) The directors of a parent company must secure that the individual accounts of –
 - (a) the parent company, and
 - (b) each of its subsidiary undertakings,are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.
- (2) Subsection (1) does not apply if the directors do not prepare group accounts for the parent company.
- (3) Subsection (1) only applies to accounts of subsidiary undertakings that are required to be prepared under this Part.
- (4) Subsection (1) does not require accounts of undertakings that are charities to be prepared using the same financial reporting framework as accounts of undertakings which are not charities.
- (5) Subsection (1)(a) does not apply where the directors of a parent company prepare IAS group accounts and IAS individual accounts.

408 Individual profit and loss account where group accounts prepared

- (1) This section applies where –
 - (a) a company prepares group accounts in accordance with this Act, and
 - (b) the notes to the company's individual balance sheet show the company's profit or loss for the financial year determined in accordance with this Act.
- (2) The profit and loss account need not contain the information specified in section 411 (information about employee numbers and costs).
- (3) The company's individual profit and loss account must be approved in accordance with section 414(1) (approval by directors) but may be omitted from the company's annual accounts for the purposes of the other provisions of the Companies Acts.
- (4) The exemption conferred by this section is conditional upon its being disclosed in the company's annual accounts that the exemption applies.

Information to be given in notes to the accounts

409 Information about related undertakings

- (1) The Secretary of State may make provision by regulations requiring information about related undertakings to be given in notes to a company's annual accounts.
- (2) The regulations –
 - (a) may make different provision according to whether or not the company prepares group accounts, and
 - (b) may specify the descriptions of undertaking in relation to which they apply, and make different provision in relation to different descriptions of related undertaking.
- (3) The regulations may provide that information need not be disclosed with respect to an undertaking that –
 - (a) is established under the law of a country outside the United Kingdom, or
 - (b) carries on business outside the United Kingdom,if the following conditions are met.
- (4) The conditions are –
 - (a) that in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of –
 - (i) that undertaking,
 - (ii) the company,
 - (iii) any of the company's subsidiary undertakings, or
 - (iv) any other undertaking which is included in the consolidation;
 - (b) that the Secretary of State agrees that the information need not be disclosed.
- (5) Where advantage is taken of any such exemption, that fact must be stated in a note to the company's annual accounts.

410 Information about related undertakings: alternative compliance

- (1) This section applies where the directors of a company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of regulations under section 409 (related undertakings) is such that compliance with that provision would result in information of excessive length being given in notes to the company's annual accounts.
- (2) The information need only be given in respect of—
 - (a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts, and
 - (b) where the company prepares group accounts, undertakings excluded from consolidation under section 405(3) (undertakings excluded on grounds other than materiality).
- (3) If advantage is taken of subsection (2)—
 - (a) there must be included in the notes to the company's annual accounts a statement that the information is given only with respect to such undertakings as are mentioned in that subsection, and
 - (b) the full information (both that which is disclosed in the notes to the accounts and that which is not) must be annexed to the company's next annual return.

For this purpose the “next annual return” means that next delivered to the registrar after the accounts in question have been approved under section 414.

- (4) If a company fails to comply with subsection (3)(b), an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

411 Information about employee numbers and costs

- (1) In the case of a company not subject to the small companies regime, the following information with respect to the employees of the company must be given in notes to the company's annual accounts—
 - (a) the average number of persons employed by the company in the financial year, and
 - (b) the average number of persons so employed within each category of persons employed by the company.
- (2) The categories by reference to which the number required to be disclosed by subsection (1)(b) is to be determined must be such as the directors may select having regard to the manner in which the company's activities are organised.
- (3) The average number required by subsection (1)(a) or (b) is determined by dividing the relevant annual number by the number of months in the financial year.

- (4) The relevant annual number is determined by ascertaining for each month in the financial year –
- (a) for the purposes of subsection (1)(a), the number of persons employed under contracts of service by the company in that month (whether throughout the month or not);
 - (b) for the purposes of subsection (1)(b), the number of persons in the category in question of persons so employed;
- and adding together all the monthly numbers.
- (5) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of subsection (1)(a) there must also be stated the aggregate amounts respectively of –
- (a) wages and salaries paid or payable in respect of that year to those persons;
 - (b) social security costs incurred by the company on their behalf; and
 - (c) other pension costs so incurred.
- This does not apply in so far as those amounts, or any of them, are stated elsewhere in the company's accounts.
- (6) In subsection (5) –
- “pension costs” includes any costs incurred by the company in respect of –
 - (a) any pension scheme established for the purpose of providing pensions for persons currently or formerly employed by the company,
 - (b) any sums set aside for the future payment of pensions directly by the company to current or former employees, and
 - (c) any pensions paid directly to such persons without having first been set aside;
 - “social security costs” means any contributions by the company to any state social security or pension scheme, fund or arrangement.
- (7) Where the company prepares group accounts, this section applies as if the undertakings included in the consolidation were a single company.

412 Information about directors' benefits: remuneration

- (1) The Secretary of State may make provision by regulations requiring information to be given in notes to a company's annual accounts about directors' remuneration.
- (2) The matters about which information may be required include –
- (a) gains made by directors on the exercise of share options;
 - (b) benefits received or receivable by directors under long-term incentive schemes;
 - (c) payments for loss of office (as defined in section 215);
 - (d) benefits receivable, and contributions for the purpose of providing benefits, in respect of past services of a person as director or in any other capacity while director;
 - (e) consideration paid to or receivable by third parties for making available the services of a person as director or in any other capacity while director.

- (3) Without prejudice to the generality of subsection (1), regulations under this section may make any such provision as was made immediately before the commencement of this Part by Part 1 of Schedule 6 to the Companies Act 1985 (c. 6).
- (4) For the purposes of this section, and regulations made under it, amounts paid to or receivable by –
 - (a) a person connected with a director, or
 - (b) a body corporate controlled by a director,are treated as paid to or receivable by the director.

The expressions “connected with” and “controlled by” in this subsection have the same meaning as in Part 10 (company directors).
- (5) It is the duty of –
 - (a) any director of a company, and
 - (b) any person who is or has at any time in the preceding five years been a director of the company,to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.
- (6) A person who makes default in complying with subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

413 Information about directors’ benefits: advances, credit and guarantees

- (1) In the case of a company that does not prepare group accounts, details of –
 - (a) advances and credits granted by the company to its directors, and
 - (b) guarantees of any kind entered into by the company on behalf of its directors,must be shown in the notes to its individual accounts.
- (2) In the case of a parent company that prepares group accounts, details of –
 - (a) advances and credits granted to the directors of the parent company, by that company or by any of its subsidiary undertakings, and
 - (b) guarantees of any kind entered into on behalf of the directors of the parent company, by that company or by any of its subsidiary undertakings,must be shown in the notes to the group accounts.
- (3) The details required of an advance or credit are –
 - (a) its amount,
 - (b) an indication of the interest rate,
 - (c) its main conditions, and
 - (d) any amounts repaid.
- (4) The details required of a guarantee are –
 - (a) its main terms,
 - (b) the amount of the maximum liability that may be incurred by the company (or its subsidiary), and
 - (c) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee (including any loss incurred by reason of enforcement of the guarantee).

- (5) There must also be stated in the notes to the accounts the totals –
 - (a) of amounts stated under subsection (3)(a),
 - (b) of amounts stated under subsection (3)(d),
 - (c) of amounts stated under subsection (4)(b), and
 - (d) of amounts stated under subsection (4)(c).
- (6) References in this section to the directors of a company are to the persons who were a director at any time in the financial year to which the accounts relate.
- (7) The requirements of this section apply in relation to every advance, credit or guarantee subsisting at any time in the financial year to which the accounts relate –
 - (a) whenever it was entered into,
 - (b) whether or not the person concerned was a director of the company in question at the time it was entered into, and
 - (c) in the case of an advance, credit or guarantee involving a subsidiary undertaking of that company, whether or not that undertaking was such a subsidiary undertaking at the time it was entered into.
- (8) Banking companies and the holding companies of credit institutions need only state the details required by subsections (3)(a) and (4)(b).

Approval and signing of accounts

414 Approval and signing of accounts

- (1) A company's annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.
- (2) The signature must be on the company's balance sheet.
- (3) If the accounts are prepared in accordance with the provisions applicable to companies subject to the small companies regime, the balance sheet must contain a statement to that effect in a prominent position above the signature.
- (4) If annual accounts are approved that do not comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation), every director of the company who –
 - (a) knew that they did not comply, or was reckless as to whether they complied, and
 - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,commits an offence.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

CHAPTER 5

DIRECTORS’ REPORT

Directors’ report

415 Duty to prepare directors’ report

- (1) The directors of a company must prepare a directors’ report for each financial year of the company.
- (2) For a financial year in which—
 - (a) the company is a parent company, and
 - (b) the directors of the company prepare group accounts,the directors’ report must be a consolidated report (a “group directors’ report”) relating to the undertakings included in the consolidation.
- (3) A group directors’ report may, where appropriate, give greater emphasis to the matters that are significant to the undertakings included in the consolidation, taken as a whole.
- (4) In the case of failure to comply with the requirement to prepare a directors’ report, an offence is committed by every person who—
 - (a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and
 - (b) failed to take all reasonable steps for securing compliance with that requirement.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

416 Contents of directors’ report: general

- (1) The directors’ report for a financial year must state—
 - (a) the names of the persons who, at any time during the financial year, were directors of the company, and
 - (b) the principal activities of the company in the course of the year.
- (2) In relation to a group directors’ report subsection (1)(b) has effect as if the reference to the company was to the undertakings included in the consolidation.
- (3) Except in the case of a company subject to the small companies regime, the report must state the amount (if any) that the directors recommend should be paid by way of dividend.
- (4) The Secretary of State may make provision by regulations as to other matters that must be disclosed in a directors’ report.
Without prejudice to the generality of this power, the regulations may make any such provision as was formerly made by Schedule 7 to the Companies Act 1985.

417 Contents of directors’ report: business review

- (1) Unless the company is subject to the small companies’ regime, the directors’ report must contain a business review.
- (2) The purpose of the business review is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company).
- (3) The business review must contain –
 - (a) a fair review of the company’s business, and
 - (b) a description of the principal risks and uncertainties facing the company.
- (4) The review required is a balanced and comprehensive analysis of –
 - (a) the development and performance of the company’s business during the financial year, and
 - (b) the position of the company’s business at the end of that year, consistent with the size and complexity of the business.
- (5) In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include –
 - (a) the main trends and factors likely to affect the future development, performance and position of the company’s business; and
 - (b) information about –
 - (i) environmental matters (including the impact of the company’s business on the environment),
 - (ii) the company’s employees, and
 - (iii) social and community issues,including information about any policies of the company in relation to those matters and the effectiveness of those policies; and
 - (c) subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

If the review does not contain information of each kind mentioned in paragraphs (b)(i), (ii) and (iii) and (c), it must state which of those kinds of information it does not contain.

- (6) The review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include –
 - (a) analysis using financial key performance indicators, and
 - (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

“Key performance indicators” means factors by reference to which the development, performance or position of the company’s business can be measured effectively.

- (7) Where a company qualifies as medium-sized in relation to a financial year (see sections 465 to 467), the directors’ report for the year need not comply with the requirements of subsection (6) so far as they relate to non-financial information.

- (8) The review must, where appropriate, include references to, and additional explanations of, amounts included in the company’s annual accounts.
- (9) In relation to a group directors’ report this section has effect as if the references to the company were references to the undertakings included in the consolidation.
- (10) Nothing in this section requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.
- (11) Nothing in subsection (5)(c) requires the disclosure of information about a person if the disclosure would, in the opinion of the directors, be seriously prejudicial to that person and contrary to the public interest.

418 Contents of directors’ report: statement as to disclosure to auditors

- (1) This section applies to a company unless –
 - (a) it is exempt for the financial year in question from the requirements of Part 16 as to audit of accounts, and
 - (b) the directors take advantage of that exemption.
- (2) The directors’ report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved –
 - (a) so far as the director is aware, there is no relevant audit information of which the company’s auditor is unaware, and
 - (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company’s auditor is aware of that information.
- (3) “Relevant audit information” means information needed by the company’s auditor in connection with preparing his report.
- (4) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things mentioned in subsection (2)(b) if he has –
 - (a) made such enquiries of his fellow directors and of the company’s auditors for that purpose, and
 - (b) taken such other steps (if any) for that purpose,as are required by his duty as a director of the company to exercise reasonable care, skill and diligence.
- (5) Where a directors’ report containing the statement required by this section is approved but the statement is false, every director of the company who –
 - (a) knew that the statement was false, or was reckless as to whether it was false, and
 - (b) failed to take reasonable steps to prevent the report from being approved,commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –

- (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

419 Approval and signing of directors’ report

- (1) The directors’ report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
- (2) If the report is prepared in accordance with the small companies regime, it must contain a statement to that effect in a prominent position above the signature.
- (3) If a directors’ report is approved that does not comply with the requirements of this Act, every director of the company who –
 - (a) knew that it did not comply, or was reckless as to whether it complied, and
 - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,commits an offence.
- (4) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

CHAPTER 6

QUOTED COMPANIES: DIRECTORS’ REMUNERATION REPORT

420 Duty to prepare directors’ remuneration report

- (1) The directors of a quoted company must prepare a directors’ remuneration report for each financial year of the company.
- (2) In the case of failure to comply with the requirement to prepare a directors’ remuneration report, every person who –
 - (a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and
 - (b) failed to take all reasonable steps for securing compliance with that requirement,commits an offence.
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

421 Contents of directors' remuneration report

- (1) The Secretary of State may make provision by regulations as to—
 - (a) the information that must be contained in a directors' remuneration report,
 - (b) how information is to be set out in the report, and
 - (c) what is to be the auditable part of the report.
- (2) Without prejudice to the generality of this power, the regulations may make any such provision as was made, immediately before the commencement of this Part, by Schedule 7A to the Companies Act 1985 (c. 6).
- (3) It is the duty of—
 - (a) any director of a company, and
 - (b) any person who is or has at any time in the preceding five years been a director of the company,to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.
- (4) A person who makes default in complying with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

422 Approval and signing of directors' remuneration report

- (1) The directors' remuneration report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
- (2) If a directors' remuneration report is approved that does not comply with the requirements of this Act, every director of the company who—
 - (a) knew that it did not comply, or was reckless as to whether it complied, and
 - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,commits an offence.
- (3) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

CHAPTER 7

PUBLICATION OF ACCOUNTS AND REPORTS

Duty to circulate copies of accounts and reports

423 Duty to circulate copies of annual accounts and reports

- (1) Every company must send a copy of its annual accounts and reports for each financial year to—
 - (a) every member of the company,
 - (b) every holder of the company's debentures, and

- (c) every person who is entitled to receive notice of general meetings.
- (2) Copies need not be sent to a person for whom the company does not have a current address.
- (3) A company has a “current address” for a person if –
 - (a) an address has been notified to the company by the person as one at which documents may be sent to him, and
 - (b) the company has no reason to believe that documents sent to him at that address will not reach him.
- (4) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.
- (5) Where copies are sent out over a period of days, references in the Companies Acts to the day on which copies are sent out shall be read as references to the last day of that period.
- (6) This section has effect subject to section 426 (option to provide summary financial statement).

424 Time allowed for sending out copies of accounts and reports

- (1) The time allowed for sending out copies of the company’s annual accounts and reports is as follows.
- (2) A private company must comply with section 423 not later than –
 - (a) the end of the period for filing accounts and reports, or
 - (b) if earlier, the date on which it actually delivers its accounts and reports to the registrar.
- (3) A public company must comply with section 423 at least 21 days before the date of the relevant accounts meeting.
- (4) If in the case of a public company copies are sent out later than is required by subsection (3), they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the relevant accounts meeting.
- (5) Whether the time allowed is that for a private company or a public company is determined by reference to the company’s status immediately before the end of the accounting reference period by reference to which the financial year for the accounts in question was determined.
- (6) In this section the “relevant accounts meeting” means the accounts meeting of the company at which the accounts and reports in question are to be laid.

425 Default in sending out copies of accounts and reports: offences

- (1) If default is made in complying with section 423 or 424, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;

- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Option to provide summary financial statement

426 Option to provide summary financial statement

- (1) A company may –
 - (a) in such cases as may be specified by regulations made by the Secretary of State, and
 - (b) provided any conditions so specified are complied with,provide a summary financial statement instead of copies of the accounts and reports required to be sent out in accordance with section 423.
- (2) Copies of those accounts and reports must, however, be sent to any person entitled to be sent them in accordance with that section and who wishes to receive them.
- (3) The Secretary of State may make provision by regulations as to the manner in which it is to be ascertained, whether before or after a person becomes entitled to be sent a copy of those accounts and reports, whether he wishes to receive them.
- (4) A summary financial statement must comply with the requirements of –
 - section 427 (form and contents of summary financial statement: unquoted companies), or
 - section 428 (form and contents of summary financial statement: quoted companies).
- (5) This section applies to copies of accounts and reports required to be sent out by virtue of section 146 to a person nominated to enjoy information rights as it applies to copies of accounts and reports required to be sent out in accordance with section 423 to a member of the company.
- (6) Regulations under this section are subject to negative resolution procedure.

427 Form and contents of summary financial statement: unquoted companies

- (1) A summary financial statement by a company that is not a quoted company must –
 - (a) be derived from the company’s annual accounts, and
 - (b) be prepared in accordance with this section and regulations made under it.
- (2) The summary financial statement must be in such form, and contain such information, as the Secretary of State may specify by regulations.
The regulations may require the statement to include information derived from the directors’ report.
- (3) Nothing in this section or regulations made under it prevents a company from including in a summary financial statement additional information derived from the company’s annual accounts or the directors’ report.
- (4) The summary financial statement must –

- (a) state that it is only a summary of information derived from the company's annual accounts;
 - (b) state whether it contains additional information derived from the directors' report and, if so, that it does not contain the full text of that report;
 - (c) state how a person entitled to them can obtain a full copy of the company's annual accounts and the directors' report;
 - (d) contain a statement by the company's auditor of his opinion as to whether the summary financial statement –
 - (i) is consistent with the company's annual accounts and, where information derived from the directors' report is included in the statement, with that report, and
 - (ii) complies with the requirements of this section and regulations made under it;
 - (e) state whether the auditor's report on the annual accounts was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification;
 - (f) state whether, in that report, the auditor's statement under section 496 (whether directors' report consistent with accounts) was qualified or unqualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification;
 - (g) state whether that auditor's report contained a statement under –
 - (i) section 498(2)(a) or (b) (accounting records or returns inadequate or accounts not agreeing with records and returns), or
 - (ii) section 498(3) (failure to obtain necessary information and explanations),and if so, set out the statement in full.
- (5) Regulations under this section may provide that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement.
- (6) Regulations under this section are subject to negative resolution procedure.

428 Form and contents of summary financial statement: quoted companies

- (1) A summary financial statement by a quoted company must –
 - (a) be derived from the company's annual accounts and the directors' remuneration report, and
 - (b) be prepared in accordance with this section and regulations made under it.
- (2) The summary financial statement must be in such form, and contain such information, as the Secretary of State may specify by regulations.
The regulations may require the statement to include information derived from the directors' report.
- (3) Nothing in this section or regulations made under it prevents a company from including in a summary financial statement additional information derived from the company's annual accounts, the directors' remuneration report or the directors' report.

- (4) The summary financial statement must—
- (a) state that it is only a summary of information derived from the company's annual accounts and the directors' remuneration report;
 - (b) state whether it contains additional information derived from the directors' report and, if so, that it does not contain the full text of that report;
 - (c) state how a person entitled to them can obtain a full copy of the company's annual accounts, the directors' remuneration report or the directors' report;
 - (d) contain a statement by the company's auditor of his opinion as to whether the summary financial statement—
 - (i) is consistent with the company's annual accounts and the directors' remuneration report and, where information derived from the directors' report is included in the statement, with that report, and
 - (ii) complies with the requirements of this section and regulations made under it;
 - (e) state whether the auditor's report on the annual accounts and the auditable part of the directors' remuneration report was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification;
 - (f) state whether that auditor's report contained a statement under—
 - (i) section 498(2) (accounting records or returns inadequate or accounts or directors' remuneration report not agreeing with records and returns), or
 - (ii) section 498(3) (failure to obtain necessary information and explanations),and if so, set out the statement in full;
 - (g) state whether, in that report, the auditor's statement under section 496 (whether directors' report consistent with accounts) was qualified or unqualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification.
- (5) Regulations under this section may provide that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement.
- (6) Regulations under this section are subject to negative resolution procedure.

429 Summary financial statements: offences

- (1) If default is made in complying with any provision of section 426, 427 or 428, or of regulations under any of those sections, an offence is committed by—
- (a) the company, and
 - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Quoted companies: requirements as to website publication

430 Quoted companies: annual accounts and reports to be made available on website

- (1) A quoted company must ensure that its annual accounts and reports –
 - (a) are made available on a website, and
 - (b) remain so available until the annual accounts and reports for the company's next financial year are made available in accordance with this section.
- (2) The annual accounts and reports must be made available on a website that –
 - (a) is maintained by or on behalf of the company, and
 - (b) identifies the company in question.
- (3) Access to the annual accounts and reports on the website, and the ability to obtain a hard copy of the annual accounts and reports from the website, must not be –
 - (a) conditional on the payment of a fee, or
 - (b) otherwise restricted, except so far as necessary to comply with any enactment or regulatory requirement (in the United Kingdom or elsewhere).
- (4) The annual accounts and reports –
 - (a) must be made available as soon as reasonably practicable, and
 - (b) must be kept available throughout the period specified in subsection (1)(b).
- (5) A failure to make the annual accounts and reports available on a website throughout that period is disregarded if –
 - (a) the annual accounts and reports are made available on the website for part of that period, and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.
- (6) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Right of member or debenture holder to demand copies of accounts and reports

431 Right of member or debenture holder to copies of accounts and reports: unquoted companies

- (1) A member of, or holder of debentures of, an unquoted company is entitled to be provided, on demand and without charge, with a copy of –
 - (a) the company's last annual accounts,
 - (b) the last directors' report, and
 - (c) the auditor's report on those accounts (including the statement on that report).

- (2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 423.
- (3) If a demand made under this section is not complied with within seven days of receipt by the company, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

432 Right of member or debenture holder to copies of accounts and reports: quoted companies

- (1) A member of, or holder of debentures of, a quoted company is entitled to be provided, on demand and without charge, with a copy of –
 - (a) the company's last annual accounts,
 - (b) the last directors' remuneration report,
 - (c) the last directors' report, and
 - (d) the auditor's report on those accounts (including the report on the directors' remuneration report and on the directors' report).
- (2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 423.
- (3) If a demand made under this section is not complied with within seven days of receipt by the company, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Requirements in connection with publication of accounts and reports

433 Name of signatory to be stated in published copies of accounts and reports

- (1) Every copy of a document to which this section applies that is published by or on behalf of the company must state the name of the person who signed it on behalf of the board.
- (2) In the case of an unquoted company, this section applies to copies of –
 - (a) the company's balance sheet, and
 - (b) the directors' report.
- (3) In the case of a quoted company, this section applies to copies of –
 - (a) the company's balance sheet,
 - (b) the directors' remuneration report, and

- (c) the directors' report.
- (4) If a copy is published without the required statement of the signatory's name, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

434 Requirements in connection with publication of statutory accounts

- (1) If a company publishes any of its statutory accounts, they must be accompanied by the auditor's report on those accounts (unless the company is exempt from audit and the directors have taken advantage of that exemption).
- (2) A company that prepares statutory group accounts for a financial year must not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.
- (3) A company's "statutory accounts" are its accounts for a financial year as required to be delivered to the registrar under section 441.
- (4) If a company contravenes any provision of this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) This section does not apply in relation to the provision by a company of a summary financial statement (see section 426).

435 Requirements in connection with publication of non-statutory accounts

- (1) If a company publishes non-statutory accounts, it must publish with them a statement indicating –
 - (a) that they are not the company's statutory accounts,
 - (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar, and
 - (c) whether an auditor's report has been made on the company's statutory accounts for any such financial year, and if so whether the report –
 - (i) was qualified or unqualified, or included a reference to any matters to which the auditor drew attention by way of emphasis without qualifying the report, or
 - (ii) contained a statement under section 498(2) (accounting records or returns inadequate or accounts or directors' remuneration report not agreeing with records and returns), or section 498(3) (failure to obtain necessary information and explanations).
- (2) The company must not publish with non-statutory accounts the auditor's report on the company's statutory accounts.

- (3) References in this section to the publication by a company of “non-statutory accounts” are to the publication of—
 - (a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company, or
 - (b) an account in any form purporting to be a balance sheet or profit and loss account for a group headed by the company relating to, or purporting to deal with, a financial year of the company, otherwise than as part of the company’s statutory accounts.
- (4) In subsection (3)(b) “a group headed by the company” means a group consisting of the company and any other undertaking (regardless of whether it is a subsidiary undertaking of the company) other than a parent undertaking of the company.
- (5) If a company contravenes any provision of this section, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) This section does not apply in relation to the provision by a company of a summary financial statement (see section 426).

436 Meaning of “publication” in relation to accounts and reports

- (1) This section has effect for the purposes of—
 - section 433 (name of signatory to be stated in published copies of accounts and reports),
 - section 434 (requirements in connection with publication of statutory accounts), and
 - section 435 (requirements in connection with publication of non-statutory accounts).
- (2) For the purposes of those sections a company is regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

CHAPTER 8

PUBLIC COMPANIES: LAYING OF ACCOUNTS AND REPORTS BEFORE GENERAL MEETING

437 Public companies: laying of accounts and reports before general meeting

- (1) The directors of a public company must lay before the company in general meeting copies of its annual accounts and reports.
- (2) This section must be complied with not later than the end of the period for filing the accounts and reports in question.
- (3) In the Companies Acts “accounts meeting”, in relation to a public company, means a general meeting of the company at which the company’s annual accounts and reports are (or are to be) laid in accordance with this section.

438 Public companies: offence of failure to lay accounts and reports

- (1) If the requirements of section 437 (public companies: laying of accounts and reports before general meeting) are not complied with before the end of the period allowed, every person who immediately before the end of that period was a director of the company commits an offence.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

CHAPTER 9**QUOTED COMPANIES: MEMBERS' APPROVAL OF DIRECTORS' REMUNERATION REPORT****439 Quoted companies: members' approval of directors' remuneration report**

- (1) A quoted company must, prior to the accounts meeting, give to the members of the company entitled to be sent notice of the meeting notice of the intention to move at the meeting, as an ordinary resolution, a resolution approving the directors' remuneration report for the financial year.
- (2) The notice may be given in any manner permitted for the service on the member of notice of the meeting.
- (3) The business that may be dealt with at the accounts meeting includes the resolution.
This is so notwithstanding any default in complying with subsection (1) or (2).
- (4) The existing directors must ensure that the resolution is put to the vote of the meeting.
- (5) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section.
- (6) In this section –
 - “the accounts meeting” means the general meeting of the company before which the company's annual accounts for the financial year are to be laid; and
 - “existing director” means a person who is a director of the company immediately before that meeting.

440 Quoted companies: offences in connection with procedure for approval

- (1) In the event of default in complying with section 439(1) (notice to be given of resolution for approval of directors' remuneration report), an offence is committed by every officer of the company who is in default.

- (2) If the resolution is not put to the vote of the accounts meeting, an offence is committed by each existing director.
- (3) It is a defence for a person charged with an offence under subsection (2) to prove that he took all reasonable steps for securing that the resolution was put to the vote of the meeting.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In this section –
 - “the accounts meeting” means the general meeting of the company before which the company’s annual accounts for the financial year are to be laid; and
 - “existing director” means a person who is a director of the company immediately before that meeting.

CHAPTER 10

FILING OF ACCOUNTS AND REPORTS

Duty to file accounts and reports

441 Duty to file accounts and reports with the registrar

- (1) The directors of a company must deliver to the registrar for each financial year the accounts and reports required by –
 - section 444 (filing obligations of companies subject to small companies regime),
 - section 445 (filing obligations of medium-sized companies),
 - section 446 (filing obligations of unquoted companies), or
 - section 447 (filing obligations of quoted companies).
- (2) This is subject to section 448 (unlimited companies exempt from filing obligations).

442 Period allowed for filing accounts

- (1) This section specifies the period allowed for the directors of a company to comply with their obligation under section 441 to deliver accounts and reports for a financial year to the registrar.

This is referred to in the Companies Acts as the “period for filing” those accounts and reports.
- (2) The period is –
 - (a) for a private company, nine months after the end of the relevant accounting reference period, and
 - (b) for a public company, six months after the end of that period.

This is subject to the following provisions of this section.
- (3) If the relevant accounting reference period is the company’s first and is a period of more than twelve months, the period is –
 - (a) nine months or six months, as the case may be, from the first anniversary of the incorporation of the company, or

- (b) three months after the end of the accounting reference period, whichever last expires.
- (4) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the company under section 392 (alteration of accounting reference date), the period is—
 - (a) that applicable in accordance with the above provisions, or
 - (b) three months from the date of the notice under that section, whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.
- (6) Whether the period allowed is that for a private company or a public company is determined by reference to the company's status immediately before the end of the relevant accounting reference period.
- (7) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

443 Calculation of period allowed

- (1) This section applies for the purposes of calculating the period for filing a company's accounts and reports which is expressed as a specified number of months from a specified date or after the end of a specified previous period.
- (2) Subject to the following provisions, the period ends with the date in the appropriate month corresponding to the specified date or the last day of the specified previous period.
- (3) If the specified date, or the last day of the specified previous period, is the last day of a month, the period ends with the last day of the appropriate month (whether or not that is the corresponding date).
- (4) If—
 - (a) the specified date, or the last day of the specified previous period, is not the last day of a month but is the 29th or 30th, and
 - (b) the appropriate month is February,the period ends with the last day of February.
- (5) “The appropriate month” means the month that is the specified number of months after the month in which the specified date, or the end of the specified previous period, falls.

Filing obligations of different descriptions of company

444 Filing obligations of companies subject to small companies regime

- (1) The directors of a company subject to the small companies regime—
 - (a) must deliver to the registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year, and
 - (b) may also deliver to the registrar—

- (i) a copy of the company's profit and loss account for that year, and
 - (ii) a copy of the directors' report for that year.
- (2) The directors must also deliver to the registrar a copy of the auditor's report on those accounts (and on the directors' report).
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) The copies of accounts and reports delivered to the registrar must be copies of the company's annual accounts and reports, except that where the company prepares Companies Act accounts –
 - (a) the directors may deliver to the registrar a copy of a balance sheet drawn up in accordance with regulations made by the Secretary of State, and
 - (b) there may be omitted from the copy profit and loss account delivered to the registrar such items as may be specified by the regulations.These are referred to in this Part as “abbreviated accounts”.
- (4) If abbreviated accounts are delivered to the registrar the obligation to deliver a copy of the auditor's report on the accounts is to deliver a copy of the special auditor's report required by section 449.
- (5) Where the directors of a company subject to the small companies regime deliver to the registrar IAS accounts, or Companies Act accounts that are not abbreviated accounts, and in accordance with this section –
 - (a) do not deliver to the registrar a copy of the company's profit and loss account, or
 - (b) do not deliver to the registrar a copy of the directors' report,the copy of the balance sheet delivered to the registrar must contain in a prominent position a statement that the company's annual accounts and reports have been delivered in accordance with the provisions applicable to companies subject to the small companies regime.
- (6) The copies of the balance sheet and any directors' report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (7) The copy of the auditor's report delivered to the registrar under this section must –
 - (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
 - (b) if the conditions in section 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.

445 Filing obligations of medium-sized companies

- (1) The directors of a company that qualifies as a medium-sized company in relation to a financial year (see sections 465 to 467) must deliver to the registrar a copy of –
 - (a) the company's annual accounts, and
 - (b) the directors' report.

- (2) They must also deliver to the registrar a copy of the auditor's report on those accounts (and on the directors' report).
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) Where the company prepares Companies Act accounts, the directors may deliver to the registrar a copy of the company's annual accounts for the financial year –
 - (a) that includes a profit and loss account in which items are combined in accordance with regulations made by the Secretary of State, and
 - (b) that does not contain items whose omission is authorised by the regulations.These are referred to in this Part as “abbreviated accounts”.
- (4) If abbreviated accounts are delivered to the registrar the obligation to deliver a copy of the auditor's report on the accounts is to deliver a copy of the special auditor's report required by section 449.
- (5) The copies of the balance sheet and directors' report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (6) The copy of the auditor's report delivered to the registrar under this section must –
 - (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
 - (b) if the conditions in section 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.
- (7) This section does not apply to companies within section 444 (filing obligations of companies subject to the small companies regime).

446 Filing obligations of unquoted companies

- (1) The directors of an unquoted company must deliver to the registrar for each financial year of the company a copy of –
 - (a) the company's annual accounts, and
 - (b) the directors' report.
- (2) The directors must also deliver to the registrar a copy of the auditor's report on those accounts (and the directors' report).
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) The copies of the balance sheet and directors' report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (4) The copy of the auditor's report delivered to the registrar under this section must –
 - (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
 - (b) if the conditions in section 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.

- (5) This section does not apply to companies within –
- (a) section 444 (filing obligations of companies subject to the small companies regime), or
 - (b) section 445 (filing obligations of medium-sized companies).

447 Filing obligations of quoted companies

- (1) The directors of a quoted company must deliver to the registrar for each financial year of the company a copy of –
- (a) the company’s annual accounts,
 - (b) the directors’ remuneration report, and
 - (c) the directors’ report.
- (2) They must also deliver a copy of the auditor’s report on those accounts (and on the directors’ remuneration report and the directors’ report).
- (3) The copies of the balance sheet, the directors’ remuneration report and the directors’ report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (4) The copy of the auditor’s report delivered to the registrar under this section must –
- (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
 - (b) if the conditions in section 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.

448 Unlimited companies exempt from obligation to file accounts

- (1) The directors of an unlimited company are not required to deliver accounts and reports to the registrar in respect of a financial year if the following conditions are met.
- (2) The conditions are that at no time during the relevant accounting reference period –
- (a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited, or
 - (b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it, or
 - (c) has the company been a parent company of an undertaking which was then limited.

The references above to an undertaking being limited at a particular time are to an undertaking (under whatever law established) the liability of whose members is at that time limited.

- (3) The exemption conferred by this section does not apply if –
- (a) the company is a banking or insurance company or the parent company of a banking or insurance group, or
 - (b) the company is a qualifying company within the meaning of the Partnerships and Unlimited Companies (Accounts) Regulations 1993 (S.I. 1993/1820).

- (4) Where a company is exempt by virtue of this section from the obligation to deliver accounts –
- (a) section 434(3) (requirements in connection with publication of statutory accounts: meaning of “statutory accounts”) has effect with the substitution for the words “as required to be delivered to the registrar under section 441” of the words “as prepared in accordance with this Part and approved by the board of directors”; and
 - (b) section 435(1)(b) (requirements in connection with publication of non-statutory accounts: statement whether statutory accounts delivered) has effect with the substitution for the words from “whether statutory accounts” to “have been delivered to the registrar” of the words “that the company is exempt from the requirement to deliver statutory accounts”.
- (5) In this section the “relevant accounting reference period”, in relation to a financial year, means the accounting reference period by reference to which that financial year was determined.

Requirements where abbreviated accounts delivered

449 Special auditor’s report where abbreviated accounts delivered

- (1) This section applies where –
- (a) the directors of a company deliver abbreviated accounts to the registrar, and
 - (b) the company is not exempt from audit (or the directors have not taken advantage of any such exemption).
- (2) The directors must also deliver to the registrar a copy of a special report of the company’s auditor stating that in his opinion –
- (a) the company is entitled to deliver abbreviated accounts in accordance with the section in question, and
 - (b) the abbreviated accounts to be delivered are properly prepared in accordance with regulations under that section.
- (3) The auditor’s report on the company’s annual accounts need not be delivered, but –
- (a) if that report was qualified, the special report must set out that report in full together with any further material necessary to understand the qualification, and
 - (b) if that report contained a statement under –
 - (i) section 498(2)(a) or (b) (accounts, records or returns inadequate or accounts not agreeing with records and returns), or
 - (ii) section 498(3) (failure to obtain necessary information and explanations),the special report must set out that statement in full.
- (4) The provisions of –
sections 503 to 506 (signature of auditor’s report), and
sections 507 to 509 (offences in connection with auditor’s report),
apply to a special report under this section as they apply to an auditor’s report on the company’s annual accounts prepared under Part 16.

- (5) If abbreviated accounts are delivered to the registrar, the references in section 434 or 435 (requirements in connection with publication of accounts) to the auditor's report on the company's annual accounts shall be read as references to the special auditor's report required by this section.

450 Approval and signing of abbreviated accounts

- (1) Abbreviated accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.
- (2) The signature must be on the balance sheet.
- (3) The balance sheet must contain in a prominent position above the signature a statement to the effect that it is prepared in accordance with the special provisions of this Act relating (as the case may be) to companies subject to the small companies regime or to medium-sized companies.
- (4) If abbreviated accounts are approved that do not comply with the requirements of regulations under the relevant section, every director of the company who—
 - (a) knew that they did not comply, or was reckless as to whether they complied, and
 - (b) failed to take reasonable steps to prevent them from being approved, commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Failure to file accounts and reports

451 Default in filing accounts and reports: offences

- (1) If the requirements of section 441 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, every person who immediately before the end of that period was a director of the company commits an offence.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

452 Default in filing accounts and reports: court order

- (1) If—

- (a) the requirements of section 441 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, and
 - (b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance,
- the court may, on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.
- (2) The court's order may provide that all costs (in Scotland, expenses) of and incidental to the application are to be borne by the directors.

453 Civil penalty for failure to file accounts and reports

- (1) Where the requirements of section 441 are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company is liable to a civil penalty.
- This is in addition to any liability of the directors under section 451.
- (2) The amount of the penalty shall be determined in accordance with regulations made by the Secretary of State by reference to—
- (a) the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements are complied with, and
 - (b) whether the company is a private or public company.
- (3) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.
- (4) It is not a defence in proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.
- (5) Regulations under this section having the effect of increasing the penalty payable in any case are subject to affirmative resolution procedure. Otherwise, the regulations are subject to negative resolution procedure.

CHAPTER 11

REVISION OF DEFECTIVE ACCOUNTS AND REPORTS

Voluntary revision

454 Voluntary revision of accounts etc

- (1) If it appears to the directors of a company that—
- (a) the company's annual accounts,
 - (b) the directors' remuneration report or the directors' report, or
 - (c) a summary financial statement of the company,
- did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), they may prepare revised accounts or a revised report or statement.

- (2) Where copies of the previous accounts or report have been sent out to members, delivered to the registrar or (in the case of a public company) laid before the company in general meeting, the revisions must be confined to –
 - (a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and
 - (b) the making of any necessary consequential alterations.
- (3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to –
 - (a) revised annual accounts,
 - (b) a revised directors' remuneration report or directors' report, or
 - (c) a revised summary financial statement.
- (4) The regulations may, in particular –
 - (a) make different provision according to whether the previous accounts, report or statement are replaced or are supplemented by a document indicating the corrections to be made;
 - (b) make provision with respect to the functions of the company's auditor in relation to the revised accounts, report or statement;
 - (c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been –
 - (i) sent out to members and others under section 423,
 - (ii) laid before the company in general meeting, or
 - (iii) delivered to the registrar,or where a summary financial statement containing information derived from the previous accounts or report has been sent to members under section 426;
 - (d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.
- (5) Regulations under this section are subject to negative resolution procedure.

Secretary of State's notice

455 Secretary of State's notice in respect of accounts or reports

- (1) This section applies where –
 - (a) copies of a company's annual accounts or directors' report have been sent out under section 423, or
 - (b) a copy of a company's annual accounts or directors' report has been delivered to the registrar or (in the case of a public company) laid before the company in general meeting,and it appears to the Secretary of State that there is, or may be, a question whether the accounts or report comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).
- (2) The Secretary of State may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise.

- (3) The notice must specify a period of not less than one month for the directors to give an explanation of the accounts or report or prepare revised accounts or a revised report.
- (4) If at the end of the specified period, or such longer period as the Secretary of State may allow, it appears to the Secretary of State that the directors have not—
 - (a) given a satisfactory explanation of the accounts or report, or
 - (b) revised the accounts or report so as to comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation),the Secretary of State may apply to the court.
- (5) The provisions of this section apply equally to revised annual accounts and revised directors' reports, in which case they have effect as if the references to revised accounts or reports were references to further revised accounts or reports.

Application to court

456 Application to court in respect of defective accounts or reports

- (1) An application may be made to the court—
 - (a) by the Secretary of State, after having complied with section 455, or
 - (b) by a person authorised by the Secretary of State for the purposes of this section,for a declaration (in Scotland, a declarator) that the annual accounts of a company do not comply, or a directors' report does not comply, with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report.
- (2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.
- (3) If the court orders the preparation of revised accounts, it may give directions as to—
 - (a) the auditing of the accounts,
 - (b) the revision of any directors' remuneration report, directors' report or summary financial statement, and
 - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts,and such other matters as the court thinks fit.
- (4) If the court orders the preparation of a revised directors' report it may give directions as to—
 - (a) the review of the report by the auditors,
 - (b) the revision of any summary financial statement,
 - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report, and
 - (d) such other matters as the court thinks fit.

- (5) If the court finds that the accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) it may order that all or part of—
- (a) the costs (in Scotland, expenses) of and incidental to the application, and
 - (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts or a revised report,
- are to be borne by such of the directors as were party to the approval of the defective accounts or report.
- For this purpose every director of the company at the time of the approval of the accounts or report shall be taken to have been a party to the approval unless he shows that he took all reasonable steps to prevent that approval.
- (6) Where the court makes an order under subsection (5) it shall have regard to whether the directors party to the approval of the defective accounts or report knew or ought to have known that the accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and it may exclude one or more directors from the order or order the payment of different amounts by different directors.
- (7) On the conclusion of proceedings on an application under this section, the applicant must send to the registrar for registration a copy of the court order or, as the case may be, give notice to the registrar that the application has failed or been withdrawn.
- (8) The provisions of this section apply equally to revised annual accounts and revised directors' reports, in which case they have effect as if the references to revised accounts or reports were references to further revised accounts or reports.

457 Other persons authorised to apply to the court

- (1) The Secretary of State may by order (an “authorisation order”) authorise for the purposes of section 456 any person appearing to him—
- (a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) relating to accounts and directors' reports,
 - (b) to have satisfactory procedures for receiving and investigating complaints about companies' annual accounts and directors' reports, and
 - (c) otherwise to be a fit and proper person to be authorised.
- (2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.
- (3) The Secretary of State may refuse to authorise a person if he considers that his authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.
- (4) If the authorised person is an unincorporated association, proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person may be brought by or against the association in the name of a body corporate whose constitution provides for the establishment of the association.

- (5) An authorisation order may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Secretary of State to be appropriate.
No such order is to be made unless it appears to the Secretary of State that the person would, if authorised, exercise his functions as an authorised person in accordance with the provisions proposed.
- (6) Where authorisation is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.
- (7) An order under this section is subject to negative resolution procedure.

458 Disclosure of information by tax authorities

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose information to a person authorised under section 457 for the purpose of facilitating—
 - (a) the taking of steps by that person to discover whether there are grounds for an application to the court under section 456 (application in respect of defective accounts etc), or
 - (b) a decision by the authorised person whether to make such an application.
- (2) This section applies despite any statutory or other restriction on the disclosure of information.
Provided that, in the case of personal data within the meaning of the Data Protection Act 1998 (c. 29), information is not to be disclosed in contravention of that Act.
- (3) Information disclosed to an authorised person under this section—
 - (a) may not be used except in or in connection with—
 - (i) taking steps to discover whether there are grounds for an application to the court under section 456, or
 - (ii) deciding whether or not to make such an application, or in, or in connection with, proceedings on such an application; and
 - (b) must not be further disclosed except—
 - (i) to the person to whom the information relates, or
 - (ii) in, or in connection with, proceedings on any such application to the court.
- (4) A person who contravenes subsection (3) commits an offence unless—
 - (a) he did not know, and had no reason to suspect, that the information had been disclosed under this section, or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under subsection (4) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

Power of authorised person to require documents etc

459 Power of authorised person to require documents, information and explanations

- (1) This section applies where it appears to a person who is authorised under section 457 that there is, or may be, a question whether a company's annual accounts or directors' report comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).
- (2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—
 - (a) discovering whether there are grounds for an application to the court under section 456, or
 - (b) deciding whether to make such an application.
- (3) Those persons are—
 - (a) the company;
 - (b) any officer, employee, or auditor of the company;
 - (c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.
- (4) If a person fails to comply with such a requirement, the authorised person may apply to the court.
- (5) If it appears to the court that the person has failed to comply with a requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.
- (6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.
- (7) Nothing in this section compels any person to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (8) In this section “document” includes information recorded in any form.

460 Restrictions on disclosure of information obtained under compulsory powers

- (1) This section applies to information (in whatever form) obtained in pursuance of a requirement or order under section 459 (power of authorised person to require documents etc) that relates to the private affairs of an individual or to any particular business.
- (2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

- (3) This does not apply –
 - (a) to disclosure permitted by section 461 (permitted disclosure of information obtained under compulsory powers), or
 - (b) to the disclosure of information that is or has been available to the public from another source.
- (4) A person who discloses information in contravention of this section commits an offence, unless –
 - (a) he did not know, and had no reason to suspect, that the information had been disclosed under section 459, or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

461 Permitted disclosure of information obtained under compulsory powers

- (1) The prohibition in section 460 of the disclosure of information obtained in pursuance of a requirement or order under section 459 (power of authorised person to require documents etc) that relates to the private affairs of an individual or to any particular business has effect subject to the following exceptions.
- (2) It does not apply to the disclosure of information for the purpose of facilitating the carrying out by the authorised person of his functions under section 456.
- (3) It does not apply to disclosure to –
 - (a) the Secretary of State,
 - (b) the Department of Enterprise, Trade and Investment for Northern Ireland,
 - (c) the Treasury,
 - (d) the Bank of England,
 - (e) the Financial Services Authority, or
 - (f) the Commissioners for Her Majesty’s Revenue and Customs.
- (4) It does not apply to disclosure –
 - (a) for the purpose of assisting a body designated by an order under section 46 of the Companies Act 1989 (c. 40) (delegation of functions of the Secretary of State) to exercise its functions under Part 2 of that Act;
 - (b) with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties;
 - (c) for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any of their functions under any of the following –
 - (i) the Companies Acts,

- (ii) Part 5 of the Criminal Justice Act 1993 (c. 36) (insider dealing),
 - (iii) the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
 - (iv) the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
 - (v) the Financial Services and Markets Act 2000 (c. 8);
- (d) for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies, directors' disqualification or insolvency;
- (e) for the purpose of enabling or assisting the Bank of England to exercise its functions;
- (f) for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions;
- (g) for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following –
- (i) the legislation relating to friendly societies or to industrial and provident societies,
 - (ii) the Building Societies Act 1986 (c. 53),
 - (iii) Part 7 of the Companies Act 1989 (c. 40),
 - (iv) the Financial Services and Markets Act 2000; or
- (h) in pursuance of any Community obligation.
- (5) It does not apply to disclosure to a body exercising functions of a public nature under legislation in any country or territory outside the United Kingdom that appear to the authorised person to be similar to his functions under section 456 for the purpose of enabling or assisting that body to exercise those functions.
- (6) In determining whether to disclose information to a body in accordance with subsection (5), the authorised person must have regard to the following considerations –
- (a) whether the use which the body is likely to make of the information is sufficiently important to justify making the disclosure;
 - (b) whether the body has adequate arrangements to prevent the information from being used or further disclosed other than –
 - (i) for the purposes of carrying out the functions mentioned in that subsection, or
 - (ii) for other purposes substantially similar to those for which information disclosed to the authorised person could be used or further disclosed.
- (7) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).

462 Power to amend categories of permitted disclosure

- (1) The Secretary of State may by order amend section 461(3), (4) and (5).
- (2) An order under this section must not –
 - (a) amend subsection (3) of that section (UK public authorities) by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);

- (b) amend subsection (4) of that section (purposes for which disclosure permitted) by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
 - (c) amend subsection (5) of that section (overseas regulatory authorities) so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (3) An order under this section is subject to negative resolution procedure.

CHAPTER 12

SUPPLEMENTARY PROVISIONS

Liability for false or misleading statements in reports

463 Liability for false or misleading statements in reports

- (1) The reports to which this section applies are –
 - (a) the directors' report,
 - (b) the directors' remuneration report, and
 - (c) a summary financial statement so far as it is derived from either of those reports.
- (2) A director of a company is liable to compensate the company for any loss suffered by it as a result of –
 - (a) any untrue or misleading statement in a report to which this section applies, or
 - (b) the omission from a report to which this section applies of anything required to be included in it.
- (3) He is so liable only if –
 - (a) he knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
 - (b) he knew the omission to be dishonest concealment of a material fact.
- (4) No person shall be subject to any liability to a person other than the company resulting from reliance, by that person or another, on information in a report to which this section applies.
- (5) The reference in subsection (4) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.
- (6) This section does not affect –
 - (a) liability for a civil penalty, or
 - (b) liability for a criminal offence.

Accounting and reporting standards

464 Accounting standards

- (1) In this Part “accounting standards” means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.
- (2) References in this Part to accounting standards applicable to a company’s annual accounts are to such standards as are, in accordance with their terms, relevant to the company’s circumstances and to the accounts.
- (3) Regulations under this section may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.

Companies qualifying as medium-sized

465 Companies qualifying as medium-sized: general

- (1) A company qualifies as medium-sized in relation to its first financial year if the qualifying conditions are met in that year.
- (2) A company qualifies as medium-sized in relation to a subsequent financial year –
 - (a) if the qualifying conditions are met in that year and the preceding financial year;
 - (b) if the qualifying conditions are met in that year and the company qualified as medium-sized in relation to the preceding financial year;
 - (c) if the qualifying conditions were met in the preceding financial year and the company qualified as medium-sized in relation to that year.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements –

1. Turnover	Not more than £22.8 million
2. Balance sheet total	Not more than £11.4 million
3. Number of employees	Not more than 250

- (4) For a period that is a company’s financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted.
- (5) The balance sheet total means the aggregate of the amounts shown as assets in the company’s balance sheet.
- (6) The number of employees means the average number of persons employed by the company in the year, determined as follows –
 - (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
 - (b) add together the monthly totals, and
 - (c) divide by the number of months in the financial year.

- (7) This section is subject to section 466 (companies qualifying as medium-sized: parent companies).

466 Companies qualifying as medium-sized: parent companies

- (1) A parent company qualifies as a medium-sized company in relation to a financial year only if the group headed by it qualifies as a medium-sized group.
- (2) A group qualifies as medium-sized in relation to the parent company's first financial year if the qualifying conditions are met in that year.
- (3) A group qualifies as medium-sized in relation to a subsequent financial year of the parent company –
- (a) if the qualifying conditions are met in that year and the preceding financial year;
 - (b) if the qualifying conditions are met in that year and the group qualified as medium-sized in relation to the preceding financial year;
 - (c) if the qualifying conditions were met in the preceding financial year and the group qualified as medium-sized in relation to that year.
- (4) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements –

1. Aggregate turnover	Not more than £22.8 million net (or £27.36 million gross)
2. Aggregate balance sheet total	Not more than £11.4 million net (or £13.68 million gross)
3. Aggregate number of employees	Not more than 250

- (5) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 465 for each member of the group.
- (6) In relation to the aggregate figures for turnover and balance sheet total –
- “net” means after any set-offs and other adjustments made to eliminate group transactions –
- (a) in the case of Companies Act accounts, in accordance with regulations under section 404,
 - (b) in the case of IAS accounts, in accordance with international accounting standards; and

“gross” means without those set-offs and other adjustments.

A company may satisfy any relevant requirement on the basis of either the net or the gross figure.

- (7) The figures for each subsidiary undertaking shall be those included in its individual accounts for the relevant financial year, that is –
- (a) if its financial year ends with that of the parent company, that financial year, and
 - (b) if not, its financial year ending last before the end of the financial year of the parent company.

If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

467 Companies excluded from being treated as medium-sized

- (1) A company is not entitled to take advantage of any of the provisions of this Part relating to companies qualifying as medium-sized if it was at any time within the financial year in question –
 - (a) a public company,
 - (b) a company that –
 - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, or
 - (ii) carries on insurance market activity, or
 - (c) a member of an ineligible group.
- (2) A group is ineligible if any of its members is –
 - (a) a public company,
 - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market,
 - (c) a person (other than a small company) who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity,
 - (d) a small company that is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
 - (e) a person who carries on insurance market activity.
- (3) A company is a small company for the purposes of subsection (2) if it qualified as small in relation to its last financial year ending on or before the end of the financial year in question.

General power to make further provision about accounts and reports

468 General power to make further provision about accounts and reports

- (1) The Secretary of State may make provision by regulations about –
 - (a) the accounts and reports that companies are required to prepare;
 - (b) the categories of companies required to prepare accounts and reports of any description;
 - (c) the form and content of the accounts and reports that companies are required to prepare;
 - (d) the obligations of companies and others as regards –
 - (i) the approval of accounts and reports,
 - (ii) the sending of accounts and reports to members and others,
 - (iii) the laying of accounts and reports before the company in general meeting,
 - (iv) the delivery of copies of accounts and reports to the registrar, and
 - (v) the publication of accounts and reports.
- (2) The regulations may amend this Part by adding, altering or repealing provisions.
- (3) But they must not amend (other than consequentially) –
 - (a) section 393 (accounts to give true and fair view), or

- (b) the provisions of Chapter 11 (revision of defective accounts and reports).
- (4) The regulations may create criminal offences in cases corresponding to those in which an offence is created by an existing provision of this Part.
The maximum penalty for any such offence may not be greater than is provided in relation to an offence under the existing provision.
- (5) The regulations may provide for civil penalties in circumstances corresponding to those within section 453(1) (civil penalty for failure to file accounts and reports).
The provisions of section 453(2) to (5) apply in relation to any such penalty.

Other supplementary provisions

469 Preparation and filing of accounts in euros

- (1) The amounts set out in the annual accounts of a company may also be shown in the same accounts translated into euros.
- (2) When complying with section 441 (duty to file accounts and reports), the directors of a company may deliver to the registrar an additional copy of the company's annual accounts in which the amounts have been translated into euros.
- (3) In both cases –
 - (a) the amounts must have been translated at the exchange rate prevailing on the date to which the balance sheet is made up, and
 - (b) that rate must be disclosed in the notes to the accounts.
- (4) For the purposes of sections 434 and 435 (requirements in connection with published accounts) any additional copy of the company's annual accounts delivered to the registrar under subsection (2) above shall be treated as statutory accounts of the company.
In the case of such a copy, references in those sections to the auditor's report on the company's annual accounts shall be read as references to the auditor's report on the annual accounts of which it is a copy.

470 Power to apply provisions to banking partnerships

- (1) The Secretary of State may by regulations apply to banking partnerships, subject to such exceptions, adaptations and modifications as he considers appropriate, the provisions of this Part (and of regulations made under this Part) applying to banking companies.
- (2) A "banking partnership" means a partnership which has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8).
But a partnership is not a banking partnership if it has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.
- (3) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 have the same meaning here as they do in those provisions.

See section 22 of that Act, orders made under that section and Schedule 2 to that Act.

- (4) Regulations under this section are subject to affirmative resolution procedure.

471 Meaning of “annual accounts” and related expressions

- (1) In this Part a company’s “annual accounts”, in relation to a financial year, means –
- (a) the company’s individual accounts for that year (see section 394), and
 - (b) any group accounts prepared by the company for that year (see sections 398 and 399).

This is subject to section 408 (option to omit individual profit and loss account from annual accounts where information given in group accounts).

- (2) In the case of an unquoted company, its “annual accounts and reports” for a financial year are –
- (a) its annual accounts,
 - (b) the directors’ report, and
 - (c) the auditor’s report on those accounts and the directors’ report (unless the company is exempt from audit).
- (3) In the case of a quoted company, its “annual accounts and reports” for a financial year are –
- (a) its annual accounts,
 - (b) the directors’ remuneration report,
 - (c) the directors’ report, and
 - (d) the auditor’s report on those accounts, on the auditable part of the directors’ remuneration report and on the directors’ report.

472 Notes to the accounts

- (1) Information required by this Part to be given in notes to a company’s annual accounts may be contained in the accounts or in a separate document annexed to the accounts.
- (2) References in this Part to a company’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision of this Act or international accounting standards, and required or allowed by any such provision to be given in a note to company accounts.

473 Parliamentary procedure for certain regulations under this Part

- (1) This section applies to regulations under the following provisions of this Part –
- section 396 (Companies Act individual accounts),
 - section 404 (Companies Act group accounts),
 - section 409 (information about related undertakings),
 - section 412 (information about directors’ benefits: remuneration, pensions and compensation for loss of office),
 - section 416 (contents of directors’ report: general),
 - section 421 (contents of directors’ remuneration report),

section 444 (filing obligations of companies subject to small companies regime),
 section 445 (filing obligations of medium-sized companies),
 section 468 (general power to make further provision about accounts and reports).

- (2) Any such regulations may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (3) Regulations that –
 - (a) restrict the classes of company which have the benefit of any exemption, exception or special provision,
 - (b) require additional matter to be included in a document of any class, or
 - (c) otherwise render the requirements of this Part more onerous,
 are subject to affirmative resolution procedure.
- (4) Otherwise, the regulations are subject to negative resolution procedure.

474 Minor definitions

- (1) In this Part –
 - “e-money issuer” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on the activity of issuing electronic money within the meaning of article 9B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
 - “group” means a parent undertaking and its subsidiary undertakings;
 - “IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;
 - “included in the consolidation”, in relation to group accounts, or “included in consolidated group accounts”, means that the undertaking is included in the accounts by the method of full (and not proportional) consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly;
 - “international accounting standards” means the international accounting standards, within the meaning of the IAS Regulation, adopted from time to time by the European Commission in accordance with that Regulation;
 - “ISD investment firm” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000;
 - “profit and loss account”, in relation to a company that prepares IAS accounts, includes an income statement or other equivalent financial statement required to be prepared by international accounting standards;
 - “regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000, except that it does not include activities of the kind specified in any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) –
 - (a) article 25A (arranging regulated mortgage contracts),
 - (b) article 25B (arranging regulated home reversion plans),

- (c) article 25C (arranging regulated home purchase plans),
- (d) article 39A (assisting administration and performance of a contract of insurance),
- (e) article 53A (advising on regulated mortgage contracts),
- (f) article 53B (advising on regulated home reversion plans),
- (g) article 53C (advising on regulated home purchase plans),
- (h) article 21 (dealing as agent), article 25 (arranging deals in investments) or article 53 (advising on investments) where the activity concerns relevant investments that are not contractually based investments (within the meaning of article 3 of that Order), or
- (i) article 64 (agreeing to carry on a regulated activity of the kind mentioned in paragraphs (a) to (h));

“turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of –

- (a) trade discounts,
- (b) value added tax, and
- (c) any other taxes based on the amounts so derived;

“UCITS management company” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000 (c. 8).

- (2) In the case of an undertaking not trading for profit, any reference in this Part to a profit and loss account is to an income and expenditure account. References to profit and loss and, in relation to group accounts, to a consolidated profit and loss account shall be construed accordingly.

PART 16

AUDIT

CHAPTER 1

REQUIREMENT FOR AUDITED ACCOUNTS

Requirement for audited accounts

475 Requirement for audited accounts

- (1) A company’s annual accounts for a financial year must be audited in accordance with this Part unless the company –
- (a) is exempt from audit under –
 - section 477 (small companies), or
 - section 480 (dormant companies);
 - or
 - (b) is exempt from the requirements of this Part under section 482 (non-profit-making companies subject to public sector audit).
- (2) A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.

- (3) A company is not entitled to exemption under any of the provisions mentioned in subsection (1)(a) unless its balance sheet contains a statement by the directors to the effect that –
 - (a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476, and
 - (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts.
- (4) The statement required by subsection (2) or (3) must appear on the balance sheet above the signature required by section 414.

476 Right of members to require audit

- (1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 475(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year.
- (2) The notice must be given by –
 - (a) members representing not less in total than 10% in nominal value of the company's issued share capital, or any class of it, or
 - (b) if the company does not have a share capital, not less than 10% in number of the members of the company.
- (3) The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year.

Exemption from audit: small companies

477 Small companies: conditions for exemption from audit

- (1) A company that meets the following conditions in respect of a financial year is exempt from the requirements of this Act relating to the audit of accounts for that year.
- (2) The conditions are –
 - (a) that the company qualifies as a small company in relation to that year,
 - (b) that its turnover in that year is not more than £5.6 million, and
 - (c) that its balance sheet total for that year is not more than £2.8 million.
- (3) For a period which is a company's financial year but not in fact a year the maximum figure for turnover shall be proportionately adjusted.
- (4) For the purposes of this section –
 - (a) whether a company qualifies as a small company shall be determined in accordance with section 382(1) to (6), and
 - (b) "balance sheet total" has the same meaning as in that section.
- (5) This section has effect subject to –
 - section 475(2) and (3) (requirements as to statements to be contained in balance sheet),
 - section 476 (right of members to require audit),
 - section 478 (companies excluded from small companies exemption), and

section 479 (availability of small companies exemption in case of group company).

478 Companies excluded from small companies exemption

A company is not entitled to the exemption conferred by section 477 (small companies) if it was at any time within the financial year in question –

- (a) a public company,
- (b) a company that –
 - (i) is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
 - (ii) carries on insurance market activity, or
- (c) a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or an employers' association as defined in section 122 of that Act or Article 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)).

479 Availability of small companies exemption in case of group company

- (1) A company is not entitled to the exemption conferred by section 477 (small companies) in respect of a financial year during any part of which it was a group company unless –
 - (a) the conditions specified in subsection (2) below are met, or
 - (b) subsection (3) applies.
- (2) The conditions are –
 - (a) that the group –
 - (i) qualifies as a small group in relation to that financial year, and
 - (ii) was not at any time in that year an ineligible group;
 - (b) that the group's aggregate turnover in that year is not more than £5.6 million net (or £6.72 million gross);
 - (c) that the group's aggregate balance sheet total for that year is not more than £2.8 million net (or £3.36 million gross).
- (3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant.
- (4) In this section –
 - (a) “group company” means a company that is a parent company or a subsidiary undertaking, and
 - (b) “the group”, in relation to a group company, means that company together with all its associated undertakings.

For this purpose undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.

- (5) For the purposes of this section –
 - (a) whether a group qualifies as small shall be determined in accordance with section 383 (companies qualifying as small: parent companies);
 - (b) “ineligible group” has the meaning given by section 384(2) and (3);

- (c) a group’s aggregate turnover and aggregate balance sheet total shall be determined as for the purposes of section 383;
 - (d) “net” and “gross” have the same meaning as in that section;
 - (e) a company may meet any relevant requirement on the basis of either the gross or the net figure.
- (6) The provisions mentioned in subsection (5) apply for the purposes of this section as if all the bodies corporate in the group were companies.

Exemption from audit: dormant companies

480 Dormant companies: conditions for exemption from audit

- (1) A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if –
- (a) it has been dormant since its formation, or
 - (b) it has been dormant since the end of the previous financial year and the following conditions are met.
- (2) The conditions are that the company –
- (a) as regards its individual accounts for the financial year in question –
 - (i) is entitled to prepare accounts in accordance with the small companies regime (see sections 381 to 384), or
 - (ii) would be so entitled but for having been a public company or a member of an ineligible group, and
 - (b) is not required to prepare group accounts for that year.
- (3) This section has effect subject to –
- section 475(2) and (3) (requirements as to statements to be contained in balance sheet),
 - section 476 (right of members to require audit), and
 - section 481 (companies excluded from dormant companies exemption).

481 Companies excluded from dormant companies exemption

A company is not entitled to the exemption conferred by section 480 (dormant companies) if it was at any time within the financial year in question a company that –

- (a) is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
- (b) carries on insurance market activity.

Companies subject to public sector audit

482 Non-profit-making companies subject to public sector audit

- (1) The requirements of this Part as to audit of accounts do not apply to a company for a financial year if it is non-profit-making and its accounts –
- (a) are subject to audit –
 - (i) by the Comptroller and Auditor General by virtue of an order under section 25(6) of the Government Resources and Accounts Act 2000 (c. 20), or

- (ii) by the Auditor General for Wales by virtue of section 96, or an order under section 144, of the Government of Wales Act 1998 (c. 38);
 - (b) are accounts –
 - (i) in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies, or
 - (ii) that are subject to audit by the Auditor General for Scotland by virtue of an order under section 483 (Scottish public sector companies: audit by Auditor General for Scotland); or
 - (c) are subject to audit by the Comptroller and Auditor General for Northern Ireland by virtue of an order under Article 5(3) of the Audit and Accountability (Northern Ireland) Order 2003 (S.I. 2003/418 (N.I. 5)).
- (2) In the case of a company that is a parent company or a subsidiary undertaking, subsection (1) applies only if every group undertaking is non-profit-making.
 - (3) In this section “non-profit-making” has the same meaning as in Article 48 of the Treaty establishing the European Community.
 - (4) This section has effect subject to section 475(2) (balance sheet to contain statement that company entitled to exemption under this section).

483 Scottish public sector companies: audit by Auditor General for Scotland

- (1) The Scottish Ministers may by order provide for the accounts of a company having its registered office in Scotland to be audited by the Auditor General for Scotland.
- (2) An order under subsection (1) may be made in relation to a company only if it appears to the Scottish Ministers that the company –
 - (a) exercises in or as regards Scotland functions of a public nature none of which relate to reserved matters (within the meaning of the Scotland Act 1998 (c. 46)), or
 - (b) is entirely or substantially funded from a body having accounts falling within paragraph (a) or (b) of subsection (3).
- (3) Those accounts are –
 - (a) accounts in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies,
 - (b) accounts which are subject to audit by the Auditor General for Scotland by virtue of an order under this section.
- (4) An order under subsection (1) may make such supplementary or consequential provision (including provision amending an enactment) as the Scottish Ministers think expedient.
- (5) An order under subsection (1) shall not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, the Scottish Parliament.