

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Chapter 9: Supplementary Provisions

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

457. This section confers a power on the directors to make provision for the benefit of employees (including former employees) of the company or its subsidiaries on the cessation or transfer of the whole or part of the undertaking of the company or the subsidiary (*subsection (1)*).
458. The directors may exercise this power, even if it will not promote the success of the company. The directors' general duty under section 172 to act in the way they consider would be most likely to promote the success of the company for the benefit of its members as a whole, does not apply when the directors exercise this power to make provision for employees (*subsection (2)*).
459. There are a number of conditions to the exercise of this power. It must be authorised by a resolution of the members or, if the articles of the company allow it, by the board of directors. The company's articles may also impose further conditions on its use (*subsection (6)*).
460. Any payments made by the directors using the power conferred by this section must be made before the commencement of the winding up of the company and can only be made out of profits available for dividend. Section 187 of the Insolvency Act 1986 confers power to make provision for employees once the company has commenced winding up.
461. This section replaces section 719 of the 1985 Act. In a change from that section, the directors can no longer use the power conferred by this section to make payments to themselves or to former directors or to shadow directors, unless the payments are authorised by the members. The CLR recommended that directors should be prevented from abusing the power by making excessive payments to themselves.

Section 248: Minutes of directors' meetings

462. This section, together with section 249, replaces the provisions of section 382 of the 1985 Act relating to records of meetings of directors. The requirements of section 382 of the 1985 Act relating to records of meetings of managers have not been retained. This section requires a company to record minutes of all meetings of its directors.
463. *Subsection (2)* is new. The minutes must be kept for at least ten years.
464. Failure to make and keep minutes as required by this section is a criminal offence, applying to every officer of the company who is in default. In a change from section 382 of the 1985 Act, liability for the offence will no longer fall on the company.

465. **Part 37** of the Act makes provision as to the form in which company records (including minutes) may be kept and imposes a duty to take precautions against falsification.

Section 249: Minutes as evidence

466. This section makes provision in respect of the evidential value of the minutes of directors' meetings.

Section 250: "Director"

467. This section restates the definition of "director" in section 741(1) of the 1985 Act.

Section 251: "Shadow director"

468. This section restates the definition of "shadow director" in section 741(2) of the 1985 Act.

Section 252: Persons connected with a director

469. This section sets out the definition of "connected person" which is used in many of the sections in this Part in relation to the regulation of directors. The persons who are "connected" for this purpose with a director include:

- certain family members (see section 253);
- certain companies with which the director is connected (see section 254);
- trustees of a trust under which the director or a relative mentioned in section 253 or a company with which the director is connected is a beneficiary (but not if the trust exists for the purposes of an employees' share scheme as defined in section 1166 or a pension scheme);
- certain partners; and
- certain firms with legal personality (such as a Scottish firm in which the director is a partner).

470. This section, together with sections 253 to 255, replaces section 346 of the 1985 Act.

Section 253: Members of a director's family

471. This section sets out those members of a director's family who fall within the definition of persons connected with the director. The list includes all those family members currently falling within the definition of connected person in section 346 of the 1985 Act, and in addition it covers:

- the director's parents;
- children or step-children of the director who are over 18 years old (those under 18 were already included under section 346 of the 1985 Act);
- persons with whom the director lives as partner in an enduring family relationship; and
- children or step-children of the director's unmarried partner if they live with the director and are under 18 years of age.

472. This implements the Law Commissions' recommendation that the definition of connected person be extended so as to include cohabitants, infant children of the cohabitant if they live with the director, adult children of the director and the director's parents. The recommendation that the definition be extended to siblings has not been implemented.

Section 254: Director “connected with” a body corporate

473. This section determines whether a company or other body corporate is a person connected with a director. Broadly speaking, the director, together with any other person connected with him, must be interested in 20% of the equity share capital, or control (directly or indirectly through another body corporate controlled by them) more than 20% of the voting power exercisable at any general meeting.
474. [Schedule 1](#) contains the rules for determining whether a person is “interested in shares” for this purpose.

Section 255: Director “controlling” a body corporate

475. This section defines the circumstances in which a director is deemed to control a body corporate for the purposes of section 254. These circumstances involve two cumulative hurdles. First, the director or any other person connected with him must be interested in the equity share capital or be entitled to control some part of the voting power exercisable at any general meeting. Secondly, the director, fellow directors and other persons connected with him must be interested in more than 50% of the equity share capital or be entitled to control more than 50% of the voting power exercisable at any general meeting.
476. [Schedule 1](#) contains the rules for determining whether a person is “interested in shares” for this purpose.

Section 256: Associated bodies corporate

477. This section is a new provision. It explains what is meant by references in this Part to associated bodies corporate and associated companies. A holding company is associated with all its subsidiaries, and a subsidiary is associated with its holding company and all the other subsidiaries of its holding company.

Section 257: References to company’s constitution

478. This section is new. It makes provision as to the meaning of references to a company’s constitution in this Part.
479. The section is relevant to a number of provisions in this Part, including the duty to act within powers (section 171) and the duty to exercise independent judgment (section 173).

Section 258: Power to increase financial limits

480. This section confers power on the Secretary of State by order to increase financial limits in this Part of the Act. All the financial limits appear in Chapter 4 (provisions regulating transactions with directors requiring approval of members). This section restates section 345 of the 1985 Act.

Section 259: Transactions under foreign law

481. This section makes clear that the rules under this Part of the Act apply whether or not the proper law governing a transaction or arrangement is the law of the UK or a part of the UK.
482. This provision is necessary to prevent parties seeking to avoid the application of the rules relating to approval of long-term service contracts, substantial property transactions and loans and similar transactions by choosing a foreign law. This section restates section 347 of the 1985 Act.