



# Companies Act 1985

## 1985 CHAPTER 6

### PART I

#### FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

### CHAPTER I

#### COMPANY FORMATION

##### *Memorandum of association*

#### **1 Mode of forming incorporated company.**

- (1) Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.
- (2) A company so formed may be either—
  - (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (“a company limited by shares”);
  - (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (“a company limited by guarantee”); or
  - (c) a company not having any limit on the liability of its members (“an unlimited company”).
- (3) A “public company” is a company limited by shares or limited by guarantee and having a share capital, being a company—
  - (a) the memorandum of which states that it is to be a public company, and

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- (b) in relation to which the provisions of this Act or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 22nd December 1980;  
 and a “private company” is a company that is not a public company.

[<sup>F1</sup>(3A) Notwithstanding subsection (1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company being a private company limited by shares or by guarantee.]

- (4) With effect from 22nd December 1980, a company cannot be formed as, or become, a company limited by guarantee with a share capital.

#### Textual Amendments

**F1** S. 1(3A) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, Sch. para.1.

## 2 Requirements with respect to memorandum.

- (1) The memorandum of every company must state—
- (a) the name of the company;
  - (b) whether the registered office of the company is to be situated in England and Wales, or in Scotland;
  - (c) the objects of the company.
- (2) Alternatively to subsection (1)(b), the memorandum may contain a statement that the company’s registered office is to be situated in Wales; and a company whose registered office is situated in Wales may by special resolution alter its memorandum so as to provide that its registered office is to be so situated.
- (3) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.
- (4) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company if it should be wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (5) In the case of a company having a share capital—
- (a) the memorandum must also (unless it is an unlimited company) state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount;
  - (b) no subscriber of the memorandum may take less than one share; and
  - (c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.
- (6) [<sup>F2</sup>Subject to subsection (6A), the memorandum] must be signed by each subscriber in the presence of at least one witness, who must attest the signature; [<sup>F3</sup>and that attestation is sufficient in Scotland as well as in England and Wales].

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[<sup>F4</sup>(6A) Where the memorandum is delivered to the registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the registrar, the requirements in subsection (6) for signature in the presence of at least one witness and for attestation of the signature do not apply.]

(7) A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent, for which express provision is made by this Act.

#### Textual Amendments

- F2** Words in s. 2(6) substituted (22.12.2000) by S.I. 2000/3373, **art. 2(1)(2)**
- F3** Words in s. 2(6) repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))
- F4** S. 2(6A) inserted (22.12.2000) by S.I. 2000/3373, **art. 2(1)(3)**

#### Modifications etc. (not altering text)

- C1** S. 2(5)(b)(c)(6)(6A) excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 1(2)** (with Sch. 4 para.11)
- C2** S. 2(7) excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 74(7)(a), 181(1); S.I. 2002/1912, **art. 2(c)**; S.I. 2002/3012, **art. 2(c)**; S.I. 2003/1986, **art. 2**; S.I. 2004/669, **art. 2**
- S. 2(7) excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 4(1)(a)** (with s. 63); S.I. 2004/1832, **art. 2**

### 3 Forms of memorandum.

(1) Subject to the provisions of sections 1 and 2, the form of the memorandum of association of—

- (a) a public company, being a company limited by shares,
- (b) a public company, being a company limited by guarantee and having a share capital,
- (c) a private company limited by shares,
- (d) a private company limited by guarantee and not having a share capital,
- (e) a private company limited by guarantee and having a share capital, and
- (f) an unlimited company having a share capital,

shall be as specified respectively for such companies by regulations made by the Secretary of State, or as near to that form as circumstances admit.

(2) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Modifications etc. (not altering text)

- C3** S. 3 excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 74(7)(a), 181(1); S.I. 2002/1912, **art. 2(c)**; S.I. 2002/3012, **art. 2(c)**; S.I. 2003/1986, **art. 2**; S.I. 2004/669, **art. 2**
- S. 3 excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 4(1)(a)** (with s. 63); S.I. 2004/1832, **art. 2**

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**[<sup>F5</sup>3A Statement of company’s objects: general commercial company.**

Where the company’s memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.]

**Textual Amendments**

**F5** S. 3A inserted (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 110, 213(2)

**[4 <sup>F6</sup>Resolution to alter objects.**

- (1) A company may by special resolution alter its memorandum with respect to the statement of the company’s objects.
- (2) If an application is made under the following section, an alteration does not have effect except in so far as it is confirmed by the court.]

**Textual Amendments**

**F6** S. 4 substituted (4. 2. 1991) by Companies Act 1989 (c. 40), ss. 110(2), 213(2)

**5 Procedure for objecting to alteration.**

- (1) Where a company’s memorandum has been altered by special resolution under section 4, application may be made to the court for the alteration to be cancelled.
- (2) Such an application may be made—
  - (a) by the holders of not less in the aggregate than 15 per cent. in nominal value of the company’s issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent. of the company’s members; or
  - (b) by the holders of not less than 15 per cent. of the company’s debentures entitling the holders to object to an alteration of its objects;
 but an application shall not be made by any person who has consented to or voted in favour of the alteration.
- (3) The application must be made within 21 days after the date on which the resolution altering the company’s objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may—
  - (a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
  - (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

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- (5) The court's order may (if the court thinks fit) provide for the purchase by the company of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (6) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.
- (7) An alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.
- [<sup>F7</sup>(7A) For the purposes of subsection (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.]
- (8) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which were issued or first issued before 1st December 1947 or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company.

In the absence of provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members apply.

#### Textual Amendments

- F7** [S. 5\(7A\)](#) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 ([S.I. 2003/1116](#)), reg. 4, { Sch. para. 1 }

## 6 Provisions supplementing ss. 4, 5.

- (1) Where a company passes a resolution altering its objects, then—
- (a) if with respect to the resolution no application is made under section 5, the company shall within 15 days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and
- (b) if such an application is made, the company shall—
- (i) forthwith give notice (in the prescribed form) of that fact to the registrar, and
- (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.
- (2) The court may by order at any time extend the time for the delivery of documents to the registrar under subsection (1)(b) for such period as the court may think proper.
- (3) If a company makes default in giving notice or delivering any document to the registrar of companies as required by subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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- (4) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by section 4, except in proceedings taken for the purpose (whether under section 5 or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.
- (5) Where such proceedings are taken otherwise than under section 5, subsections (1) to (3) above apply in relation to the proceedings as if they had been taken under that section, and as if an order declaring the alteration invalid were an order cancelling it, and as if an order dismissing the proceedings were an order confirming the alteration.

**Modifications etc. (not altering text)**

- C4** S. 6(3) applied (4.2.1991) by Charities Act 1960 (c. 58, SIF 19), s. 30A(3) (as substituted by Companies Act 1989 (c. 40, SIF 27), ss. 111(1), 213(2))
- C5** S. 6(3) extended (E.W.) (1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), ss. 12(6), 17(2)
- S. 6(3) applied (E.W.) (1.1.1993) by Companies Act 1960 (c. 58), s. 30A(4) (as inserted (1.1.1993) by Charities Act 1992 (c. 41), s.40; S.I. 1992/1900, art. 4, Sch.3).
- S. 6(3) extended (E.W.) (1.8.1993) by 1993 c. 10, ss. 64(4), 99(1)

*Articles of association*

**7 Articles prescribing regulations for companies.**

- (1) There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.
- (2) In the case of an unlimited company having a share capital, the articles must state the amount of share capital with which the company proposes to be registered.
- (3) Articles must—
  - (a) be printed,
  - (b) be divided into paragraphs numbered consecutively, and
  - (c) [<sup>F8</sup>subject to subsection (3A),] be signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature [<sup>F9</sup>(which attestation is sufficient in Scotland as well as in England and Wales)].

[<sup>F10</sup>(3A) Where the articles are delivered to the registrar otherwise than in legible form and are authenticated by each subscriber to the memorandum in such manner as is directed by the registrar, the requirements in subsection (3)(c) for signature in the presence of at least one witness and for attestation of the signature do not apply.]

**Textual Amendments**

- F8** Words in s. 7(3)(c) inserted (22.12.2000) by S.I. 2000/3373, art. 3(1)(2)
- F9** Words in s. 7(3)(c) repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), Sch. 5 (with ss. 9(3)(5)(7), 13, 14(3))

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**F10** S. 7(3A) inserted (22.12.2000) by S.I. 2000/3373, **art. 3(1)(3)**

**Modifications etc. (not altering text)**

- C6** S. 7 restricted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 1(3)** (with para. 11)
- C7** S. 7(1) applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 32(2), 65**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

## 8 Tables A, C, D and E.

- (1) Table A is as prescribed by regulations made by the Secretary of State; and a company may for its articles adopt the whole or any part of that Table.
- (2) In the case of a company limited by shares, if articles are not registered or, if articles are registered, in so far as they do not exclude or modify Table A, that Table (so far as applicable, and as in force at the date of the company's registration) constitutes the company's articles, in the same manner and to the same extent as if articles in the form of that Table had been duly registered.
- (3) If in consequence of regulations under this section Table A is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.
- (4) The form of the articles of association of—
  - (a) a company limited by guarantee and not having a share capital,
  - (b) a company limited by guarantee and having a share capital, and
  - (c) an unlimited company having a share capital,shall be respectively in accordance with Table C, D or E prescribed by regulations made by the Secretary of State, or as near to that form as circumstances admit.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

- C8** S. 8 excluded (E.W.) (26.7.2002 for E. for certain purposes and 30.9.2003 for E. in so far as not already in force, 1.1.2003 for W. for certain purposes and 30.3.2004 for W. in so far as not already in force) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 74(7)(b), 181(1)**; S.I. 2002/1912, **art. 2(c)**; S.I. 2002/3012, **art. 2(c)**; S.I. 2003/1986, **art. 2**; S.I. 2004/669, **art. 2**
- S. 8 excluded (E.W.) (27.9.2004) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), Sch. 3 para. 4(1)(b)** (with s. 63); S.I. 2004/1832, **art. 2**

## [<sup>F11</sup>8A Table G.

- (1) The Secretary of State may by regulations prescribe a Table G containing articles of association appropriate for a partnership company, that is, a company limited by shares whose shares are intended to be held to a substantial extent by or on behalf of its employees.
- (2) A company limited by shares may for its articles adopt the whole or any part of that Table.

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- (3) If in consequence of regulations under this section Table G is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.
- (4) Regulations 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.]

#### Textual Amendments

**F11** S. 8A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 128, 213(2), 215(2)

### 9 Alteration of articles by special resolution.

- (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter its articles.
- (2) Alterations so made in the articles are (subject to this Act) as valid as if originally contained in them, and are subject in like manner to alteration by special resolution.

#### *Registration and its consequences*

### 10 Documents to be sent to registrar.

- (1) The company's memorandum and articles (if any) shall be delivered—
  - (a) to the registrar of companies for England and Wales, if the memorandum states that the registered office of the company is to be situated in England and Wales, or that it is to be situated in Wales; and
  - <sup>F12</sup>(ba) 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;
  - (bb) 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) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—
  - (a) the person who is, or the persons who are, to be the first director or directors of the company; and
  - (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company;
 and the requisite particulars in each case are those set out in Schedule 1.

<sup>F13</sup>(2A) Where any statement delivered under subsection (2) includes an address specified in reliance on paragraph 5 of Schedule 1 there shall be delivered with the statement, a statement in the prescribed form containing particulars of the usual residential address of the director or secretary whose address is so specified.]

- (3) The statement [<sup>F14</sup>under subsection (2)] shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.



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- (4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.
- (5) An appointment by any articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.
- (6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

#### Textual Amendments

- F12** S. 10(2)(ba)(bb) substituted (6.4.2008) for s. 10(2)(b) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 54** (with arts. 6, 11, 12)
- F13** S. 10(2A) inserted (2.4.2002) by [The Companies \(Particulars of Usual Residential Address\) \(Confidentiality Orders\) Regulations 2002 \(S.I. 2002/912\)](#), reg. 16, **Sch. 2 para. 1(2)**
- F14** Words in s. 10(3) inserted (2.4.2002) by [The Companies \(Particulars of Usual Residential Address\) \(Confidentiality Orders\) Regulations 2002 \(S.I. 2002/912\)](#), reg. 16, **Sch. 2 para. 1(3)**

#### Modifications etc. (not altering text)

- C9** S. 10 excluded (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), regs. 85, 88, **Sch. 4 para. 1(4)** (with Sch. 4 para. 11)
- C10** S. 10 modified (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 36(1)(2)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

## 11 Minimum authorised capital (public companies).

When a memorandum delivered to the registrar of companies under section 10 states that the association to be registered is to be a public company,<sup>F15</sup> the share capital stated in the memorandum to be that with which the company proposes to be registered—

- (a) must have a nominal value of not less than the authorised minimum (as defined in section 763 of the Companies Act 2006); and
- (b) to the extent necessary to comply with that requirement, must be denominated in accordance with section 765 of that Act (allotted share capital of public company to be denominated either in sterling or in euros but not partly in one and partly in the other).]

#### Textual Amendments

- F15** Words in s. 11 substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 55** (with arts. 6, 11, 12)

## 12 Duty of registrar.

- (1) The registrar of companies shall not register a company's memorandum delivered under section 10 unless he is satisfied that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with.

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- (2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that section.
- (3) [<sup>F16</sup>Subject to subsection (3A), a statutory declaration] in the prescribed form by—
- (a) a solicitor engaged in the formation of a company, or
  - (b) a person named as a director or secretary of the company in the statement delivered under section 10(2),
- that those requirements have been complied with shall be delivered to the registrar of companies, and the registrar may accept such a declaration as sufficient evidence of compliance.
- [<sup>F17</sup>(3A) In place of the statutory declaration referred to in subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a person mentioned in paragraph (a) or (b) of subsection (3) that the requirements mentioned in subsection (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.
- <sup>F17</sup>(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

#### Textual Amendments

- F16** Words in s. 12(3) substituted (22.12.2000) by S.I. 2000/3373, art. 3(1)(2)  
**F17** S. 12(3A)(3B) inserted (22.12.2000) by S.I. 2000/3373, art. 3(1)(3)

#### Modifications etc. (not altering text)

- C11** S. 12 modified (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), s. 34, Sch. 3 para. 17 (with s. 63); S.I. 2004/1832, art. 2  
**C12** S. 12 applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 36(7), 65; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)  
**C13** S. 12(2) modified (27.7.1999) by 1999 c. 20, s. 4(1) (with s. 15)

### 13 Effect of registration.

- (1) On the registration of a company's memorandum, the registrar of companies shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.
- (2) The certificate may be signed by the registrar, or authenticated by his official seal.
- (3) From the date of incorporation mentioned in the certificate, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.
- (4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets in the event of its being wound up as is provided by this Act [<sup>F18</sup>and the Insolvency Act].

This is subject, in the case of a public company, to [<sup>F19</sup>section 761 of the Companies Act 2006 (public company not to do business without trading certificate)] .

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- (5) The persons named in the statement under section 10 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.
- (6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.
- (7) A certificate of incorporation given in respect of an association is conclusive evidence—
  - (a) that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Act, and
  - (b) if the certificate contains a statement that the company is a public company, that the company is such a company.

#### Textual Amendments

**F18** Words added by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**

**F19** Words in s. 13(4) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 56** (with arts. 6, 11, 12)

#### Modifications etc. (not altering text)

**C14** S. 13 excluded (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), regs. 85, 88, **Sch. 4 para. 6** (with para. 11)

**C15** S. 13 modified (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 36(8), 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

## 14 Effect of memorandum and articles.

- (1) Subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.
- (2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company, and in England and Wales is of the nature of a speciality debt.

#### Modifications etc. (not altering text)

**C16** S. 14 modified (12.2.1992) by [S.I. 1992/225](#), **regs. 1, 119(1)**.

## 15 Memorandum and articles of company limited by guarantee.

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

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- (2) For purposes of provisions of this Act relating to the memorandum of a company limited by guarantee, and for those of section 1(4) and this section, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

**Modifications etc. (not altering text)**

**C17** S. 15 excluded by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c.9, SIF 27\)](#), s. 10

**16 Effect of alteration on company's members.**

- (1) A member of a company is not bound by an alteration made in the memorandum or 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) operates notwithstanding anything in the memorandum or articles; but it 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.

**17 Conditions in memorandum which could have been in articles.**

- (1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.
- (2) This section—
- (a) is subject to section 16, and also to [F20 section 996 of the Companies Act 2006] (court order protecting minority), and
  - (b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions above referred to, and does not authorise any variation or abrogation of the special rights of any class of members.
- (3) Section 5 (except subsections (2)(b) and (8)) and section 6(1) to (3) apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and applications under sections 4 to 6.

**Textual Amendments**

**F20** Words in s. 17(2)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 57** (with arts. 6, 11, 12)

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**Modifications etc. (not altering text)**

**C18** S. 17 extended (1.10.2009) by [Companies Act 2006 \(c. 46\)](#), **ss. 63(5)**, 1300; [S.I. 2008/2860](#), **art. 3(e)** (with [arts. 5, 7, 8, Sch. 2](#))

**18 Amendments of memorandum or articles to be registered.**

- (1) Where an alteration is made in a company's memorandum or articles by any statutory provision, whether contained in an Act of Parliament or in an instrument made under an Act, a printed copy of the Act or instrument shall, not later than 15 days after that provision comes into force, be forwarded to the registrar of companies and recorded by him.
- (2) Where a company is required (by this section or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other than a special resolution under section 4), the company shall send with it a printed copy of the memorandum or articles as altered.
- (3) If a company fails to comply with this section, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

**C19** S. 18 applied with modifications by [S.I. 1985/680](#), **regs. 4–6, Sch.**

**C20** S. 18(3) extended (12.2.1992) by [S.I. 1992/225](#), **regs. 1, 119(3)**.

**19 Copies of memorandum and articles to be given to members.**

- (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles (if any), and a copy of any Act of Parliament which alters the memorandum, subject to payment—
  - (a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may prescribe, and
  - (b) in the case of a copy of an Act, of such sum not exceeding its published price as the company may require.
- (2) If a company makes default in complying with this section, the company and every officer of it who is in default is liable for each offence to a fine.

**20 Issued copy of memorandum to embody alterations.**

- (1) Where an alteration is made in a company's memorandum, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.
- (2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is liable to a fine, and so too is every officer of the company who is in default.

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## 21 .....

F21 .....

### Textual Amendments

**F21** S. 21 repealed (1.2.1994) by 1993 c. 38, ss. 30(2), 35(1), **Sch. 2**; S.I. 1994/115, **art. 2(2)**

### *A company's membership*

## 22 Definition of “member”.

- (1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration shall 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.

### Modifications etc. (not altering text)

- C21** S. 22(1) applied (E.W.) (27.9.2004) by **Commonhold and Leasehold Reform Act 2002** (c. 15), ss. 34, 181(1), **Sch. 3 para. 15(1)** (with s. 63); S.I. 2004/1832, **art. 2**
- C22** S. 22(1) excluded (8.10.2004) by **The European Public Limited-Liability Company Regulations 2004** (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para.7** (with para. 11)
- C23** S. 22(2) excluded (E.W.) (27.9.2004) by **Commonhold and Leasehold Reform Act 2002** (c. 15), s. 34, 181(1), **Sch. 3 para. 15(2)** (with s. 63); S.I. 2004/1832, **art. 2**

## [<sup>F22</sup>23 Membership of holding company.

- (1) Except as mentioned in this section, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

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 which includes the lending of money;
- (b) any such interest as is mentioned in Part I of Schedule 2.

[ The prohibition does not apply where shares in the holding company are held by the <sup>F23</sup>(3) subsidiary in the ordinary course of its business as an intermediary.

For this purpose a person is an intermediary if that person—

- (a) carries on a bona fide business of dealing in securities;

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- (b) is a member of an EEA exchange (and satisfies any requirements for recognition as a dealer in securities laid down by that exchange) or is otherwise approved or supervised as a dealer in securities under the laws of an EEA State; and
- (c) does not carry on an excluded business.

(3A) The excluded businesses are the following—

- (a) any business which consists wholly or mainly in the making or managing of investments;
- (b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;
- (c) any business which consists in insurance business;
- (d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
- (e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.

(3B) For the purposes of subsections (3) and (3A)—

- (a) the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988 <sup>M1</sup>;
- (b) 'collective investment scheme' has the meaning given in [<sup>F24</sup>section 236 of the Financial Services and Markets Act 2000];
- (c) 'EEA exchange' means a market which appears on the list drawn up by an EEA State pursuant to [<sup>F25</sup>Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments];
- [<sup>F26</sup>(d) "insurance business" means business which consists of the effecting or carrying out of contracts of insurance;
- <sup>F26</sup>(e) "securities" includes—
  - (i) options,
  - (ii) futures, and
  - (iii) contracts for differences,and rights or interests in those investments;]
- (f) 'trustee' and 'the operator' shall, in relation to a collective investment scheme, be construed in accordance with [<sup>F27</sup>section 237(2) of the Financial Services and Markets Act 2000].

[ Subsection (3B) must be read with—

- <sup>F28</sup>(3BA)
  - (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

(3C) Where—

- (a) a subsidiary which is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in subsection (1); and
- (b) a person acting in good faith has agreed, for value and without notice of that contravention, to acquire shares in the holding company from the subsidiary

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or from someone who has purportedly acquired the shares after their disposal by the subsidiary,

any transfer to that person of the shares mentioned in paragraph (a) shall have the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.]

- (4) Where a body corporate became a holder of shares in a company—
- (a) before 1st July 1948, or
  - (b) on or after that date and before [F<sup>29</sup>20th October 1997], in circumstances in which this section as it then had effect did not apply,
- but at any time [F<sup>30</sup>on or after [F<sup>29</sup>20th October 1997]] falls within the prohibition in subsection (1) above in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.
- (5) Where a body corporate becomes a holder of shares in a company [F<sup>30</sup>on or after [F<sup>29</sup>20th October 1997]] in circumstances in which the prohibition in subsection (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.
- (6) Where a body corporate is permitted to continue as a member of a company by virtue of subsection (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in subsection (1) would apply, apart from subsection (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.
- (7) The provisions of this section apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.
- (8) In relation to a company other than a company limited by shares, the references in this section to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.]

#### Textual Amendments

- F22** S. 23 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 129(1), 213(2)
- F23** S. 23(3)-(3C) substituted (20.10.1997) for s. 23(3) by S.I. 1997/2306, reg. 2
- F24** Words in s. 23(3B)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 4(1)(2)
- F25** Words in s. 23(3B)(c) substituted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), reg. 3(6), Sch. 6 para. 7(2)
- F26** S. 23(3B)(d)(e) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 4(3)
- F27** Words in s. 23(3B)(f) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 4(4)
- F28** S. 23(3BA) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 4(5)
- F29** Words in s. 23(4)(5) substituted (20.10.1997) by S.I. 1997/2306, reg. 3
- F30** Substituted by S.I. 1990/1392, art. 8(b) as amended by S.I. 1990/1707, art. 8(2)



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#### Modifications etc. (not altering text)

- C24** S. 23 modified (subject to the transitional and savings provisions as mentioned in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c.40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 32(2)**
- C25** S. 23 restricted (subject to the transitional and savings provisions as mentioned in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c.40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 32(3)**
- C26** S. 23 excluded (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 15(2)** (with s. 63); S.I. 2004/1832, **art. 2**

#### Marginal Citations

- M1** 1988 c. 1; section 839 was amended by section 74 of, and paragraph 20 of Part II of Schedule 17 to, the Finance Act 1995 (c. 4), and modified by S.I. 1988/745.

## 24 Minimum membership for carrying on business.

[<sup>F31</sup>(1)] If a company [<sup>F32</sup>other than a private company limited by shares or by guarantee.] carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months—

- (a) is a member of the company, and
- (b) knows that it is carrying on business with only one member,

is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.

[<sup>F33</sup>(2) For the purposes of this section references to a member of a company do not include the company itself where it is such a member only by virtue of its holding shares as treasury shares.]

#### Textual Amendments

- F31** S. 24: the existing provision becomes subsection (1) (of that section) (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 2}
- F32** Words in s. 24 inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.2**.
- F33** S. 24(2) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 2}

#### Modifications etc. (not altering text)

- C27** S. 24 modified (12.2.1992) by S.I. 1992/225, **reg. 61(7)**.  
S. 24 amended (15.7.1992) by S.I. 1992/1699, **reg.3**.  
S. 24 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C28** S. 24 excluded (temp. from 22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), **art. 7(1)**
- C29** S. 24 excluded (temp. from 29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **art. 8(1)**

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## CHAPTER II

### COMPANY NAMES

#### 25 Name as stated in memorandum.

- (1) The name of a public company must end with the words “public limited company” or, if the memorandum states that the company’s registered office is to be situated in Wales, those words or their equivalent in Welsh (“cwmni cyfyngedig cyhoeddus”); and those words or that equivalent may not be preceded by the word “limited” or its equivalent in Welsh (“cyfyngedig”).
- (2) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word, except that—
  - (a) this is subject to section 30 (exempting, in certain circumstances, a company from the requirement to have “limited” as part of the name), and
  - (b) if the company is to be registered with a memorandum stating that its registered office is to be situated in Wales, the name may have “cyfyngedig” as its last word.

#### Modifications etc. (not altering text)

**C30** S. 25 excluded (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33(5), 65; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

#### 26 Prohibition on registration of certain names.

- (1) A company shall not be registered under this Act by a name—
  - (a) which includes, otherwise than at the end of the name, any of the following words or expressions, that is to say, “limited”, “unlimited”<sup>[F34]</sup>, “public limited company”, “community interest company” or “community interest public limited company”] or their Welsh equivalents (“cyfyngedig”, “anghyfyngedig”<sup>[F35]</sup>, “cwmni cyfyngedig cyhoeddus”, “cwmni buddiant cymunedol” and “cwmni buddiant cymunedol cyhoeddus cyfyngedig”] respectively);
  - (b) which includes, otherwise than at the end of the name, an abbreviation of any of those words or expressions;
  - <sup>[F36]</sup>(bb) which includes, at any place in the name, the expressions “investment company with variable capital” or “open-ended investment company” or their Welsh equivalents (“cwmni buddsoddi â chyfalaf newidiol” and “cwmni buddsoddiant penagored” respectively);]
  - <sup>[F37]</sup>(bbb) which includes, at any place in the name, the expression “limited liability partnership” or its Welsh equivalent (“partneriaeth atebolrwydd cyfyngedig”);]
  - (c) which is the same as a name appearing in the registrar’s index of company names;
  - (d) the use of which by the company would in the opinion of the Secretary of State constitute a criminal offence; or
  - (e) which in the opinion of the Secretary of State is offensive.

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- (2) Except with the approval of the Secretary of State, a company shall not be registered under this Act by a name which—
- in the opinion of the Secretary of State would be likely to give the impression that the company is connected in any way with Her Majesty’s Government [<sup>F38</sup>, with the Welsh Assembly Government] or with any local authority; or
  - includes any word or expression for the time being specified in regulations under section 29.

“Local authority” means any local authority within the meaning of the <sup>M2</sup>Local Government Act 1972 or the <sup>M3</sup>Local Government (Scotland) Act 1973, the Common Council of the City of London or the Council of the Isles of Scilly.

- (3) In determining for purposes of subsection (1)(c) whether one name is the same as another, there are to be disregarded—
- the definite article, where it is the first word of the name;
  - the following words and expressions where they appear at the end of the name, that is to say—
    - “company” or its Welsh equivalent (“cwmni”),
    - “and company” or its Welsh equivalent (“a’r cwmni”),
    - “company limited” or its Welsh equivalent (“cwmni cyfyngedig”),
    - “and company limited” or its Welsh equivalent (“a’r cwmni cyfyngedig”),
    - “limited” or its Welsh equivalent (“cyfyngedig”),
    - “unlimited” or its Welsh equivalent (“anghyfyngedig”), <sup>F39</sup> . . .
    - “public limited company” or its Welsh equivalent (“cwmni cyfyngedig cyhoeddus”);
    - [<sup>F40</sup>“community interest company” or its Welsh equivalent (“cwmni buddiant cymunedol”);
    - “community interest public limited company” or its Welsh equivalent (“cwmni buddiant cymunedol cyhoeddus cyfyngedig”);]<sup>F41</sup> . . .
    - [<sup>F42</sup>“investment company with variable capital” or its Welsh equivalent (“cwmni buddsoddi â chyfalaf newidiol”);
    - [<sup>F43</sup>and
    - “open-ended investment company” or its Welsh equivalent (“cwmni buddsoddiant penagored”);]
  - abbreviations of any of those words or expressions where they appear at the end of the name; and
  - type and case of letters, accents, spaces between letters and punctuation marks;
- and “and” and “&” are to be taken as the same.]

#### Textual Amendments

**F34** Words in s. 26(1)(a) substituted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33, 65, Sch. 6 para. 2(1)(2)(a); S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

**F35** Words in s. 26(1)(a) substituted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33, 65, Sch. 6 para. 2(1)(2)(b); S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

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- F36** S. 26(1)(bb) substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 3(2)**; S.I. 2001/3538, **art. 2(1)**
- F37** S. 26(1)(bbb) inserted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 9**
- F38** Words in s. 26(2)(a) inserted (in accordance with art. 1(2)(3) of the amending S.I.) by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, **Sch. 1 para. 19**
- F39** Word in s. 26(3)(b) omitted (6.1.1997) by virtue of S.I. 1996/2827, reg. 75, **Sch. 8 Pt. 1 para. 4(b)**
- F40** Words in s. 26(3)(b) inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33, 65, **Sch. 6 para. 2(3)**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)
- F41** Words in s. 26(3)(b) omitted (1.12.2001) by virtue of S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 3(3)**; S.I. 2001/3538, **art. 2(1)**
- F42** Words in s. 26(3)(b) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. 1 para. 4(b)**
- F43** Words in s. 26(3)(b) inserted (1.12.2001) by virtue of S.I. 2001/1228, regs. 1(2)(3), 84, **Sch. 7 para. 3(3)**; S.I. 2001/3538, **art. 2(1)**

#### Modifications etc. (not altering text)

- C31** S. 26(1)(c) extended (with modifications) by S.I. 1989/638, regs. 10(2), 18, 21, **Sch. 4 para. 1**
- C32** S. 26(1)(d)(e) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 1**
- C33** S. 26(2) restricted (10.5.2001) by 1999 c. 19, s. 2; S.I. 2001/258, **art. 2**
- C34** S. 26(2)(3) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 1**
- C35** S. 26(2)(a) excluded (19.7.1995) by 1995 c. 24, s. 6
- C36** S. 26(3) applied (with modifications) (E.W.) (1.9.1992) by Charities Act 1992 (c. 41), s. 4(7)(9); S.I. 1992/1900, art. 2(1), **Sch. 1**.  
S. 26(3) applied (E.W.) (1.8.1993) by 1993 c. 10, ss. 6(7), 99(1)

#### Marginal Citations

- M2** 1972 c. 70.  
**M3** 1973 c. 65.

## 27 Alternatives of statutory designations.

- (1) A company which by any provision of this Act is either required or entitled to include in its name, as its last part, any of the words specified in subsection (4) below may, instead of those words, include as the last part of the name the abbreviations there specified as alternatives in relation to those words.
- (2) A reference in this Act to the name of a company or to the inclusion of any of those words in a company's name includes a reference to the name including (in place of any of the words so specified) the appropriate alternative, or to the inclusion of the appropriate alternative, as the case may be.
- (3) A provision of this Act requiring a company not to include any of those words in its name also requires it not to include the abbreviated alternative specified in subsection (4).
- (4) For the purposes of this section—
  - (a) the alternative of “limited” is “ltd.”;
  - (b) the alternative of “public limited company” is “p.l.c.”;
  - (c) the alternative of “cyfyngedig” is “cyf.”; <sup>F44</sup> . . .
  - (d) the alternative of “cwmni cyfyngedig cyhoeddus” is “c.c.c.”;
  - <sup>F45</sup> (e) the alternative of “community interest company” is “c.i.c.”;

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- (f) the alternative of “cwmni buddiant cymunedol” is “c.b.c.”;
- (g) the alternative of “community interest public limited company” is “community interest p.l.c.”; and
- (h) the alternative of “cwmni buddiant cymunedol cyhoeddus cyfyngedig” is “cwmni buddiant cymunedol c.c.c.”.]

#### Textual Amendments

- F44** Word in s. 27(4)(c) repealed (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 64, 65, **Sch. 8**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)
- F45** S. 27(4)(e)-(h) inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33, 65, **Sch. 6 para. 3**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

## 28 Change of name.

- (1) A company may by special resolution change its name (but subject to section 31 in the case of a company which has received a direction under subsection (2) of that section from the Secretary of State).
- (2) Where a company has been registered by a name which—
  - (a) is the same as or, in the opinion of the Secretary of State, too like a name appearing at the time of the registration in the registrar’s index of company names, or
  - (b) is the same as or, in the opinion of the Secretary of State, too like a name which should have appeared in that index at that time,the Secretary of State may within 12 months of that time, in writing, direct the company to change its name within such period as he may specify.

Section 26(3) applies in determining under this subsection whether a name is the same as or too like another.
- (3) If it appears to the Secretary of State that misleading information has been given for the purpose of a company’s registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.
- (4) Where a direction has been given under subsection (2) or (3), the Secretary of State may by a further direction in writing extend the period within which the company is to change its name, at any time before the end of that period.
- (5) A company which fails to comply with a direction under this section, and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.
- (6) Where a company changes its name under this section, the registrar of companies shall (subject to section 26) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.
- (7) A change of name by a company under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it;

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and 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.

**Modifications etc. (not altering text)**

- C37** S. 28(2) extended (with modifications) by S.I. 1989/638, regs. 11(1), 18, 21, **Sch. 4 para. 2**
- C38** S. 28(3)–(5), (7) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 2**
- C39** S. 28(6) applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 38(6), 55(6)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)
- C40** S. 28(6) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 38(8)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

**29 Regulations about names.**

- (1) The Secretary of State may by regulations—
- (a) specify words or expressions for the registration of which as or as part of a company's corporate name his approval is required under section 26(2)(b), and
  - (b) in relation to any such word or expression, specify a Government department or other body as the relevant body for purposes of the following subsection.
- (2) Where a company proposes to have as, or as part of, its corporate name any such word or expression and a Government department or other body is specified under subsection (1)(b) in relation to that word or expression, a request shall be made (in writing) to the relevant body to indicate whether (and if so why) it has any objections to the proposal; and the person to make the request is—
- (a) in the case of a company seeking to be registered under this Part, the person making the statutory declaration [<sup>F46</sup>under section 12(3) or statement under section 12(3A) (as the case may be)],
  - (b) in the case of a company seeking to be registered under section 680, the persons making the statutory declaration [<sup>F47</sup>under section 686(2) or statement under section 686(2A) (as the case may be)], and
  - (c) in any other case, a director or secretary of the company concerned.
- (3) The person who has made that request to the relevant body shall submit to the registrar of companies a statement that it has been made and a copy of any response received from that body, together with—
- (a) the requisite statutory declaration [<sup>F48</sup>or statement], or
  - (b) a copy of the special resolution changing the company's name, according as the case is one or other of those mentioned in subsection (2).
- (4) <sup>F49</sup> .....
- (5) Regulations under this section may contain such transitional provisions and savings as the Secretary of State thinks appropriate and may make different provision for different cases or classes of case.
- (6) The regulations shall be made by statutory instrument, to be laid before Parliament after it is made; and the regulations shall cease to have effect at the end of 28 days beginning with the day on which the regulations were made (but without prejudice to anything previously done by virtue of them or to the making of new regulations), unless during that period they are approved by resolution of each House. In reckoning

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that period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

#### Textual Amendments

- F46** Words in s. 29(2)(a) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(1)(a)**  
**F47** Words in s. 29(2)(b) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(1)(b)**  
**F48** Words in s. 29(3)(a) inserted (22.12.2000) by S.I. 2000/3373, **art. 31(1)(c)**  
**F49** S. 29(4) repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(a)**, Sch. 2 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

#### Modifications etc. (not altering text)

- C41** S. 29(1)(a) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 3**

### 30 Exemption from requirement of “limited” as part of the name.

- (1) Certain companies are exempt from requirements of this Act relating to the use of “limited” as part of the company name.
- (2) A private company limited by guarantee is exempt from those requirements, and so too is a company which on 25th February 1982 was a private company limited by shares with a name which, by virtue of a licence under section 19 of the <sup>M4</sup>Companies Act 1948, did not include “limited”; but in either case the company must, to have the exemption, comply with the requirements of the following subsection.
- (3) Those requirements are that—
  - (a) the objects of the company are (or, in the case of a company about to be registered, are to be) the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects; and
  - (b) the company’s memorandum or articles—
    - (i) require its profits (if any) or other income to be applied in promoting its objects,
    - (ii) prohibit the payment of dividends to its members, and
    - (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or 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).
- (4) [<sup>F50</sup>Subject to subsection (5A), a statutory declaration] that a company complies with the requirements of subsection (3) may be delivered to the registrar of companies, who may accept the declaration as sufficient evidence of the matters stated in it <sup>F51</sup> . . .
- (5) The statutory declaration must be in the prescribed form and be made—
  - (a) in the case of a company to be formed, by a solicitor engaged in its formation or by a person named as director or secretary in the statement delivered under section 10(2);
  - (b) in the case of a company to be registered in pursuance of section 680, by two or more directors or other principal officers of the company; and

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- (c) in the case of a company proposing to change its name so that it ceases to have the word “limited” as part of its name, by a director or secretary of the company.

<sup>F52</sup>(5A) In place of the statutory declaration referred to in subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a person falling within the applicable paragraph of subsection (5) stating that the company complies with the requirements of subsection (3); and the registrar may accept such a statement as sufficient evidence of the matters stated in it.

<sup>F52</sup>(5B) The registrar may refuse to register a company by a name which does not include the word “limited” unless a statutory declaration under subsection (4) or statement under subsection (5A) has been delivered to him.

<sup>F52</sup>(5C) Any person who makes a false statement under subsection (5A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

- (6) References in this section to the word “limited” include (in an appropriate case) its Welsh equivalent (“cyfyngedig”), and the appropriate alternative (“ltd.” or “cyf.”, as the case may be).

- (7) A company which [<sup>F53</sup>under this section] is exempt from requirements relating to the use of “limited” and does not include that word as part of its name, is also exempt from the requirements of this Act relating to the publication of its name and the sending of lists of members to the registrar of companies.

#### Textual Amendments

- F50** Words in s. 30(4) substituted (22.12.2000) by S.I. 2000/3373, **art. 5(1)(2)(a)**  
**F51** Words in s. 30(4) omitted (22.12.2000) by virtue of S.I. 2000/3373, **art. 5(1)(2)(b)**  
**F52** S. 30(5A)-(5C) inserted (22.12.2000) by S.I. 2000/3373, **art. 5(1)(3)**  
**F53** Words in s. 30(7) inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33, 65, **Sch. 6 para. 4**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

#### Modifications etc. (not altering text)

- C42** S. 30(4) amended by Financial Services Act 1986 (c. 60, SIF 69), s. 116, **Sch. 9 para. 2(2)**  
**C43** S. 30(7) restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), **s. 30BB** (as inserted (1.1.1993) by Charities Act 1992 (c. 41), **s. 42**; S.I. 1992/1900, art. 4, **Sch. 3**).  
 S. 30(7) excluded (E.W.) (1.8.1993) by 1993 c. 10, **ss. 67, 99(1)**

#### Marginal Citations

- M4** 1948 c. 38.

### 31 Provisions applying to company exempt under s. 30.

- (1) A company which is exempt under section 30 and whose name does not include “limited” shall not alter its memorandum or articles of association so that it ceases to comply with the requirements of subsection (3) of that section.
- (2) If it appears to the Secretary of State that such a company—
- (a) has carried on any business other than the promotion of any of the objects mentioned in that subsection, or



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- (b) has applied any of its profits or other income otherwise than in promoting such objects, or
- (c) has paid a dividend to any of its members,

he may, in writing, direct the company to change its name by resolution of the directors within such period as may be specified in the direction, so that its name ends with “limited”.<sup>F54</sup> . . .

[<sup>F55</sup>(2A) Where such a resolution is passed by the directors, the company must give notice to the registrar of companies of the change.

(2B) Where a company changes its name under this section, the registrar of companies shall (subject to section 26) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(2C) A change of name by a company under this section does not affect any right or obligations of the company or render defective any legal proceedings by or against it; and 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.]

(3) A company which has received a direction under subsection (2) shall not thereafter be registered by a name which does not include “limited”, without the approval of the Secretary of State.

(4) References in this section to the word “limited” include (in an appropriate case) its Welsh equivalent (“cyfyngedig”), and the appropriate alternative (“ltd.” or “cyf.”, as the case may be).

(5) A company which contravenes subsection (1), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

(6) A company which fails to comply with a direction by the Secretary of State under subsection (2), and any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

#### Textual Amendments

**F54** Words in s. 31(2) omitted (1.10.2007) by virtue of [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(1\)](#) (with art. 12)

**F55** S. 31(2A)-(2C) inserted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(1\)](#) (with art. 12)

#### Modifications etc. (not altering text)

**C44** S. 31 amended by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 116, [Sch. 9 para. 2\(3\)](#)

**C45** S. 31(2) modified by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 116, [Sch. 9 para. 2\(3\)](#)

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### 32 Power to require company to abandon misleading name.

- (1) If in the Secretary of State's opinion 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, he may direct it to change its name.
- (2) The direction must, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of 6 weeks from the date of the direction or such longer period as the Secretary of State may think fit to allow.
- (3) The company may, within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify a period within which it must be complied with.
- (4) If a company makes default in complying with a direction under this section, it is liable to a fine and, for continued contravention, to a daily default fine.
- (5) Where a company changes its name under this section, the registrar shall (subject to section 26) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.
- (6) A change of name by a company under this section does not affect any of the rights or obligations of the company, or render defective any legal proceedings by or against it; and 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.

#### Modifications etc. (not altering text)

C46 S. 32 restricted (19.7.1995) by 1995 c. 24, s. 6

### 33 Prohibition on trading under misleading name.

- (1) A person who is not a public company is guilty of an offence if he carries on any trade, profession or business under a name which includes, as its last part, the words "public limited company" or their equivalent in Welsh ("cwmni cyfyngedig cyhoeddus") [<sup>F56</sup>; and a community interest company which is not a public company is guilty of an offence if it does so under a name which includes, as its last part, the words "cwmni buddiant cymunedol cyhoeddus cyfyngedig".]
- (2) A public company is guilty of an offence if, in circumstances in which the fact that it is a public company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a private company.
- (3) A person guilty of an offence under subsection (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

#### Textual Amendments

F56 Words in s. 33(1) inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 33, 65, Sch. 6 para. 5; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

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### 34 Penalty for improper use of “limited” or “cyfyngedig”.

If any person trades or carries on business under a name or title of which “limited” or “cyfyngedig”, or any contraction or imitation of either of those words, is the last word, that person, unless duly incorporated with limited liability, is liable to a fine and, for continued contravention, to a daily default fine.

#### Modifications etc. (not altering text)

C47 S. 34 modified (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, Sch. 4 para.8 (with para. 11)

### 34A Penalty for improper use of “community interest company” etc.

- (1) A company which is not a community interest company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of the expressions specified in subsection (3).
- (2) A person other than a company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of those expressions (or any contraction of them) as its last part.
- (3) The expressions are—
  - (a) “community interest company” or its Welsh equivalent (“cwmni buddiant cymunedol”), and
  - (b) “community interest public limited company” or its Welsh equivalent (“cwmni buddiant cymunedol cyhoeddus cyfyngedig”).
- (4) Subsections (1) and (2) do not apply—
  - (a) to a person who was carrying on a trade, profession or business under the name in question at any time during the period beginning with 1st September 2003 and ending with 4th December 2003, or
  - (b) if the name in question was on 4th December 2003 a registered trade mark or Community trade mark (within the meaning of the Trade Marks Act 1994 (c. 26)), to a person who was on that date a proprietor or licensee of that trade mark.
- (5) A person guilty of an offence under subsection (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

## CHAPTER III

### A COMPANY’S CAPACITY; FORMALITIES OF CARRYING ON BUSINESS

#### [<sup>F57</sup>35 A company’s capacity not limited by its memorandum.

- (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 memorandum.
- (2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company’s capacity; but no such

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proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the company’s memorandum; and action by the directors which but for subsection (1) would be beyond the company’s capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

- (4) The operation of this section is restricted by [<sup>F58</sup>section 65(1) of the Charities Act 1993] and section 112(3) of the <sup>M5</sup>Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

#### Textual Amendments

- F57** Ss. 35, 35A, 35B substituted (4. 2. 1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, art. 7) by Companies Act 1989 (c. 40), ss. 108(1), 213(2)
- F58** Words in s. 35(4) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), Sch. 6 para. 20(2)

#### Modifications etc. (not altering text)

- C48** S. 35 excluded by Charities Act 1960 (c. 58, SIF 19), s. 30B(1) as substituted (4. 2. 1991) (with transitional and savings provisions in S.I. 1990/2569, art. 7) by Companies Act 1989 (c. 40, SIF 27), ss. 111(1), 213
- S. 35 excluded by S.I. 1990/2569, art. 7(1)
- S. 35 excluded (S) (4. 2. 1991) by Companies Act 1989 (c. 40, SIF 27), ss. 112(3), 213(2)
- C49** S. 35 applied with modifications by S.I. 1985/680, regs. 4-6, Sch. as amended (4. 2. 1991) by S.I. 1990/2571, reg. 2(a)(b)
- S. 35 excluded (E.W.) (1.8.1993) by 1993 c. 10, ss. 65(1), 99(1)
- C50** S. 35(3) modified by Charities Act 1960 (c. 58, SIF 19), s. 30(B)(4) as substituted (4. 2. 1991) (subject to the transitional and savings provisions in S.I. 1990/2569, art. 7), by Companies Act 1989 (c. 40, SIF 27), ss. 111(1), 213(2)
- S. 35(3) restricted (E.W.) (1.8.1993) by 1993 c. 10, ss. 65(4), 99(1)

#### Marginal Citations

- M5** 1989 c. 40

### [<sup>F59</sup>35A Power of directors to bind the company.

- (1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be 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 shall not 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; and

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- (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (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 in general meeting or a meeting of any class of shareholders, or
  - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) Nor does that subsection affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) The operation of this section is restricted by [<sup>F60</sup>section 65(1) of the Charities Act 1993] and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.]

#### Textual Amendments

- F59** Ss. 35, 35A, 35B substituted (4.2.1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, art. 7) by Companies Act 1989 (c. 40, SIF 27), ss. 108(1), 213(2)
- F60** Words in s. 35A(6) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), Sch. 6 para. 20(2)

#### Modifications etc. (not altering text)

- C51** S. 35A excluded by Charities Act 1960 (c. 58, SIF 19), s. 30B(1) as substituted (4.2.1991) (subject to the transitional and savings provisions in S.I. 1990/2569, art. 7) by Companies Act 1989 (c.40, SIF 27), ss. 111(1), 213(2)
- C52** S. 35A excluded (S.) (4.2.1992) by Companies Act 1989 (c. 40, SIF 27), ss. 112(3), 213(2)
- C53** S. 35A excluded by S.I. 1990/2569, art. 7(2)
- C54** S. 35A applied with modifications by S.I. 1985/680, arts. 4–6, Sch. as amended (4.2.1991) by S.I. 1990/2571, reg. 2(a)(b)
- S. 35A excluded (E.W.) (1.8.1993) by 1993 c. 10, ss. 65(1), 99(1)

#### [<sup>F61</sup>35B No duty to enquire as to capacity of company or authority of directors.

A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.]

#### Textual Amendments

- F61** Ss. 35, 35A, 35B substituted (4.2.1991) for s. 35 (subject to the transitional and savings provisions in S.I. 1990/2569, art. 7) by Companies Act 1989 (c. 40, SIF 27), ss. 108(1), 213(2)

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**Modifications etc. (not altering text)**

- C55** S. 35B applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** as amended (4.2.1991) by S.I. 1990/2571, **reg. 2(a)(b)**  
 S. 35B applied (with modifications) by S.S.I. 2001/128, **reg. 3, Sch. 1**

[<sup>F62</sup>**36** **Company contracts: England and Wales.**

Under the law of England and Wales a contract may be made—

- (a) by a company, by writing under its common seal, or
- (b) on behalf of a company, by any person acting under its authority, express or implied;

and 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.]

**Textual Amendments**

- F62** S. 36 substituted by **Companies Act 1989 (c. 40, SIF 27), ss. 130(1), 213(2)**

**Modifications etc. (not altering text)**

- C56** S. 36: power to apply conferred by **Companies Act 1989 (c. 40, SIF 27), ss. 130(6), 213(2)**  
**C57** **Ss. 36-36C** applied (with modifications) (16.5.1994) by S.I. 1994/950, **regs. 2-6**  
 S. 36 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**

[<sup>F63</sup>**36A** **Execution of documents: England and Wales.**

- (1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.
- (2) <sup>F64</sup> .....
- (3) A company need not have a common seal <sup>F65</sup> . . .
- (4) <sup>F64</sup> .....
- (4A) <sup>F64</sup> .....
- (5) <sup>F64</sup> .....
- (6) <sup>F64</sup> .....
- (7) <sup>F64</sup> .....
- (8) <sup>F64</sup> .....]

**Textual Amendments**

- F63** S. 36A inserted by **Companies Act 1989 (c. 40, SIF 27), ss. 130(2), 213(2)**  
**F64** S. 36A(2)(4)-(8) repealed (6.4.2008) by **Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1** (with arts. 7, 12, Sch. 4 para. 1(2)(3) and with savings in S.I. 2008/948, arts. 2(2), 7)

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**F65** Words in s. 36A(3) repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 1(2)(3))

**Modifications etc. (not altering text)**

**C58** S. 36A: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), **ss. 130(6)**, 213(2)

**C59** S. 36A applied with modifications by S.I. 1985/680, arts. 4–6, **Sch.** as amended by S.I. 1990/1394, **reg. 2**

**C60** S. 36A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C61** Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, **regs. 2-6**

### **36AA Execution of deeds: England and Wales**

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

### **[<sup>F66</sup>36B Execution of documents by companies.**

- (1) Notwithstanding the provisions of any enactment, a company need not have a company seal.
- (2) 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 shall have effect as if so executed.
- (3) In this section “enactment” includes an enactment contained in a statutory instrument.]

**Textual Amendments**

**F66** S. 36B substituted (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 51** (with ss. 9(3)(5)(7), 13, 14(3))

**Modifications etc. (not altering text)**

**C62** S. 36B applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

**C63** S. 36B(2) applied (6.4.2006) by The Energy Administration (Scotland) Rules 2006 (S.I. 2006/772), **rule 67(2)** (with rule 67(3))

### **[<sup>F67</sup>36C Pre-incorporation contracts, deeds and obligations.**

- (1) A contract which 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.

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(2) Subsection (1) applies—

- (a) to the making of a deed under the law of England and Wales, and
- (b) to the undertaking of an obligation under the law of Scotland, as it applies to the making of a contract.]

#### Textual Amendments

**F67** S. 36C inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(4), 213(2)

#### Modifications etc. (not altering text)

**C64** S. 36C: power to apply conferred by Companies Act 1989 (c. 40, SIF 27), ss. 130(6), 213(2)

**C65** S. 36C applied with modifications by S.I. 1985/680, arts. 4–6, Sch. (as amended by S.I. 1990/1394, reg. 2)

**C66** Ss. 36-36C applied (with modifications) (16.5.1994) by S.I. 1994/950, regs. 2-6

S. 36C applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 37 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.

#### Modifications etc. (not altering text)

**C67** S. 37 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 38 Execution of deeds abroad.

(1) A company may . . . <sup>F68</sup>, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.

[<sup>F69</sup>(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company's common seal.]

[<sup>F70</sup>(3) This section does not extend to Scotland.]

#### Textual Amendments

**F68** Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), Sch. 17 para. 1(2) and repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), Sch. 8 para. 33(2), Sch. 9

**F69** S. 38(2) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), Sch. 17 para. 1(3)

**F70** S. 38(3) added (S.) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), Sch. 4 para. 52 (with ss. 9(3)(5)(7), 13, 14(3))

#### Modifications etc. (not altering text)

**C68** S. 38 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I



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### 39 Power of company to have official seal for use abroad.

(1) A company [<sup>F71</sup>which has a common seal] whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district or place elsewhere than in the United Kingdom, an official seal, which shall be a facsimile of [<sup>F72</sup>its common seal], with the addition on its face of the name of every territory, district or place where it is to be used.

[<sup>F73</sup>(2) The official seal when duly affixed to a document has the same effect as the company’s common seal.]

[<sup>F74</sup>(2A) Subsection (2) does not extend to Scotland.]

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal [<sup>F75</sup>or as respects Scotland by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995] . . . <sup>F76</sup>, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) As between the company and a person dealing with such an agent, the agent’s authority continues during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent’s authority has been given to the person dealing with him.

(5) The person affixing the official seal shall certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

#### Textual Amendments

- F71** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 2\(2\)](#)
- F72** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 2\(2\)](#)
- F73** [S. 39\(2\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 2\(3\)](#)
- F74** [S. 39\(2A\)](#) inserted (1.8.1995) by [1995 c. 7](#), ss. 14(1), 15(2), [Sch. 4 para. 53\(a\)](#) (with ss. 9(3)(5)(7), 13, 14(3))
- F75** Words in [s. 39\(3\)](#) inserted (S.) (1.8.1995) by [1995 c. 7](#), ss. 14(1), 15(2), [Sch. 4 para. 53\(b\)](#) (with ss. 9(3)(5)(7), 13, 14(3))(with ss. 9(3)(5)(7), 13, 14(3))
- F76** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 2\(4\)](#) and repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 27\)](#), s. 74(1)(2), [Sch. 8 para. 33\(3\)](#), [Sch. 9](#)

#### Modifications etc. (not altering text)

- C69** [S. 39](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, [Sch. 2 Pt. I](#)

### [<sup>F77</sup>40 Official seal for share certificates, etc.

(1) A company [<sup>F78</sup>which has a common seal] may have, for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of [<sup>F79</sup>its common seal] with the addition on its face of the word “Securities”. [<sup>F80</sup>The official seal when duly affixed to a document has the same effect as the company’s common seal.]]

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[<sup>F81</sup>(2) Nothing in this section shall affect the right of a company registered in Scotland to subscribe such securities and documents in accordance with the Requirements of Writing (Scotland) Act 1995.]

**Textual Amendments**

**F77** S. 40 renumbered as s. 40(1) (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 54** (with ss. 9(3)(5)(7), 13, 14(3))

**F78** Words inserted by **Companies Act 1989** (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 3(2)**

**F79** Words substituted by **Companies Act 1989** (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 3(2)**

**F80** Words inserted by **Companies Act 1989** (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 3(3)**

**F81** S. 40(2) added (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 54** (with ss. 9(3)(5)(7), 13, 14(3))

**Modifications etc. (not altering text)**

**C70** S. 40 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

**41 Authentication of documents.**

<sup>F82</sup>  
 .....

**Textual Amendments**

**F82** S. 41 repealed (6.4.2007) by **Companies Act 2006** (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 4(2)(b)**, (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**42 Events affecting a company’s status.**

<sup>F83</sup>  
 .....

**Textual Amendments**

**F83** S. 42 repealed (1.1.2007) by **Companies Act 2006** (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(a)**, Sch. 2 Pt. 1 (with arts. 6, 8, Sch. 5) (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**PART II**

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

*Private company becoming public*

**43 Re-registration of private company as public.**

- (1) Subject to this and the following five sections, a private company (other than a company not having a share capital) may be re-registered as a public company if—
- (a) a special resolution that it should be so re-registered is passed; and

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- (b) an application for re-registration is delivered to the registrar of companies, together with the necessary documents.

A company cannot be re-registered under this section if it has previously been re-registered as unlimited.

- (2) The special resolution must—
    - (a) alter the company’s memorandum so that it states that the company is to be a public company; and
    - (b) make such other alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a public company (the alterations to include compliance with section 25(1) [<sup>F84</sup>, or section 33 of the Companies (Audit, Investigations and Community Enterprise) Act 2004,] as regards the company’s name); and
    - (c) make such alterations in the company’s articles as are requisite in the circumstances.
  - (3) The application must be in the prescribed form and be signed by a director or secretary of the company; and the documents to be delivered with it are the following—
    - (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
    - (b) a copy of a written statement by the company’s auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company’s net assets (within the meaning given to that expression by [<sup>F85</sup>section 831 of the Companies Act 2006]) was not less than the aggregate of its called-up share capital and undistributable reserves;
    - (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (defined in section 46) by the company’s auditors in relation to that balance sheet;
    - (d) if section 44 applies, a copy of the valuation report under subsection (2)(b) of that section; and
    - (e) [<sup>F86</sup>Subject to subsection (3A),] a statutory declaration in the prescribed form by a director or secretary of the company—
      - (i) that the special resolution required by this section has been passed and that the conditions of the following two sections (so far as applicable) have been satisfied, and
      - (ii) that, between the balance sheet date and the application for re-registration, there has been no change in the company’s financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- [<sup>F87</sup>(3A) In place of the statutory declaration referred to in paragraph (e) of subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.
- [<sup>F87</sup>(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]
- (4) “Relevant balance sheet” means a balance sheet prepared as at a date not more than 7 months before the company’s application under this section.

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- (5) A resolution that a company be re-registered as a public company may change the company name by deleting the word “company” or the words “and company”, or its or their equivalent in Welsh (“cwmni”, “a’r cwmni”), including any abbreviation of them.

#### Textual Amendments

- F84** Words in s. 43(2)(b) inserted (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 33, 65, [Sch. 6 para. 7](#); S.I. 2004/3322, [art. 2\(3\)](#), Sch. 3 (subject to arts. 3-13)
- F85** Words in s. 43(3)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), [Sch. 1 para. 58](#) (with arts. 6, 11, 12)
- F86** Words in s. 43(3)(e) inserted (22.12.2000) by S.I. 2000/3373, [art. 6\(1\)\(2\)](#)
- F87** S. 43(3A)(3B) inserted (22.12.2000) by S.I. 2000/3373, [art. 6\(3\)](#)

#### 44 Consideration for shares recently allotted to be valued.

- (1) The following applies if shares have been allotted by the company between the date as at which the relevant balance sheet was prepared and the passing of the special resolution under section 43, and those shares were allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.
- (2) Subject to the following provisions, the registrar of companies shall not entertain an application by the company under section 43 unless beforehand—
- (a) the consideration for the allotment has been valued in accordance with section 108, and
  - (b) a report with respect to the value of the consideration has been made to the company (in accordance with that section) during the 6 months immediately preceding the allotment of the shares.
- (3) Where an amount standing to the credit of any of the company’s reserve accounts, or of its profit and loss account, has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares, the amount applied does not count as consideration for the allotment, and accordingly subsection (2) does not apply to it.
- (4) Subsection (2) does not apply if the allotment is in connection with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to the company applying under section 43 of shares, or of shares of any particular class, in that other company).
- (5) But subsection (4) does not exclude the application of subsection (2), unless under the arrangement it 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, all the holders of the other company’s shares of that class) to take part in the arrangement.

In determining whether that is the case, shares held by or by a nominee of the company allotting shares in connection with the arrangement, or by or by a nominee of a company which is that company’s holding company or subsidiary or a company which is a subsidiary of its holding company, are to be disregarded.

- (6) Subsection (2) does not apply to preclude an application under section 43, if the allotment of the company’s shares is in connection with its proposed merger with

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another company; that is, where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.

(7) In this section—

- (a) “arrangement” means any agreement, scheme or arrangement, including an arrangement sanctioned in accordance with [F88 section 899 of the Companies Act 2006] (company compromise with creditors and members) or [F89 section 110 of the Insolvency Act] (liquidator in winding up accepting shares as consideration for sale of company’s property), and
- (b) “another company” includes any body corporate <sup>F90</sup> . . .

#### Textual Amendments

- F88** Words in s. 44(7)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 59** (with arts. 6, 11, 12)
- F89** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**
- F90** Words in s. 44(7)(b) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), s. 1(1), {Sch. 1 Pt. 17 Group 5}

## 45 Additional requirements relating to share capital.

- (1) For a private company to be re-registered under section 43 as a public company, the following conditions with respect to its share capital must be satisfied at the time the special resolution under that section is passed.
- (2) Subject to subsections (5) to (7) below—
  - (a) the nominal value of the company’s allotted share capital must be not less than the authorised minimum [F91 (see Chapter 2 of Part 20 of the Companies Act 2006)], and
  - (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.
- (3) Subject to subsection (5), 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.
- (4) Subject to subsection (5), 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 subsection (3) applies), then either—
  - (a) the undertaking must have been performed or otherwise discharged, or
  - (b) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within 5 years from the time the resolution under section 43 is passed.
- (5) For the purpose of determining whether subsections (2)(b), (3) and (4) are complied with, certain shares in the company may be disregarded; and these are—
  - (a) subject to the next subsection, any share which was allotted before 22nd June 1982, and

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- (b) any share which was allotted in pursuance of an employees’ share scheme and by reason of which the company would, but for this subsection, be precluded under subsection (2)(b) (but not otherwise) from being re-registered as a public company.
- (6) A share is not to be disregarded under subsection (5)(a) if the aggregate in nominal value of that share and other shares proposed to be so disregarded is more than one-tenth of the nominal value of the company’s allotted share capital; but for this purpose the allotted share capital is treated as not including any shares disregarded under subsection (5)(b).
- (7) Any shares disregarded under subsection (5) are treated as not forming part of the allotted share capital for the purposes of subsection (2)(a).

#### Textual Amendments

**F91** Words in s. 45(2)(a) inserted (6.4.2008) by virtue of [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 60** (with arts. 6, 11, 12)

#### 46 Meaning of “unqualified report” in s. 43(3).

- (1) The following subsections explain the reference in section 43(3)(c) to an unqualified report of the company’s auditors on the relevant balance sheet.
- <sup>F92</sup>(2) If the balance sheet was prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared <sup>F93</sup>in accordance with the Companies Act 2006].
- (3) If the balance sheet was not prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared in accordance with <sup>F94</sup>the provisions of the Companies Act 2006] which would have applied if it had been so prepared.

For the purposes of an auditors’ report under this subsection <sup>F94</sup>the provisions of the Companies Act 2006] shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

- (4) A qualification shall be regarded as material unless the auditors state in their 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.

In this subsection “net assets” and “undistributable reserves” have the meaning given by <sup>F95</sup>section 831 of the Companies Act 2006][<sup>F96</sup> and “financial year” has the meaning given by section 390 of that Act].

#### Textual Amendments

**F92** S. 46(2)-(4) substituted for s. 46(2)-(6) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 23, 213(2), **Sch. 10 para. 1** (subject to transitional and saving provisions in [S.I. 1990/355](#), arts. 6-9, **Sch. 3 para. 1**)

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- F93** Words in s. 46(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 61(2)** (with arts. 6, 11, 12)
- F94** Words in s. 46(3) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 61(3)** (with arts. 6, 11, 12)
- F95** Words in s. 46(4) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 61(4)(a)** (with arts. 6, 11, 12)
- F96** Words in s. 46(4) inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 61(4)(b)** (with arts. 6, 11, 12)

#### 47 Certificate of re-registration under s. 43.

- (1) If the registrar of companies is satisfied, on an application under section 43, that a company may be re-registered under that section as a public company, he shall—
- (a) retain the application and other documents delivered to him under the section; and
  - (b) issue the company with a certificate of incorporation stating that the company is a public company.
- (2) The registrar may accept a declaration under section 43(3)(e) [<sup>F97</sup>or a statement under section 43(3A)] as sufficient evidence that the special resolution required by that section has been passed and the other conditions of re-registration satisfied.
- (3) The registrar shall not issue the certificate if it appears to him that the court has made an order confirming a reduction of the company’s capital which has the effect of bringing the nominal value of the company’s allotted share capital below the authorised minimum [<sup>F98</sup>(see Chapter 2 of Part 20 of the Companies Act 2006)].
- (4) Upon the issue to a company of a certificate of incorporation under this section—
- (a) the company by virtue of the issue of that certificate becomes a public company; and
  - (b) any alterations in the memorandum and articles set out in the resolution take effect accordingly.
- (5) The certificate is conclusive evidence—
- (a) that the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
  - (b) that the company is a public company.

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#### Textual Amendments

- F97** Words in s. 47(2) inserted (22.12.2000) by S.I. 2000/3373, **art. 7**
- F98** Words in s. 47(3) inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 62** (with arts. 6, 11, 12)
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#### Modifications etc. (not altering text)

- C71** S. 47(1)(3)-(5) extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 2(6)**
- C72** S. 47(1)(b) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 52(2), 65**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

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#### **48 Modification for unlimited company re-registering.**

- (1) In their application to unlimited companies, sections 43 to 47 are modified as follows.
- (2) The special resolution required by section 43(1) must, in addition to the matters mentioned in subsection (2) of that section—
  - (a) state that the liability of the members is to be limited by shares, and what the company's share capital is to be; and
  - (b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares.
- (3) The certificate of incorporation issued under section 47(1) shall, in addition to containing the statement required by paragraph (b) of that subsection, state that the company has been incorporated as a company limited by shares; and—
  - (a) the company by virtue of the issue of the certificate becomes a public company so limited; and
  - (b) the certificate is conclusive evidence of the fact that it is such a company.

#### *Limited company becoming unlimited*

#### **49 Re-registration of limited company as unlimited.**

- (1) Subject as follows, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.
- (2) A company is excluded from re-registering under this section if it is limited by virtue of re-registration under section 44 of the <sup>M6</sup>Companies Act 1967 or section 51 of this Act.
- (3) A public company cannot be re-registered under this section; nor can a company which has previously been re-registered as unlimited.
- (4) An application under this section must be in the prescribed form and be signed by a director or the secretary of the company, and be lodged with the registrar of companies, together with the documents specified in subsection (8) below.
- (5) The application must set out such alterations in the company's memorandum as—
  - (a) if it is to have a share capital, are requisite to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or
  - (b) if it is not to have a share capital, are requisite in the circumstances.
- (6) If articles have been registered, the application must set out such alterations in them as—
  - (a) if the company is to have a share capital, are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital; or
  - (b) if the company is not to have a share capital, are requisite in the circumstances.



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- (7) If articles have not been registered, the application must have annexed to it, and request the registration of, printed articles; and these must, if the company is to have a share capital, comply with the requirements mentioned in subsection (6)(a) and, if not, be articles appropriate to the circumstances.
- (8) The documents to be lodged with the registrar are—
- (a) the prescribed form of assent to the company's being registered as unlimited, subscribed by or on behalf of all the members of the company;
  - (b) [<sup>F99</sup>Subject to subsection (8A),] a statutory declaration made by the directors of the company—
    - (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and
    - (ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so;
  - (c) a printed copy of the memorandum incorporating the alterations in it set out in the application; and
  - (d) if articles have been registered, a printed copy of them incorporating the alterations set out in the application.
- [<sup>F100</sup>(8A) In place of the lodging of a statutory declaration under paragraph (b) of subsection (8), there may be delivered to the registrar of companies using electronic communications a statement made by the directors of the company as to the matters set out in subparagraphs (i) and (ii) of that paragraph.
- [<sup>F100</sup>(8B) Any person who makes a false statement under subsection (8A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]
- (9) For purposes of this section—
- (a) subscription to a form of assent by the legal personal representative of a deceased member of a company is deemed subscription by him; and
  - (b) a trustee in bankruptcy of a member of a company is, to the exclusion of the latter, deemed a member of the company.

#### Textual Amendments

**F99** Words in s. 49(8)(b) inserted (22.12.2000) by S.I. 2000/3373, art. 8(1)(2)

**F100** S. 49(8A)(8B) inserted (22.12.2000) by S.I. 2000/3373, art. 8(1)(3)

#### Modifications etc. (not altering text)

**C73** S. 49 modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 52(1), 65; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

#### Marginal Citations

**M6** 1967 c. 81.

## 50 Certificate of re-registration under s. 49.

- (1) The registrar of companies shall retain the application and other documents lodged with him under section 49 and shall—

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- (a) if articles are annexed to the application, register them; and
  - (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.
- (2) On the issue of the certificate—
- (a) the status of the company, by virtue of the issue, is changed from limited to unlimited; and
  - (b) the alterations in the memorandum set out in the application and (if articles have been previously registered) any alterations to the articles so set out take effect as if duly made by resolution of the company; and
  - (c) the provisions of this Act apply accordingly to the memorandum and articles as altered.
- (3) The certificate is conclusive evidence that the requirements of section 49 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of that section and was duly so re-registered.

*Unlimited company becoming limited*

**51 Re-registration of unlimited company as limited.**

- (1) Subject as follows, a company which is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered is passed, and the requirements of this section are complied with in respect of the resolution and otherwise.
- (2) A company cannot under this section be re-registered as a public company; and a company is excluded from re-registering under it if it is unlimited by virtue of re-registration under section 43 of the <sup>M7</sup>Companies Act 1967 or section 49 of this Act.
- (3) The special resolution must state whether the company is to be limited by shares or by guarantee and—
- (a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances;
  - (b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum and articles of a company so limited.
- (4) <sup>F101</sup> . . . An application for the company to be re-registered as limited, framed in the prescribed form and signed by a director or by the secretary of the company, must be lodged with the registrar of companies, together with the necessary documents, not earlier than the day on which the copy of the resolution forwarded [<sup>F102</sup> under section 30 of the Companies Act 2006] is received by him.
- (5) The documents to be lodged with the registrar are—
- (a) a printed copy of the memorandum as altered in pursuance of the resolution; and

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(b) a printed copy of the articles as so altered.

(6) This section does not apply in relation to the re-registration of an unlimited company as a public company under section 43.

#### Textual Amendments

**F101** Words in s. 51(4) omitted (1.10.2007) by virtue of The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 1(2)(a)** (with art. 12)

**F102** Words in s. 51(4) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 1(2)(b)** (with art. 12)

#### Marginal Citations

**M7** 1967 c. 81.

## 52 Certification of re-registration under s. 51.

- (1) The register shall retain the application and other documents lodged with him under section 51, and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of that section.
- (2) On the issue of the certificate—
  - (a) the status of the company is, by virtue of the issue, changed from unlimited to limited; and
  - (b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified take effect.
- (3) The certificate is conclusive evidence that the requirements of section 51 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered in pursuance of that section and was duly so re-registered.

*Public company becoming private*

## 53 Re-registration of public company as private.

- (1) A public company may be re-registered as a private company if—
  - (a) a special resolution complying with subsection (2) below that it should be so re-registered is passed and has not been cancelled by the court under the following section;
  - (b) an application for the purpose in the prescribed form and signed by a director or the secretary of the company is delivered to the registrar of companies, together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
  - (c) the period during which an application for the cancellation of the resolution under the following section may be made has expired without any such application having been made; or

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- (d) where such an application has been made, the application has been withdrawn or an order has been made under section 54(5) confirming the resolution and a copy of that order has been delivered to the registrar.
- (2) The special resolution must alter the company's memorandum so that it no longer states that the company is to be a public company and must make such other alterations in the company's memorandum and articles as are requisite in the circumstances.
- (3) A company cannot under this section be re-registered otherwise than as a company limited by shares or by guarantee.

#### **54 Litigated objection to resolution under s. 53.**

- (1) Where a special resolution by a public company to be re-registered under section 53 as a private company has been passed, an application may be made to the court for the cancellation of that resolution.
- (2) The application may be made—
  - (a) by the holders of not less in the aggregate than 5 per cent. in nominal value of the company's issued share capital or any class thereof;
  - (b) if the company is not limited by shares, by not less than 5 per cent. 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.

[<sup>F103</sup>(2A) For the purposes of subsection (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.]

- (3) 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 the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) If such an application is made, the company shall forthwith give notice in the prescribed form of that fact to the registrar of companies.
- (5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and—
  - (a) may make that order on such terms and conditions as it thinks fit, and may (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
  - (b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (6) The court's order may, if the court thinks fit, 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 may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (7) The company shall, within 15 days from the making of the court's order, or within such longer period as the court may at any time by order direct, deliver to the registrar of companies [<sup>F104</sup>a copy] of the order.

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- (8) If the court’s order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without the leave of the court to make any such alteration in breach of the requirement.
- (9) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.
- (10) A company which fails to comply with subsection (4) or subsection (7), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

#### Textual Amendments

**F103** S. 54(2A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 3}

**F104** Words in s. 54(7) substituted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 3(1)(a)

#### Modifications etc. (not altering text)

**C74** S. 54 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c.9, SIF 27), s. 4(1)

## 55 Certificate of re-registration under s. 53.

- (1) If the registrar of companies is satisfied that a company may be re-registered under section 53, he shall—
  - (a) retain the application and other documents delivered to him under that section; and
  - (b) issue the company with a certificate of incorporation appropriate to a private company.
- (2) On the issue of the certificate—
  - (a) the company by virtue of the issue becomes a private company; and
  - (b) the alterations in the memorandum and articles set out in the resolution under section 53 take effect accordingly.
- (3) The certificate is conclusive evidence—
  - (a) that the requirements of section 53 in respect of re-registration and of matters precedent and incidental to it have been complied with; and
  - (b) that the company is a private company.

#### Modifications etc. (not altering text)

**C75** S. 55(1)(b) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 52(2), 65; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

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## PART III

### CAPITAL ISSUES

#### Textual Amendments

- F105** Pt. III (ss. 56-79) repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. I](#) (the repeal coming into force as mentioned in [S.I. 1986/2246, art. 5, Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, Sch. (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285, arts. 2-6](#)) and [S.I. 1995/1538, art. 2](#) and otherwise prosp.)
- F106** Ss. 56-79 repealed (prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#) and the repeal being partly in force, as to which see individual sections.

#### Modifications etc. (not altering text)

- C76** Pt. III (ss. 56-79): functions transferred from the Secretary of State to the Treasury (7.6.1992) by [S.I. 1992/1315, arts. 2\(3\)\(4\), 6](#).

## CHAPTER I

### ISSUES BY COMPANIES REGISTERED, OR TO BE REGISTERED, IN GREAT BRITAIN

#### Modifications etc. (not altering text)

- C77** Pt. III Ch. I (ss.56-71) applied with modifications by [S.I. 1985/680, regs. 4-6, Sch.](#)

### *The prospectus*

#### 56 Matters to be stated, and reports to be set out, in prospectus.

- (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must comply—
  - (a) with Part I of Schedule 3 to this Act, as respects the matters to be stated in the prospectus, and
  - (b) with Part II of that Schedule, as respects the reports to be set out.
- (2) It is unlawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section.
- (3) Subsection (2) does not apply if it is shown that the form of application was issued either—
  - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or
  - (b) in relation to shares or debentures which were not offered to the public.
- (4) If a person acts in contravention of subsection (2), he is liable to a fine.
- (5) This section does not apply—

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- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

but subject to this, it applies to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

**Modifications etc. (not altering text)**

**C78** S. 56(1) modified by S.I. 1991/823, reg. 2(1), Sch. 1.

**57 Attempted evasion of s. 56 to be void.**

A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of section 56, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

**58 Document offering shares etc. for sale deemed a prospectus.**

**F107** .....

**Textual Amendments**

**F107** S. 58 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12)

**F108 59** .....

**Textual Amendments**

**F108** S. 59 repealed (1.12.2001) by S.I. 2001/3649, art. 5

**F109 60** .....

**Textual Amendments**

**F109** S. 60 repealed (1.12.2001) by S.I. 2001/3649, art. 5

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## 61 Prospectus containing statement by expert.

- (1) A prospectus inviting persons to subscribe for a company's shares or debentures and including a statement purporting to be made by an expert shall not be issued unless—
- (a) he (the expert) has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to its issue with the statement included in the form and context in which it is in fact included; and
  - (b) a statement that he has given and not withdrawn that consent appears in the prospectus.
- (2) If a prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine.

### Modifications etc. (not altering text)

**C79** S. 61(1)(b) modified by S.I. 1991/823, reg. 2(1), Sch.1.

## 62 Meaning of “expert”.

The expression “expert”, in both Chapters of this Part, includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

## 63 Prospectus to be dated.

A prospectus issued by or on behalf of a company, or in relation to an intended company, shall be dated; and that date shall, unless the contrary is proved, be taken as its date of publication.

### Modifications etc. (not altering text)

**C80** S. 63 modified by S.I. 1991/823, reg. 2(1), Sch.1

## *Registration of prospectus*

## 64 Registration requirement applicable in all cases.

- (1) No prospectus shall be issued by or on behalf of a company, or in relation to an intended company, unless on or before the date of its publication there has been delivered to the registrar of companies for registration a copy of the prospectus—
- (a) signed by every person who is named in it as a director or proposed director of the company, or by his agent authorised in writing, and
  - (b) having endorsed on or attached to it any consent to its issue required by section 61 from any person as an expert.
- (2) Where the prospectus is such a document as is referred to in section 58, the signatures required by subsection (1) above include those of every person making the offer, or his agent authorised in writing.

Where the offer is made by a company or a firm, it is sufficient for the purposes of this subsection if the document is signed on its behalf by two directors or (as the case



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may be) not less than half of the partners; and a director or partner may sign by his agent authorised in writing.

- (3) Every prospectus shall on its face—
  - (a) state that a copy has been delivered for registration as required by this section, and
  - (b) specify, or refer to statements in the prospectus specifying, any documents required by this or the following section to be endorsed on or attached to the copy delivered.
- (4) The registrar shall not register a prospectus unless it is dated and the copy of it signed as required by this section and unless it has endorsed on or attached to it the documents (if any) specified in subsection (3)(b).
- (5) If a prospectus is issued without a copy of it being delivered to the registrar as required by this section, or without the copy so delivered having the required documents endorsed on or attached to it, the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

C81 S. 64(3) modified by S.I. 1991/823, reg. 2(1), Sch. 1

## 65 Additional requirements in case of prospectus issued generally.

- (1) In the case of a prospectus issued generally (that is to persons who are not existing members or debenture holders of the company), the following provisions apply in addition to those of section 64.
- (2) The copy of the prospectus delivered to the registrar of companies must also have endorsed on or attached to it a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it.
- (3) In the case of a contract wholly or partly in a foreign language—
  - (a) the copy required by subsection (2) to be endorsed on or attached to the prospectus must be a copy of a translation of the contract into English or (as the case may be) a copy embodying a translation into English of the parts in a foreign language, and
  - (b) the translation must be certified in the prescribed manner to be a correct translation.
- (4) If the persons making any report required by Part II of Schedule 3 have made in the report, or have (without giving reasons) indicated in it, any such adjustments as are mentioned in paragraph 21 of the Schedule (profits, losses, assets, liabilities), the copy of the prospectus delivered to the registrar must have endorsed on or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for them.

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### *Liabilities and offences in connection with prospectus*

#### **66 Directors, etc. exempt from liability in certain cases.**

- (1) In the event of non-compliance with or contravention of section 56, a director or other person responsible for the prospectus does not incur any liability by reason of that non-compliance or contravention if—
  - (a) as regards any matter not disclosed, he proves that he was not cognisant of it, or
  - (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or
  - (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or was otherwise such as ought (in the court’s opinion, having regard to all the circumstances of the case) reasonably to be excused.
- (2) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 13 of Schedule 3 (disclosure of directors’ interests), no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.
- (3) Nothing in section 56 or 57 or this section limits or diminishes any liability which a person may incur under the general law or this Act apart from those provisions.

#### **67 Compensation for subscribers misled by statement in prospectus.**

- (1) Where a prospectus invites persons to subscribe for a company’s shares or debentures, compensation is payable to all those who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage which they may have sustained by reason of any untrue statement included in it.
- (2) The persons liable to pay the compensation are—
  - (a) every person who is a director of the company at the time of the issue of the prospectus,
  - (b) every person who authorised himself to be named, and is named, in the prospectus as a director or as having agreed to become a director (either immediately or after an interval of time),
  - (c) every person being a promoter of the company, and
  - (d) every person who has authorised the issue of the prospectus.
- (3) The above has effect subject to the two sections next following; and here and in those sections “promoter” means a promoter who was party to the preparation of the prospectus, or of the portion of it containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

#### **68 Exemption from s. 67 for those acting with propriety.**

- (1) A person is not liable under section 67 if he proves—
  - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent, or

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- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or
  - (c) that after issue of the prospectus and before allotment under it he, on becoming aware of any untrue statement in it, withdrew his consent to its issue and gave reasonable public notice of the withdrawal and of the reason for it.
- (2) A person is not liable under that section if he proves that—
  - (a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true; and
  - (b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 61 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment under it; and
  - (c) as regards every untrue statement purporting to be made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) Subsections (1) and (2) of this section do not apply in the case of a person liable, by reason of his having given a consent required of him by section 61, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.
- (4) Where under section 61 the consent of a person is required to the issue of a prospectus and he has given that consent, he is not by reason of his having given it liable under section 67 as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.
- (5) A person who, apart from this subsection, would under section 67 be liable, by reason of his having given a consent required of him by section 61, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—
  - (a) that, having given his consent under the section to the issue of the prospectus, he withdrew it in writing before the delivery of a copy of the prospectus for registration; or
  - (b) that, after delivery of a copy of the prospectus for registration and before allotment under it, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for it; or
  - (c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true.

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## **69 Indemnity for innocent director or expert.**

- (1) This section applies where—
- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director of it, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to its issue, or
  - (b) the consent of a person is required under section 61 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus.
- (2) The directors of the company (except any without whose knowledge or consent the prospectus was issued) and any other person who authorised its issue are liable to indemnify the person named, or whose consent was required under section 61 (as the case may be), against all damages, costs and expenses to which he may be liable by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert (as the case may be), or in defending himself against any action or legal proceedings brought against him in respect of it.
- (3) A person is not deemed for purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 61 to the inclusion of a statement purporting to be made by him as an expert.

## **70 Criminal liability for untrue statements.**

- (1) If a prospectus is issued with an untrue statement included in it, any person who authorised the issue of the prospectus is guilty of an offence and liable to imprisonment or a fine, or both, unless he proves either—
- (a) that the statement was immaterial, or
  - (b) that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.
- (2) A person is not deemed for purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 61 to the inclusion in it of a statement purporting to be made by him as an expert.

### *Supplementary*

## **71 Interpretation for ss. 56 to 70.**

For purposes of sections 56 to 70—

- (a) a statement included in a prospectus is deemed to be untrue if it is misleading in the form and context in which it is included, and
- (b) a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

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## CHAPTER II

### ISSUES BY COMPANIES INCORPORATED, OR TO BE INCORPORATED, OUTSIDE GREAT BRITAIN

#### 72 Prospectus of overseas company.

- (1) It is unlawful for a person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain) unless the prospectus complies with the requirements of the next two subsections.
- (2) The prospectus must be dated and contain particulars with respect to the following matters—
  - (a) the instrument constituting or defining the constitution of the company;
  - (b) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
  - (c) an address in Great Britain where that instrument, and those enactments or provisions, or copies of them (and, if they are in a foreign language, a translation of them certified in the prescribed manner), can be inspected;
  - (d) the date on which, and the country in which, the company was incorporated; and
  - (e) whether the company has established a place of business in Great Britain and, if so, the address of its principal office in Great Britain.
- (3) Subject to the following provisions, the prospectus must comply—
  - (a) with Part I of Schedule 3, as respects the matters to be stated in the prospectus, and
  - (b) with Part II of that Schedule, as respects the reports to be set out.
- (4) Paragraphs (a) to (c) of subsection (2) do not apply in the case of a prospectus issued more than 2 years after the company is entitled to commence business.
- (5) It is unlawful for a person to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Chapter and the issue of which in Great Britain does not contravene section 74 or 75 below.

This subsection does not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

- (6) This section—
  - (a) does not apply to the issue to a company's existing members or debenture holders of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and
  - (b) except in so far as it requires a prospectus to be dated, does not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

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but subject to this, it applies to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

**Modifications etc. (not altering text)**

**C82** S. 72(2)-(4) modified by S.I. 1991/823, reg. 2(1), **Sch.1**

**73 Attempted evasion of s. 72 to be void.**

A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed—

- (a) by subsection (2) of section 72, as regards the particulars to be contained in the prospectus, or
- (b) by subsection (3) of that section, as regards compliance with Schedule 3, or purporting to affect an applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

**74 Prospectus containing statement by expert.**

- (1) This section applies in the case of a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether it has or has not established, or when formed will or will not establish, a place of business in Great Britain), if the prospectus includes a statement purporting to be made by an expert.
- (2) It is unlawful for any person to issue, circulate or distribute in Great Britain such a prospectus if—
  - (a) the expert has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or
  - (b) there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as above mentioned.
- (3) For purposes of this section, a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

**Modifications etc. (not altering text)**

**C83** S. 74(2)(b) modified by S.I. 1991/823, reg. 2(1), **Sch.1**

**75 Restrictions on allotment to be secured in prospectus.**

- (1) It is unlawful for a person to issue, circulate or distribute in Great Britain a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), unless the prospectus complies with the following condition.

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- (2) The prospectus must have the effect, where an application is made in pursuance of it, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 82, 86 and 87 (restrictions on allotment), so far as applicable.

**Modifications etc. (not altering text)**

**C84** S. 75 modified by S.I. 1991/823, reg. 2(1), Sch.1

## 76 Stock exchange certificate exempting from compliance with Sch. 3.

- (1) The following applies where—
- (a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), and
  - (b) application is made to a prescribed stock exchange for permission for those shares or debentures to be listed on that stock exchange.

“Issued generally” means issued to persons who are not existing members or debenture holders of the company.

- (2) There may on the applicant’s request be given by or on behalf of that stock exchange a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with Schedule 3 would be unduly burdensome.
- (3) If a certificate is given under subsection (2), and if the proposals above mentioned are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—
- (a) a prospectus giving the particulars and information in the form in which they are so required to be published is deemed to comply with Schedule 3, and
  - (b) except as respects the requirement for the prospectus to be dated, section 72 does not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

## 77 Registration of overseas prospectus before issue.

- (1) It is unlawful for a person to issue, circulate or distribute in Great Britain a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), unless before the issue, circulation or distribution the requirements of this section have been complied with.
- (2) A copy of the prospectus, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, must have been delivered for registration to the registrar of companies.
- (3) The prospectus must state on the face of it that a copy has been so delivered to the registrar of companies; and the following must be endorsed on or attached to that copy of the prospectus—

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- (a) any consent to the issue of the prospectus which is required by section 74;
  - (b) a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it; and
  - (c) where the persons making any report required by Part II of Schedule 3 have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 21 of the Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.
- (4) If in the case of a prospectus deemed by virtue of a certificate under section 76 to comply with Schedule 3, a contract or a copy of it, or a memorandum of a contract, is required to be available for inspection in connection with application under that section to the stock exchange, a copy or (as the case may be) a memorandum of the contract must be endorsed on or attached to the copy of the prospectus delivered to the registrar for registration.
- (5) References in subsections (3)(b) and (4) to the copy of a contract are, in the case of a contract wholly or partly in a foreign language, to a copy of a translation of the contract into English, or a copy embodying a translation into English of the parts in a foreign language (as the case may be); and—
- (a) the translation must in either case be certified in the prescribed manner to be a correct translation, and
  - (b) the reference in subsection (4) to a copy of a contract required to be available for inspection includes a copy of a translation of it or a copy embodying a translation of parts of it.

**Modifications etc. (not altering text)**

C85 S. 77(3) modified by S.I. 1991/823, reg. 2(1), Sch. 1

**78 Consequences (criminal and civil) of non-compliance with ss. 72-77.**

- (1) A person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of sections 72 to 77 is liable to a fine.
- (2) Sections 67, 68 and 69 extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain (whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain), substituting for any reference to section 61 a reference to section 74.
- (3) In the event of non-compliance with or contravention of any of the requirements of section 72(2) as regards the particulars to be contained in the prospectus, or section 72(3) as regards compliance with Schedule 3, a director or other person responsible for the prospectus incurs no liability by reason of the non-compliance or contravention if—
  - (a) as regards any matter not disclosed, he proves that he was not cognisant of it, or
  - (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or



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- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the court’s opinion, having regard to all the circumstances of the case, reasonably to be excused.
- (4) In the event of failure to include in a prospectus to which this Chapter applies a statement with respect to the matters contained in paragraph 13 of Schedule 3, no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.
- (5) Nothing in section 72 or 73 or this section, limits or diminishes any liability which a person may incur under the general law or this Act, apart from those provisions.

## 79 Supplementary.

- (1) Where a document by which the shares or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company had been a company incorporated under this Act, have been deemed by virtue of section 58 to be a prospectus issued by the company, that document is deemed, for the purposes of this Chapter, a prospectus so issued.
- (2) An offer of shares or debentures for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not deemed an offer to the public for those purposes.
- (3) In this Chapter “shares” and “debentures” have the same meaning as when those expressions are used, elsewhere in this Act, in relation to a company incorporated under this Act.]

**Modifications etc. (not altering text)**

C86 S. 79(2) extended by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 195(a)

## PART IV

### ALLOTMENT OF SHARES AND DEBENTURES

#### *General provisions as to allotment*

## 80 Authority of company required for certain allotments.

- (1) The directors of a company shall not exercise any power of the company to allot relevant securities, unless they are, in accordance with this section [<sup>F110</sup>or section 80A], authorised to do so by—
- (a) the company in general meeting; or
  - (b) the company’s articles.
- (2) In this section “relevant securities” means—
- (a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers to it or shares allotted in pursuance of an employees’ share scheme, and

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- (b) any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted);
- and a reference to the allotment of relevant securities includes the grant of such a right but (subject to subsection (6) below), not the allotment of shares pursuant to such a right.
- (3) Authority under this section may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.
- (4) The authority must state the maximum amount of relevant securities that may be allotted under it and the date on which it will expire, which must be not more than 5 years from whichever is relevant of the following dates—
- (a) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation; and
  - (b) in any other case, the date on which the resolution is passed by virtue of which the authority is given;
- but such an authority (including an authority contained in the articles) may be previously revoked or varied by the company in general meeting.
- (5) The authority may be renewed or further renewed by the company in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and must specify the date on which the renewed authority will expire.
- (6) In relation to authority under this section for the grant of such rights as are mentioned in subsection (2)(b), the reference in subsection (4) (as also the corresponding reference in subsection (5)) to the maximum amount of relevant securities that may be allotted under the authority is to the maximum amount of shares which may be allotted pursuant to the rights.
- (7) The directors may allot relevant securities, notwithstanding that authority under this section has expired, if they are allotted in pursuance of an offer or agreement made by the company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.
- (8) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the company's articles, be an ordinary resolution; <sup>F1111</sup>but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to it.]
- (9) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this section is liable to a fine.
- (10) Nothing in this section affects the validity of any allotment.
- (11) This section does not apply to any allotment of relevant securities by a company, other than a public company registered as such on its original incorporation, if it is made in pursuance of an offer or agreement made before the earlier of the following two dates—
- (a) the date of the holding of the first general meeting of the company after its registration or re-registration as a public company, and
  - (b) 22nd June 1982;

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but any resolution to give, vary or revoke an authority for the purposes of section 14 of the <sup>M8</sup>Companies Act 1980 or this section has effect for those purposes if passed at any time after the end of April 1980.

#### Textual Amendments

**F110** Words inserted (subject to the transitional and savings provisions in [S.I. 1990/355, arts. 4, 10, Sch. 4](#)) by [Companies Act 1989 \(c. 40, SIF 27\), ss. 115\(1\), 213\(2\)](#)

**F111** Words in [s. 80\(8\)](#) beginning "but it is in any case subject to section 380" to the end omitted and substituted (1.10.2007) by virtue of [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\), art. 10\(1\), Sch. 4 para. 1\(3\)](#) (with [art. 12](#))

#### Marginal Citations

**M8** 1980 c. 22.

### [<sup>F112</sup>80A Election by private company as to duration of authority.

- (1) A private company may elect (by elective resolution in accordance with section 379A) that the provisions of this section shall apply, instead of the provisions of section 80(4) and (5), in relation to the giving or renewal, after the election, of an authority under that section.
- (2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—
  - (a) for an indefinite period, or
  - (b) for a fixed period, in which case it must state the date on which it will expire.
- (3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.
- (4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.
- (5) A resolution renewing an authority—
  - (a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and
  - (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.
- (6) The references in this section to the maximum amount of relevant securities that may be allotted shall be construed in accordance with section 80(6).
- (7) If an election under this section ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—
  - (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and
  - (b) otherwise, shall have effect as if it had been given for a fixed period of five years.]

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#### Textual Amendments

**F112** S. 80A inserted (subject to the transitional and savings provisions as mentioned in S.I. 1990/355, arts. 4, 10, Sch. 4) by Companies Act 1989 (c. 40, SIF 27), ss. 115(1), 213(2)

## 81 Restriction on public offers by private company.

F113 .....

#### Textual Amendments

**F113** S. 81 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 24(2))

## [<sup>F114</sup>82 Application for, and allotment of, shares and debentures.

- (1) No allotment shall be made of a company's shares or debentures in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.
- (2) The beginning of that third day, or that later time, is "the time of the opening of the subscription lists".
- (3) In subsection (1), the reference to the day on which the prospectus is first issued generally is to the day when it is first so issued as a newspaper advertisement; and if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the reference is to the day on which it is first so issued in any manner.
- (4) In reckoning for this purpose the third day after another day—
  - (a) any intervening day which is a Saturday or Sunday, or is a bank holiday in any part of Great Britain, is to be disregarded; and
  - (b) if the third day (as so reckoned) is itself a Saturday or Sunday, or a bank holiday, there is to be substituted the first day after that which is none of them.
- (5) The validity of an allotment is not affected by any contravention of subsections (1) to (4); but in the event of contravention, the company and every officer of it who is in default is liable to a fine.
- (6) As applying to a prospectus offering shares or debentures for sale, the above provisions are modified as follows—
  - (a) for references to allotment, substitute references to sale; and
  - (b) for the reference to the company and every officer of it who is in default, substitute a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.
- (7) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally is not revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that day of the appropriate public notice; and that notice is one given

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by some person responsible under sections 67 to 69 for the prospectus and having the effect under those sections of excluding or limiting the responsibility of the giver.]

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#### Textual Amendments

**F114** Ss. 82, 83 repealed (29.4.1988 for specified purposes and 10.5.1999 for further specified purposes and otherwise *prosp.*) by [Financial Services Act 1986 \(c.60, SIF 69\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. I](#); S.I. 1988/740, art. 2, [Sch.](#); S.I. 1999/727, [art. 2\(a\)](#)

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#### Modifications etc. (not altering text)

**C87** S. 82 applied with modifications by S.I. 1985/680, regs. 4–6, [Sch.](#)

### [<sup>F115</sup>83 No allotment unless minimum subscription received.

- (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless—
- (a) there has been subscribed the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 2 of Schedule 3 (preliminary expenses, purchase of property, working capital, etc.); and
  - (b) the sum payable on application for the amount so stated has been paid to and received by the company.
- (2) For purposes of subsection (1)(b), a sum is deemed paid to the company, and received by it, if a cheque for that sum has been received in good faith by the company and the directors have no reason for suspecting that the cheque will not be paid.
- (3) The amount so stated in the prospectus is to be reckoned exclusively of any amount payable otherwise than in cash and is known as “the minimum subscription”.
- (4) If the above conditions have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.
- (5) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.
- (7) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.]

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#### Textual Amendments

**F115** Ss. 82, 83 repealed (29.4.1988 for specified purposes and 10.5.1999 for further specified purposes and otherwise *prosp.*) by [Financial Services Act 1986 \(c.60, SIF 69\)](#), ss. 211(1), 212(3), [Sch. 17 Pt. I](#); S.I. 1988/740, art. 2, [Sch.](#); S.I. 1999/727, [art. 2\(a\)](#)

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#### 84 Allotment where issue not fully subscribed.

(1) No allotment shall be made of any share capital of a public company offered for subscription unless—

- (a) that capital is subscribed for in full; or
- (b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied;

and, where conditions are so specified, no allotment of the capital shall be made by virtue of paragraph (b) unless those conditions are satisfied.

[<sup>F116</sup>This is without prejudice to section 83.]

(2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(3) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in repayment was not due to any misconduct or negligence on his part.

(4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription (the word “subscribed” in subsection (1) being construed accordingly).

(5) In subsections (2) and (3) as they apply to the case of shares offered as wholly or partly payable otherwise than in cash, references to the repayment of money received from applicants for shares include—

- (a) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
- (b) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received,

and references to interest apply accordingly.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

#### Textual Amendments

**F116** Words repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, Sch.) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), Sch. 17 Pt. I

#### 85 Effect of irregular allotment.

(1) An allotment made by a company to an applicant in contravention of section [<sup>F117</sup>83 or] 84 is voidable at the instance of the applicant within one month after the date of the allotment, and not later, and is so voidable notwithstanding that the company is in the course of being wound up.

(2) If a director of a company knowingly contravenes, or permits or authorises the contravention of, any provision of either of those sections with respect to allotment,

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he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred by the contravention.

- (3) But proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

**Textual Amendments**

**F117** Words repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**

**F118** 86 .....

**Textual Amendments**

**F118** Ss. 86, 87 repealed (29.4.1988 for specified purposes and otherwise 10.5.1999) by Financial Services Act 1986 (c.60, SIF 69), s. 211(1), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(b)**

**F119** 87 .....

**Textual Amendments**

**F119** Ss. 86, 87 repealed (29.4.1988 for specified purposes and otherwise 10.5.1999) by Financial Services Act 1986 (c.60, SIF 69), ss. 211(1), 212(3), **Sch. 17 Pt. I**; S.I. 1988/740, art. 2, **Sch.**; S.I. 1999/727, **art. 2(b)**

**88 Return as to allotments, etc.**

- (1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.
- (2) When such a company makes an allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—
- (a) a return of the allotments (in the prescribed form) stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees, and the amount (if any) paid or due and payable on each share, whether on account of the nominal value of the share or by way of premium; and
  - (b) in the case of shares allotted as fully or partly paid up otherwise than in cash—
    - (i) a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made (such contracts being duly stamped), and
    - (ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

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- (3) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract <sup>F120</sup> . . . .
- (4) <sup>F121</sup> . . . . .
- (5) If default is made in complying with this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine, but subject as follows.
- (6) In the case of default in delivering to the registrar within one month after the allotment any document required by this section to be delivered, the company, or any officer liable for the default, may apply to the court for relief; and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court thinks proper.

#### Textual Amendments

**F120** Words in s. 88(3) omitted (with effect as mentioned in reg. 2(4) of the amending S.I.) by virtue of [The Stamp Duty and Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2868\)](#), [reg. 2\(2\)](#)

**F121** S. 88(4) omitted (with effect as mentioned in reg. 2(4) of the amending S.I.) by virtue of [The Stamp Duty and Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2868\)](#), [reg. 2\(3\)](#)

#### Modifications etc. (not altering text)

**C88** S. 88 excluded (27.7.1999) by [1999 c. 20, s. 6\(3\)](#) (with s. 15)

### *Pre-emption rights*

#### **89 Offers to shareholders to be on pre-emptive basis.**

- (1) Subject to the provisions of this section and the seven sections next following, a company proposing to allot equity securities (defined in section 94)—
- (a) shall not allot any of them on any terms to a person unless it has made an offer to each person who holds relevant shares or relevant employee shares to allot to him on the same or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of relevant shares and relevant employee shares, and
  - (b) shall not allot any of those securities to a person unless the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.
- (2) Subsection (3) below applies to any provision of a company's memorandum or articles which requires the company, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in subsection (1) to each person who holds relevant shares or relevant employee shares of that class.
- (3) If in accordance with a provision to which this subsection applies—



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- (a) a company makes an offer to allot securities to such a holder, and
- (b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer,

subsection (1) does not apply to the allotment of those securities, and the company may allot them accordingly; but this is without prejudice to the application of subsection (1) in any other case.

- (4) Subsection (1) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash; and securities which a company has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening subsection (1)(b).
- (5) Subsection (1) does not apply to the allotment of securities which would, apart from a renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

[<sup>F122</sup>(6) Where a company holds relevant shares as treasury shares—

- (a) for the purposes of subsections (1) and (2), the company is not a “person who holds relevant shares”; and
- (b) for the purposes of subsection (1), the shares held as treasury shares do not form part of “the aggregate of relevant shares and relevant employee shares”.]

#### Textual Amendments

**F122** S. 89(6) substituted (18.12.2003) by The Companies (Acquisition of Own Shares) (Treasury Shares) No. 2 Regulations 2003 (S.I. 2003/3031), {reg. 2(1)}

#### Modifications etc. (not altering text)

**C89** S. 89(2) modified (18.12.2003) by The Companies (Acquisition of Own Shares) (Treasury Shares) No. 2 Regulations 2003 (S.I. 2003/3031), {reg. 2(2)}

## 90 Communication of pre-emption offers to shareholders.

- (1) This section has effect as to the manner in which offers required by section 89(1), or by a provision to which section 89(3) applies, are to be made to holders of a company's shares.
- (2) Subject to the following subsections, an offer shall be in writing and shall be made to a holder of shares either personally or by sending it by post (that is to say, prepaying and posting a letter containing the offer) to him or to his registered address or, if he has no registered address in the United Kingdom, to the address in the United Kingdom supplied by him to the company for the giving of notice to him.  
  
If sent by post, the offer is deemed to be made at the time at which the letter would be delivered in the ordinary course of post.
- (3) Where shares are held by two or more persons jointly, the offer may be made to the joint holder first named in the register of members in respect of the shares.
- (4) In the case of a holder's death or bankruptcy, the offer may be made—
  - (a) by sending it by post in a prepaid letter addressed to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name,

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or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming, or

- (b) (until such an address has been so supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(5) If the holder—

- (a) has no registered address in the United Kingdom and has not given to the company an address in the United Kingdom for the service of notices on him, or  
 (b) is the holder of a share warrant,

the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Gazette.

- (6) The offer must state a period of not less than 21 days during which it may be accepted; and the offer shall not be withdrawn before the end of that period.
- (7) This section does not invalidate a provision to which section 89(3) applies by reason that that provision requires or authorises an offer under it to be made in contravention of any of subsections (1) to (6) above; but, to the extent that the provision requires or authorises such an offer to be so made, it is of no effect.

## **91 Exclusion of ss. 89, 90 by private company.**

- (1) Section 89(1), section 90(1) to (5) or section 90(6) may, as applying to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company.
- (2) A requirement or authority contained in the memorandum or articles of a private company, if it is inconsistent with any of those subsections, has effect as a provision excluding that subsection; but a provision to which section 89(3) applies is not to be treated as inconsistent with section 89(1).

## **92 Consequences of contravening ss. 89, 90.**

- (1) If there is a contravention of section 89(1), or of section 90(1) to (5) or section 90(6), or of a provision to which section 89(3) applies, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the subsection or provision contravened for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.
- (2) However, no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years from the delivery to the registrar of companies of the return of allotments in question or, where equity securities other than shares are granted, from the date of the grant.

## **93 Saving for other restrictions as to offers.**

- (1) Sections 89 to 92 are without prejudice to any enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.

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- (2) Where a company cannot by virtue of such an enactment offer or allot equity securities to a holder of relevant shares or relevant employee shares, those sections have effect as if the shares held by that holder were not relevant shares or relevant employee shares.

#### 94 Definitions for ss. 89-96.

- (1) The following subsections apply for the interpretation of sections 89 to 96.
- (2) “Equity security”, in relation to a company, means a relevant share in the company (other than a share shown in the memorandum to have been taken by a subscriber to the memorandum or a bonus share), or a right to subscribe for, or to convert securities into, relevant shares in the company.
- (3) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class includes the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or (as the case may be) relevant shares of a particular class; but such a reference does not include the allotment of any relevant shares pursuant to such a right.
- [<sup>F123</sup>(3A) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class also includes the sale of any relevant shares in the company or (as the case may be) relevant shares of a particular class if, immediately before the sale, the shares were held by the company as treasury shares.]
- (4) “Relevant employee shares”, in relation to a company, means shares of the company which would be relevant shares in it but for the fact that they are held by a person who acquired them in pursuance of an employees’ share scheme.
- (5) “Relevant shares”, in relation to a company, means shares in the company other than—
  - (a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and
  - (b) shares which are held by a person who acquired them in pursuance of an employees’ share scheme or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme [<sup>F124</sup>or, in the case of shares held by the company as treasury shares, are to be transferred in pursuance of such a scheme].
- (6) A reference to a class of shares is to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.
- (7) In relation to an offer to allot securities required by section 89(1) or by any provision to which section 89(3) applies, a reference in sections 89 to 94 (however expressed) to the holder of shares of any description is to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 days immediately before the date of the offer, the holder of shares of that description.

#### Textual Amendments

**F123** S. 94(3A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 5(3)}

**F124** Words in s. 94(5)(b) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 5(2)}

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## 95 Disapplication of pre-emption rights.

(1) Where the directors of a company are generally authorised for purposes of section 80, they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authority as if—

- (a) section 89(1) did not apply to the allotment, or
- (b) that subsection applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this subsection, sections 89 to 94 have effect accordingly.

(2) Where the directors of a company are authorised for purposes of section 80 (whether generally or otherwise), the company may by special resolution resolve either—

- (a) that section 89(1) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or
- (b) that that subsection shall apply to the allotment with such modifications as may be specified in the resolution;

and where such a resolution is passed, sections 89 to 94 have effect accordingly.

[<sup>F125</sup>(2A) Subsections (1) and (2) apply in relation to a sale of shares which is an allotment of equity securities by virtue of section 94(3A) as if—

- (a) in subsection (1) for “Where the directors of a company are generally authorised for purposes of section 80, they” there were substituted The directors of a company and the words “pursuant to that authority” were omitted, and
- (b) in subsection (2), the words from “Where” to “otherwise),” and, in paragraph (a), the words “to be made pursuant to that authority” were omitted.]

(3) The power conferred by subsection (1) or a special resolution under subsection (2) ceases to have effect when the authority to which it relates is revoked or would (if not renewed) expire; but if the authority is renewed, the power or (as the case may be) the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.

(4) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company, if the power or resolution enabled the company to make an offer or agreement which would or might require equity securities to be allotted after it expired.

(5) A special resolution under subsection (2), or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice a written statement by the directors setting out—

- (a) their reasons for making the recommendation,
- (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
- (c) the directors’ justification of that amount.

(6) A person who knowingly or recklessly authorises or permits the inclusion in a statement circulated under subsection (5) of any matter which is misleading, false or deceptive in a material particular is liable to imprisonment or a fine, or both.

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### Textual Amendments

**F125** **S. 95(2A)** inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116, reg. 4, Sch. para. 6

## 96 Saving for company’s pre-emption procedure operative before 1982.

- (1) Where a company which is re-registered or registered as a public company is or, but for the provisions of the <sup>M9</sup>Companies Act 1980 and the enactments replacing it, would be subject at the time of re-registration or (as the case may be) registration to a pre-1982 pre-emption requirement, sections 89 to 95 do not apply to an allotment of the equity securities which are subject to that requirement.
- (2) A “pre-1982 pre-emption requirement” is a requirement imposed (whether by the company’s memorandum or articles, or otherwise) before the relevant date in 1982 by virtue of which the company must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than because involving a contravention of section 90(1) to (5) or 90(6)) is inconsistent with sections 89 to 94; and “the relevant date in 1982” is—
  - (a) except in a case falling within the following paragraph, 22nd June in that year, and
  - (b) in the case of a company which was re-registered or registered as a public company on an application made before that date, the date on which the application was made.
- (3) A requirement which—
  - (a) is imposed on a private company (having been so imposed before the relevant date in 1982) otherwise than by the company’s memorandum or articles, and
  - (b) if contained in the company’s memorandum or articles, would have effect under section 91 to the exclusion of any provisions of sections 89 to 94,has effect, so long as the company remains a private company, as if it were contained in the memorandum or articles.
- (4) If on the relevant date in 1982 a company, other than a public company registered as such on its original incorporation, was subject to such a requirement as is mentioned in section 89(2) imposed otherwise than by the memorandum or articles, the requirement is to be treated for purposes of sections 89 to 94 as if it were contained in the memorandum or articles.

### Marginal Citations

**M9** 1980 c. 22.

## Commissions and discounts

## 97 Power of company to pay commissions.

- (1) It is lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether

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absolute or conditional) for any shares in the company, if the following conditions are satisfied.

- (2) The payment of the commission must be authorised by the company's articles; and—
- (a) the commission paid or agreed to be paid must not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;
- [<sup>F126</sup>and
- (b) the amount or rate per cent. of commission paid or agreed to be paid, and the number of shares which persons have agreed for a commission to subscribe absolutely, must be disclosed in the manner required by the following subsection.
- (3) Those matters must, in the case of shares offered to the public for subscription, be disclosed in the prospectus; and in the case of shares not so offered—
- (a) they must be disclosed in a statement in the prescribed form signed by every director of the company or by his agent authorised in writing, and delivered (before payment of the commission) to the registrar of companies for registration; and
  - (b) where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, they must also be disclosed in that circular or notice.
- (4) If default is made in complying with subsection (3)(a) as regards delivery to the registrar of the statement in prescribed form, the company and every officer of it who is in default is liable to a fine].

#### Textual Amendments

**F126** Word “and” and s. 97(2)(b),(3)(4) repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, Sch.) by Financial Services Act 1986 (c. 60, SIF 69), ss. 211(1), 212(3), Sch. 17

#### Modifications etc. (not altering text)

**C90** S. 97(3) modified by S.I. 1991/823, reg. 2(1), Sch. 1

**C91** S. 97(3) applied (19.6.1995) by S.I. 1995/1537, reg. 20, Sch. 4 Pt. III para. 12

## 98 Apart from s. 97, commissions and discounts barred.

- (1) Except as permitted by section 97, no company shall apply any of its shares or capital money, either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company.
- (2) This applies whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in section 97 or this section affects the power of a company to pay such brokerage as has previously been lawful.

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- (4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under section 97 and this section.

*Amount to be paid for shares; the means of payment*

## **99 General rules as to payment for shares on allotment.**

- (1) Subject to the following provisions of this Part, shares allotted by a company, and any premium on them, may be paid up in money or money's worth (including goodwill and know-how).
- (2) A public company shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.
- (3) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable—
  - (a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
  - (b) to pay interest at the appropriate rate on the amount payable under paragraph (a) above.
- (4) This section does not prevent a company from allotting bonus shares to its members or from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).
- (5) The reference in subsection (3) to the holder of shares includes any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of them executed in his favour.

### **Modifications etc. (not altering text)**

**C92** Ss. 99, 101–103 extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 9\(1\)](#)

**C93** Ss. 99, 101–103 restricted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 9\(2\)](#)

## **100 Prohibition on allotment of shares at a discount.**

- (1) A company's shares shall not be allotted at a discount.
- (2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

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### 101 Shares to be allotted as at least one-quarter paid-up.

- (1) A public company shall not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.
- (2) Subsection (1) does not apply to shares allotted in pursuance of an employees' share scheme.
- (3) If a company allots a share in contravention of subsection (1), the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received.
- (4) But the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it), with interest at the appropriate rate.
- (5) Subsections (3) and (4) do not apply to the allotment of bonus shares, unless the allottee knew or ought to have known the shares were allotted in contravention of subsection (1).

#### Modifications etc. (not altering text)

- C94** Ss. 99, 101–103 extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 9\(1\)](#)
- C95** Ss. 99, 101–103 restricted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 9\(2\)](#)

### 102 Restriction on payment by long-term undertaking.

- (1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than 5 years after the date of the allotment.
- (2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.
- (3) Where a contract for the allotment of shares does not contravene subsection (1), any variation of the contract which has the effect that the contract would have contravened the subsection, if the terms of the contract as varied had been its original terms, is void.
- (4) Subsection (3) applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.
- (5) The following subsection applies where a public company allots shares for a consideration which consists of or includes (in accordance with subsection (1)) an undertaking which is to be performed within 5 years of the allotment, but the undertaking is not performed within the period allowed by the contract for the allotment of the shares.
- (6) The allottee is then liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any



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premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

- (7) A reference in this section to a contract for the allotment of shares includes an ancillary contract relating to payment in respect of them.

**Modifications etc. (not altering text)**

**C96** Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 9(1)

**C97** Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 9(2)

**103 Non-cash consideration to be valued before allotment.**

- (1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—
- the consideration for the allotment has been independently valued under section 108; and
  - a report with respect to its value has been made to the company by a person appointed by the company (in accordance with that section) during the 6 months immediately preceding the allotment of the shares; and
  - a copy of the report has been sent to the proposed allottee.
- (2) Where an amount standing to the credit of any of a company's reserve accounts, or of its profit and loss account, is applied in paying up (to any extent) any shares allotted to members of the company or any premiums on shares so allotted, the amount applied does not count as consideration for the allotment, and accordingly subsection (1) does not apply in that case.
- (3) Subsection (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or the cancellation) of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company).
- (4) But subsection (3) does not exclude the application of subsection (1) unless under the arrangement it is open to all the holders of the shares in the other company in question [<sup>F127</sup> (“the relevant company”)] (or, where the arrangement applies only to shares of a particular class, to all the holders of shares in [<sup>F128</sup>the relevant company], being holders of shares of that class) to take part in the arrangement. [<sup>F129</sup> In determining whether that is the case, the following shall be disregarded—
- shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement (“the allotting company”);
  - shares held by or by a nominee of a company which is—
    - the holding company, or a subsidiary, of the allotting company, or
    - a subsidiary of that holding company; and
  - shares held as treasury shares by the relevant company.]

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- (5) Subsection (1) also does not apply to the allotment of shares by a company in connection with its proposed merger with another company; that is, where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.
- (6) If a company allots shares in contravention of subsection (1) and either—
- (a) the allottee has not received the valuer’s report required by that subsection to be sent to him; or
  - (b) there has been some other contravention of this section or section 108 which the allottee knew or ought to have known amounted to a contravention,
- the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.
- (7) In this section—
- (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with <sup>F130</sup>section 899 of the Companies Act 2006] (company compromise with creditors and members) or <sup>F131</sup>section 110 of the Insolvency Act] (liquidator in winding up accepting shares as consideration for sale of company property)), and
  - (b) any reference to a company, except where it is or is to be construed as a reference to a public company, includes any body corporate <sup>F132</sup> . . .

#### Textual Amendments

- F127** Words in s. 103(4) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 7(a)(i)}
- F128** Words in s. 103(4) substituted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para.7(a)(ii)}
- F129** Words in s. 103(4) substituted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 7(b)}
- F130** Words in s. 103(7)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2009/948), arts. 2(2), 3(1), **Sch. 1 para. 63** (with arts. 6, 11, 12)
- F131** Words substituted (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**
- F132** Words in s. 103(7)(b) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **s. 1(1)**, {Sch. 1 Pt. 17 Group 5}

#### Modifications etc. (not altering text)

- C98** Ss. 99, 101–103 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(1)**
- C99** Ss. 99, 101–103 restricted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **s. 9(2)**

### 104 Transfer to public company of non-cash asset in initial period.

- (1) A public company formed as such shall not, unless the conditions of this section have been complied with, enter into an agreement with a person for the transfer by him during the initial period of one or more non-cash assets to the company or another, if—
- (a) that person is a subscriber to the company’s memorandum, and

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- (b) the consideration for the transfer to be given by the company is equal in value at the time of the agreement to one-tenth or more of the company's nominal share capital issued at that time.
- (2) The “initial period” for this purpose is 2 years beginning with the date of the company being issued with a certificate under [<sup>F133</sup>section 761 of the Companies Act 2006] (or the previous corresponding provision) that it was entitled to do business.
- (3) This section applies also to a company re-registered as a public company (except one re-registered under section 8 of the <sup>M10</sup>Companies Act 1980 or section 2 of the Consequential Provisions Act), or registered under section 685 (joint stock company) or the previous corresponding provision; but in that case—
- (a) there is substituted a reference in subsection (1)(a) to a person who is a member of the company on the date of registration or re-registration, and
  - (b) the initial period is then 2 years beginning with that date.
- In this subsection the reference to a company re-registered as a public company includes a private company so re-registered which was a public company before it was a private company.
- (4) The conditions of this section are as follows—
- (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued under section 109;
  - (b) a report with respect to the consideration to be so received and given must have been made to the company in accordance with that section during the 6 months immediately preceding the date of the agreement;
  - (c) the terms of the agreement must have been approved by an ordinary resolution of the company; and
  - (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report must have been circulated to the members of the company entitled to receive the notice and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.
- (5) In subsection (4)(a)—
- (a) the reference to the consideration to be received by the company is to the asset to be transferred to it or the advantage to the company of the asset's transfer to another person; and
  - (b) the specified condition is without prejudice to any requirement to value any consideration for purposes of section 103.
- (6) In the case of the following agreements, this section does not apply—
- (a) where it is part of the company's ordinary business to acquire, or arrange for other persons to acquire, assets of a particular description, an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or to such a person, as the case may be;
  - (b) an agreement entered into by the company under the supervision of the court, or of an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

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#### Textual Amendments

**F133** Words in s. 104(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 64** (with arts. 6, 11, 12)

#### Marginal Citations

**M10** 1980 c. 22.

### 105 Agreements contravening s. 104.

- (1) The following subsection applies if a public company enters into an agreement contravening section 104, the agreement being made with the person referred to in subsection (1)(a) or (as the case may be) subsection (3) of that section, and either—
  - (a) that person has not received the valuer’s report required for compliance with the conditions of the section, or
  - (b) there has been some other contravention of the section or of section 108(1), (2) or (5) or section 109, which he knew or ought to have known amounted to a contravention.
- (2) The company is then entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement; and the agreement, so far as not carried out, is void.
- (3) However, if the agreement is or includes an agreement for the allotment of shares in the company, then—
  - (a) whether or not the agreement also contravenes section 103, subsection (2) above does not apply to it in so far as it is for the allotment of shares; and
  - (b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

### 106 Shares issued to subscribers of memorandum.

Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, shall be paid up in cash.

#### Modifications etc. (not altering text)

**C100** S. 106 extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 9(1)

### 107 Meaning of “the appropriate rate”.

In sections 99 to 105 “the appropriate rate”, in relation to interest, means 5 per cent. per annum or such other rate as may be specified by order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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### *Valuation provisions*

#### **108 Valuation and report (s. 103).**

- (1) The valuation and report required by section 103 (or, where applicable, section 44) shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.
- (2) However, where it appears to the independent person (from here on referred to as “the valuer”) to be reasonable for the valuation of the consideration, or part of it, to be made (or for him to accept such a valuation) by another person who—
  - (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and
  - (b) is not an officer or servant of the company or any other body corporate which is that company’s subsidiary or holding company or a subsidiary of that company’s holding company or a partner or employee of such an officer or servant,he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this section and provide the note required by subsection (6) below.
- (3) The reference in subsection (2)(b) to an officer or servant does not include an auditor.
- (4) The valuer’s report shall state—
  - (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
  - (b) the amount of any premium payable on the shares;
  - (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;
  - (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
    - (i) by the consideration;
    - (ii) in cash.
- (5) Where the consideration or part of it is valued by a person other than the valuer himself, the latter’s report shall state that fact and shall also—
  - (a) state the former’s name and what knowledge and experience he has to carry out the valuation, and
  - (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.
- (6) The valuer’s report shall contain or be accompanied by a note by him—
  - (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;
  - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;
  - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and
  - (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable

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on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

- (7) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 103 (and, where applicable, section 44) and the foregoing provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and—
- (a) the valuer shall carry out, or arrange for, such other valuations as will enable him to determine that proportion; and
  - (b) his report shall state what valuations have been made under this subsection and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

**Modifications etc. (not altering text)**

**C101** S. 108 extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 9\(1\)](#)

**C102** S. 108 restricted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 9\(2\)](#)

**109 Valuation and report (s. 104).**

- (1) Subsections (1) to (3) and (5) of section 108 apply also as respects the valuation and report for the purposes of section 104.
- (2) The valuer's report for those purposes shall—
  - (a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);
  - (b) state the method and date of valuation;
  - (c) contain or be accompanied by a note as to the matters mentioned in section 108(6)(a) to (c); and
  - (d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.
- (3) A reference in section 104 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer; but—
  - (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer;
  - (b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and
  - (c) his report for purposes of section 104 shall state what valuation has been made under this subsection and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

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## 110 Entitlement of valuer to full disclosure.

- (1) A person carrying out a valuation or making a report under section 103 or 104, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under section 108(6) or (as the case may be) section 109(2)(c).
- (2) A person who knowingly or recklessly makes a statement which—
  - (a) is misleading, false or deceptive in a material particular, and
  - (b) is a statement to which this subsection applies,is guilty of an offence and liable to imprisonment or a fine, or both.
- (3) Subsection (2) applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under section 108 or 109, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under subsection (1) of this section.

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### Modifications etc. (not altering text)

**C103** Ss. 110, 111 extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 9(1)

## 111 Matters to be communicated to registrar.

- (1) A company to which a report is made under section 108 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar of companies for registration at the same time that it files the return of the allotments of those shares under section 88.
- (2) A company which has passed a resolution under section 104 with respect to the transfer of an asset shall, within 15 days of so doing, deliver to the registrar of companies a copy of the resolution together with the valuer's report required by that section.
- (3) If default is made in complying with subsection (1), every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine; but this is subject to the same exception as is made by section 88(6) (relief on application to the court) in the case of default in complying with that section.
- (4) If a company fails to comply with subsection (2), it and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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### Modifications etc. (not altering text)

**C104** Ss. 110, 111 extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 9(1)

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*Other matters arising out of allotment &c.*

**[<sup>F134</sup>111A Right to damages, &c. not affected.**

A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company's register in respect of shares.]

**Textual Amendments**

**F134** S. 111A inserted by Companies Act 1989 (c. 40, SIF 27), s. 131(1) (with s. 213(2) and with savings in S.I. 1990/355, art. 11)

**112 Liability of subsequent holders of shares allotted.**

- (1) If a person becomes a holder of shares in respect of which—
  - (a) there has been a contravention of section 99, 100, 101 or 103; and
  - (b) by virtue of that contravention, another is liable to pay any amount under the section contravened,
 that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by subsection (3) below.
- (2) If a company enters into an agreement in contravention of section 104 and—
  - (a) the agreement is or includes an agreement for the allotment of shares in the company; and
  - (b) a person becomes a holder of shares allotted under the agreement; and
  - (c) by virtue of the agreement and allotment under it, another person is liable to pay any amount under section 105,
 the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by the following subsection; and this applies whether or not the agreement also contravenes section 103.
- (3) A person otherwise liable under subsection (1) or (2) is exempted from that liability if either—
  - (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned; or
  - (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (as the case may be) subsection (2).
- (4) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his favour.
- (5) As subsections (1) and (3) apply in relation to the contraventions there mentioned, they also apply—
  - (a) to a contravention of section 102; and



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- (b) to a failure to carry out a term of a contract as mentioned in subsections (5) and (6) of that section.

**Modifications etc. (not altering text)**

**C105** S. 112 extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c.9, SIF 27\)](#), s. [9\(1\)](#), restricted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. [9\(2\)](#)

**113 Relief in respect of certain liabilities under ss. 99 ff.**

- (1) Where a person is liable to a company under—
- (a) section 99, 102, 103 or 105;
  - (b) section 112(1) by reference to a contravention of section 99 or 103; or
  - (c) section 112(2) or (5),
- in relation to payment in respect of any shares in the company, or is liable by virtue of an undertaking given to it in, or in connection with, payment for any such shares, the person so liable may make an application to the court to be exempted in whole or in part from the liability.
- (2) If the liability mentioned in subsection (1) arises in relation to payment in respect of any shares, the court may, on an application under that subsection, exempt the applicant from the liability only—
- (a) if and to the extent that it appears to the court just and equitable to do so having regard to the matters mentioned in the following subsection,
  - (b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay the company under any of the relevant sections.
- (3) The matters to be taken into account by the court under subsection (2)(a) are—
- (a) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the relevant sections, or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and
  - (c) whether the applicant or any other person has performed in whole or in part, or is likely so to perform, any such undertaking, or has done or is likely to do any other thing in payment or part payment for the shares.
- (4) Where the liability arises by virtue of an undertaking given to the company in, or in connection with, payment for shares in it, the court may, on an application under subsection (1), exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
- (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any of the provisions mentioned in that subsection; and
  - (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

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- (5) In determining whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—
- (a) that a company which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and
  - (b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (6) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any of sections 99 to 105 or 112, and it appears to the court that the contributor is liable to make such a contribution, the court may exercise the powers of the following subsection.
- (7) The court may, if and to the extent that it appears to it, having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings, that it is just and equitable to do so—
- (a) exempt the contributor in whole or in part from his liability to make such a contribution; or
  - (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.
- (8) Where a person is liable to a company under section 105(2), the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that subsection.

**Modifications etc. (not altering text)**

**C106** Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 9(1)

**114 Penalty for contravention.**

If a company contravenes any of the provisions of sections 99 to 104 and 106 the company and any officer of it who is in default is liable to a fine.

**Modifications etc. (not altering text)**

**C107** Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 9(1)

**115 Undertakings to do work, etc.**

- (1) Subject to section 113, an undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Act, is so enforceable

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notwithstanding that there has been a contravention in relation to it of section 99, 102 or 103.

- (2) Where such an undertaking is given in contravention of section 104 in respect of the allotment of shares, it is so enforceable notwithstanding the contravention.

**Modifications etc. (not altering text)**

**C108** Ss. 113, 114, 115 extended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 9(1)

**116 Application of ss. 99 ff to special cases.**

Except as provided by section 9 of the Consequential Provisions Act (transitional cases dealt with by section 31 of the <sup>M11</sup>Companies Act 1980), sections 99, 101 to 103, 106, 108 [<sup>F135</sup>, 110, 111 and 112 to 115] apply—

- (a) to a company which has passed and not revoked a resolution to be re-registered under section 43 as a public company, and
- (b) to a joint stock company which has passed, and not revoked, a resolution that the company be a public company,

as those sections apply to a public company.

**Textual Amendments**

**F135** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 131(2), 213(2)

**Marginal Citations**

**M11** 1980 c. 22.

**PART V**

**SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION**

**CHAPTER I**

**GENERAL PROVISIONS ABOUT SHARE CAPITAL**

**117 Public company share capital requirements.**

**F136** .....

**Textual Amendments**

**F136** S. 117 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 26, 27(2), 29(2))

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## 118 The authorised minimum.

F137 .....

### Textual Amendments

**F137** S. 118 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 26, 27(2), 29(2))

## 119 Provision for different amounts to be paid on shares.

A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

## 120 Reserve liability of limited company.

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; and that portion of its share capital is then not capable of being called up except in that event and for those purposes.

## 121 Alteration of share capital (limited companies).

- (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum in any of the following ways.
- (2) The company may—
  - (a) increase its share capital by new shares of such amount as it thinks expedient;
  - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;
  - (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum (but subject to the following subsection);
  - (e) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.
- (3) In any sub-division under subsection (2)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.

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- (4) The powers conferred by this section must be exercised by the company in general meeting.
- (5) A cancellation of shares under this section does not for purposes of this Act constitute a reduction of share capital.

## **122 Notice to registrar of alteration.**

- (1) If a company having a share capital has—
  - (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
  - (b) converted any shares into stock; or
  - (c) re-converted stock into shares; or
  - (d) sub-divided its shares or any of them; or
  - (e) redeemed any redeemable shares; or
  - (f) cancelled any shares (otherwise than in connection with a reduction of share capital under section 135),it shall within one month after so doing give notice in the prescribed form to the registrar of companies, specifying (as the case may be) the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.
- (2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

## **123 Notice to registrar of increased share capital.**

- (1) If a company having a share capital (whether or not its shares have been converted into stock) increases its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.
- (2) The notice must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.
- (3) There shall be forwarded to the registrar together with the notice a printed copy of the resolution authorising the increase, or a copy of the resolution in some other form approved by the registrar.
- (4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

## **124 Reserve capital of unlimited company.**

An unlimited company having a share capital may by its resolution for re-registration as a public company under section 43, or as a limited company under section 51—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares (but subject to the condition that no part of the increased capital is to be capable of being called up except in the event and for the purpose of the company being wound up), and

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- (b) alternatively or in addition, provide that a specified portion of its uncalled share capital is not to be capable of being called up except in that event and for that purpose.

## CHAPTER II

### CLASS RIGHTS

#### 125 Variation of class rights.

- (1) This section is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.
- (2) Where the rights are attached to a class of shares otherwise than by the company's memorandum, and the company's articles do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—
- (a) the holders of three-quarters in nominal value of the issued shares of that class [<sup>F138</sup>(excluding any shares of that class held as treasury shares)] consent in writing to the variation; or
  - (b) [<sup>F139</sup>a special resolution] passed at a separate general meeting of the holders of that class sanctions the variation;

and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in paragraphs (a) and (b) above.

- (3) Where—
- (a) the rights are attached to a class of shares by the memorandum or otherwise;
  - (b) the memorandum or articles contain provision for the variation of those rights; and
  - (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for allotment under section 80 or with a reduction of the company's share capital under section 135;

those rights shall not be varied unless—

- (i) the condition mentioned in subsection (2)(a) or (b) above is satisfied; and
- (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

- (4) If the rights are attached to a class of shares in the company by the memorandum or otherwise and—
- (a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
  - (b) where they are so attached otherwise, the articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in subsection (3)(c), those rights may only be varied in accordance with that provision of the articles.

- (5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company [<sup>F140</sup>(excluding any member holding shares as treasury shares)] agree to the variation.

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- (6) <sup>F141</sup> .....
- (7) Any alteration 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.
- (8) In this section and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the variation of those rights are to be read as including references to their abrogation.

#### Textual Amendments

- F138** Words in s. 125(2)(a) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 8(2)}
- F139** Words in s. 125(2) substituted (1.10.2007 with application in accordance with Sch. 4 para. 2(2) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 2(1)** (with art. 12)
- F140** Words in s. 125(5) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 8(3)}
- F141** S. 125(6) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

## 126 Saving for court's powers under other provisions.

Nothing in subsections (2) to (5) of section 125 derogates from the powers of the court under the following sections of this Act, namely—

- sections 4 to 6 (company resolution to alter objects),  
section 54 (litigated objection to public company becoming private by re-registration),  
[<sup>F142</sup>section 899 of the Companies Act 2006 (court sanction for compromise or arrangement with creditors or members)],  
[<sup>F143</sup>section 900 of that Act (powers of court to facilitate reconstruction or amalgamation)],  
[<sup>F144</sup>Part 30 of the Companies Act 2006 (protection of members against unfair prejudice)].

#### Textual Amendments

- F142** Words in s. 126 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 65(a)** (with arts. 6, 11, 12)
- F143** Words in s. 126 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 65(b)** (with arts. 6, 11, 12)
- F144** Words in s. 126 substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 9** (with art. 12)

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## 127 Shareholders' right to object to variation.

- (1) This section applies if, in the case of a company whose share capital is divided into different classes of shares—
- (a) provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to—
    - (i) the consent of any specified proportion of the holders of the issued shares of that class, or
    - (ii) the sanction of a resolution passed at a separate meeting of the holders of those shares,
 and in pursuance of that provision the rights attached to any such class of shares are at any time varied; or
  - (b) the rights attached to any class of shares in the company are varied under section 125(2).
- (2) The holders of not less in the aggregate than 15 per cent. of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation), may apply to the court to have the variation cancelled; and if such an application is made, the variation has no effect unless and until it is confirmed by the court.
- [<sup>F145</sup>(2A) For the purposes of subsection (2), any of the company's issued share capital held as treasury shares must be disregarded.]
- (3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm it.
- The decision of the court on any such application is final.
- (5) The company shall within 15 days after the making of an order by the court on such an application forward a copy of the order to the registrar of companies; and, if default is made in complying with this provision, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) "Variation", in this section, includes abrogation; and "varied" is to be construed accordingly.

### Textual Amendments

**F145** S. 127(2A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 9}

## 128 Registration of particulars of special rights.

- (1) If a company allots shares with rights which are not stated in its memorandum or articles, or in any resolution or agreement which is required by [<sup>F146</sup>section 30 of the



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Companies Act 2006] to be sent to the registrar of companies, the Company shall deliver to the registrar of companies within one month from allotting the shares, a statement in the prescribed form containing particulars of those rights.

- (2) This does not apply if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the 12 months immediately following the former's allotment.
- (3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company's memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation is made deliver to the registrar of companies a statement in the prescribed form containing particulars of the variation.
- (4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its shares, it shall within one month from doing so deliver to the registrar of companies a notice in the prescribed form giving particulars of the name or designation so assigned.
- (5) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### Textual Amendments

**F146** Words in s. 128(1) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(4\)](#) (with art. 12)

## 129 Registration of newly created class rights.

- (1) If a company not having a share capital creates a class of members with rights which are not stated in its memorandum or articles or in a resolution or agreement to which <sup>F147</sup>section 30 of the Companies Act 2006] applies, the company shall deliver to the registrar of companies within one month from the date on which the new class is created a statement in the prescribed form containing particulars of the rights attached to that class.
- (2) If the rights of any class of members of the company are varied otherwise than by an amendment of the memorandum or articles or by a resolution or agreement subject to section 380, the company shall within one month from the date on which the variation is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.
- (3) If a company (otherwise than by such an amendment, resolution or agreement as is mentioned above) assigns a name or other designation, or a new name or other designation, to any class of its members, it shall within one month from doing so deliver to the registrar a notice in the prescribed form giving particulars of the name or designation so assigned.
- (4) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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### Textual Amendments

**F147** Words in s. 129(1) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(5\)](#) (with art. 12)

## CHAPTER III

### SHARE PREMIUMS

#### 130 Application of share premiums.

- (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called “the share premium account”.
- (2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or is writing off—
  - (a) the company’s preliminary expenses; or
  - (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,
 or in providing for the premium payable on redemption of debentures of the company.
- (3) Subject to this, the provisions of this Act relating to the reduction of a company’s share capital apply as if the share premium account were part of its paid up share capital.
- (4) Sections 131 and 132 below give relief from the requirements of this section, and in those sections references to the issuing company are to the company issuing shares as above mentioned.

### Modifications etc. (not altering text)

**C109** [S. 130](#) applied (1.5.1995) by [1988 c. 1, Sch. 28A, para. 5\(2\)\(a\)](#)(as inserted by [1995 c. 4, s. 135, Sch. 26 para. 3](#) (with [Sch. 8 para. 55\(2\), 57\(1\)](#)))

#### 131 Merger relief.

- (1) With the exception made by [<sup>F148</sup>section 132(8)] (group reconstruction) this section applies where the issuing company has secured at least a 90 per cent. equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—
  - (a) by the issue or transfer to the issuing company of equity shares in the other company, or
  - (b) by the cancellation of any such shares not held by the issuing company.
- (2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 130 does not apply to the premiums on those shares.

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- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.
- (4) Subject to the next subsection, the issuing company is to be regarded for purposes of this section as having secured at least a 90 per cent. equity holding in another company in pursuance of such an arrangement as is mentioned in subsection (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement, or not) of an aggregate nominal value equal to 90 per cent. or more of the nominal value of that company's equity share capital [<sup>F149</sup>(excluding any shares in that company held as treasury shares)].
- (5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes of shares taken separately.
- (6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for purposes of this section as held by the issuing company.
- (7) In relation to a company and its shares and capital, the following definitions apply for purposes of this section—
  - (a) "equity shares" means shares comprised in the company's equity share capital; and
  - (b) "non-equity shares" means shares (of any class) not so comprised;and "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned under [<sup>F150</sup>section 899 of the Companies Act 2006 (court sanction for compromise or arrangement with creditors or members)] or [<sup>F151</sup>section 110 of the Insolvency Act] (liquidator accepting shares etc. as consideration for sale of company property)).
- (8) The relief allowed by this section does not apply if the issue of shares took place before 4th February 1981.

#### Textual Amendments

**F148** S. 131(1): "section 132(8)" substituted (retrospectively) for "section 132(4)" by [Companies Act 1989](#) (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 1**

**F149** Words in s. 131(4) inserted (1.12.2003) by [The Companies \(Acquisition of Own Shares\)\(Treasury Shares\) Regulations 2003](#) (S.I. 2003/1116), reg. 4, {Sch. para. 10}

**F150** Words in s. 131(7) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008](#) (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 66** (with arts. 6, 11, 12)

**F151** Words substituted by [Insolvency Act 1986](#) (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

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### 132 Relief in respect of group reconstructions.

- (1) This section applies where the issuing company—
  - (a) is a wholly-owned subsidiary of another company (“the holding company”), and
  - (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash, being assets of any company (“the transferor company”) which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.
- (2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 130 to transfer any amount in excess of the minimum premium value to the share premium account.
- (3) In subsection (2), “the minimum premium value” means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.
- (4) For the purposes of subsection (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.
- (5) For the purposes of subsection (4)—
  - (a) the base value of the assets transferred is to be taken as—
    - (i) the cost of those assets to the transferor company, or
    - (ii) the amount at which those assets are stated in the transferor company’s accounting records immediately before the transfer,
 whichever is the less; and
  - (b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor company’s accounting records immediately before the transfer.
- (6) The relief allowed by this section does not apply (subject to the next subsection) if the issue of shares took place before the date of the coming into force of the <sup>M12</sup>Companies (Share Premium Account) Regulations 1984 (which were made on 21st December 1984).
- (7) To the extent that the relief allowed by this section would have been allowed by section 38 of the <sup>M13</sup>Companies Act 1981 as originally enacted (the text of which section is set out in Schedule 25 to this Act), the relief applies where the issue of shares took place before the date of the coming into force of those Regulations, but not if the issue took place before 4th February 1981.
- (8) Section 131 does not apply in a case falling within this section.

#### Marginal Citations

**M12** [S.I. 1984/2007.](#)

**M13** [1981 c. 62.](#)

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### 133 Provisions supplementing ss. 131, 132.

- (1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of section 131 or 132 of this Act, or section 12 of the Consequential Provisions Act, is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.
- (2) References in this Chapter (however expressed) to—
  - (a) the acquisition by a company of shares in another company; and
  - (b) the issue or allotment of shares to, or the transfer of shares to or by, a company, include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the reference in section 132 to the company transferring the shares is to be construed accordingly.
- (3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.
- (4) In sections 131 to 133 “company”, except in references to the issuing company, includes any body corporate.

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**Modifications etc. (not altering text)**

**C110** S. 133(2)(3) applied by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 12(5)

### 134 Provision for extending or restricting relief from s. 130.

- (1) The Secretary of State may by regulations in a statutory instrument make such provision as appears to him to be appropriate—
  - (a) for relieving companies from the requirements of section 130 in relation to premiums other than cash premiums, or
  - (b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.
- (2) Regulations under this section may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) No such regulations shall be made unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.

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**Modifications etc. (not altering text)**

**C111** S. 134 modified by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 12(6)

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## CHAPTER IV

### REDUCTION OF SHARE CAPITAL

#### 135 Special resolution for reduction of share capital.

- (1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.
- (2) In particular, and without prejudice to subsection (1), the company may—
  - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
  - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
  - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants; and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
- (3) A special resolution under this section is in this Act referred to as “a resolution for reducing share capital”.

#### 136 Application to court for order of confirmation.

- (1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.
- (2) If the proposed reduction of share capital involves either—
  - (a) diminution of liability in respect of unpaid share capital; or
  - (b) the payment to a shareholder of any paid-up share capital,
 and in any other case if the court so directs, the next three subsections have effect, but subject throughout to subsection (6).
- (3) Every creditor of the company who <sup>F152</sup>—
  - (a) at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company<sup>F153</sup>, and
  - (b) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due,]
 is entitled to object to the reduction of capital.
- (4) The court shall settle a list of creditors entitled to object, and for that purpose—
  - (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
  - (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

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- (5) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount—
  - (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
  - (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.
- (6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (3) to (5) of this section shall not apply as regards any class or any classes of creditors.

#### Textual Amendments

- F152** Words in s. 136(3) renumbered (6.4.2008) as s. 136(3)(a) by virtue of [The Companies \(Reduction of Capital\) \(Creditor Protection\) Regulations 2008 \(S.I. 2008/719\)](#), [reg. 2\(a\)](#) (with [reg. 4](#))
- F153** S. 136(3)(b) and preceding word inserted (6.4.2008) by [The Companies \(Reduction of Capital\) \(Creditor Protection\) Regulations 2008 \(S.I. 2008/719\)](#), [reg. 2\(b\)](#) (with [reg. 4](#))

### 137 Court order confirming reduction.

- (1) The court, if satisfied with respect to every creditor of the company who under section 136 is entitled to object to the reduction of capital that either—
  - (a) his consent to the reduction has been obtained; or
  - (b) his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.
- (2) Where the court so orders, it may also—
  - (a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words “and reduced”; and
  - (b) make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.
- (3) Where a company is ordered to add to its name the words “and reduced”, those words are, until the expiration of the period specified in the order, deemed to be part of the company’s name.

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### **138 Registration of order and minute of reduction.**

- (1) The registrar of companies, on production to him of an order of the court confirming the reduction of a company's share capital, and the delivery to him of a copy of the order and of a minute (approved by the court) showing, with respect to the company's share capital as altered by the order—
  - (a) the amount of the share capital;
  - (b) the number of shares into which it is to be divided, and the amount of each share; and
  - (c) the amount (if any) at the date of the registration deemed to be paid up on each share,
 shall register the order and minute (but subject to section 139).
- (2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered takes effect.
- (3) Notice of the registration shall be published in such manner as the court may direct.
- (4) The registrar shall certify the registration of the order and minute; and the certificate—
  - (a) may be either signed by the registrar, or authenticated by his official seal;
  - (b) is conclusive evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minute.
- (5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum, and is valid and alterable as if it had been originally contained therein.
- (6) The substitution of such a minute for part of the company's memorandum is deemed an alteration of the memorandum for purposes of section 20.

### **139 Public company reducing capital below authorised minimum.**

- (1) This section applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.
- (2) The registrar of companies shall not register the order under section 138 unless the court otherwise directs, or the company is first re-registered as a private company.
- (3) The court may authorise the company to be so re-registered without its having passed the special resolution required by section 53; and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.
- (4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles as altered by the court's order.
- (5) On receipt of such an application, the registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—



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- (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the court's order take effect; and
- (b) the certificate is conclusive evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental thereto have been complied with, and that the company is a private company.

#### **140 Liability of members on reduced shares.**

- (1) Where a company's share capital is reduced, a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.
- (2) But the following two subsections apply if—
  - (a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and
  - (b) after the reduction of capital, the company is unable (within the meaning of [F154 section 123 of the Insolvency Act]) to pay the amount of his debt or claim.
- (3) Every person who was a member of the company at the date of the registration of the order for reduction and minute is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (4) If the company is wound up, the court, on the application of the creditor in question and proof of ignorance referred to in subsection (2)(a), may (if it thinks fit) settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (5) Nothing in this section affects the rights of the contributories among themselves.

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#### **Textual Amendments**

**F154** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

#### **141 Penalty for concealing name of creditor, etc.**

If an officer of the company—

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as is mentioned above,

he is guilty of an offence and liable to a fine.

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## CHAPTER V

### MAINTENANCE OF CAPITAL

#### **Modifications etc. (not altering text)**

**C112** Pt. V, Ch. V (ss. 142–150) extended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 6(3)

#### **142 Duty of directors on serious loss of capital.**

- (1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company for a date not later than 56 days from that day for the purpose of considering whether any, and if so what, steps should be taken to deal with the situation.
- (2) If there is a failure to convene an extraordinary general meeting as required by subsection (1), each of the directors of the company who—
  - (a) knowingly and wilfully authorises or permits the failure, or
  - (b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorises or permits the failure to continue,
 is liable to a fine.
- (3) Nothing in this section authorises the consideration, at a meeting convened in pursuance of subsection (1), of any matter which could not have been considered at that meeting apart from this section.

#### **143 General rule against company acquiring own shares.**

- (1) Subject to the following provisions, a company limited by shares or limited by guarantee and having a share capital shall not acquire its own shares, whether by purchase, subscription or otherwise.
- (2) If a company purports to act in contravention of this section, the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and [<sup>F155</sup>, subject to subsection (2A),] the purported acquisition is void.
- [<sup>F156</sup>(2A) Where a company purchases qualifying shares out of distributable profits under section 162, any contravention by the company of any provision of section 162B(1) or (2) shall not render the acquisition void under subsection (2) above.]
- (3) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration; and subsection (1) does not apply in relation to—
  - (a) the redemption or purchase of shares in accordance with Chapter VII of this Part,
  - (b) the acquisition of shares in a reduction of capital duly made,
  - (c) the purchase of shares in pursuance of an order of the court under section 5 (alteration of objects), section 54 (litigated objection to resolution for

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- company to be re-registered as private) or <sup>F157</sup>section 996 of the Companies Act 2006] (relief to members unfairly prejudiced), or
- (d) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares.

#### Textual Amendments

**F155** Words in s. 143(2) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 11(a)}

**F156** S. 143(2A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 11(b)}

**F157** Words in s. 143(3)(c) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 67** (with arts. 6, 11, 12)

#### 144 Acquisition of shares by company's nominee.

- (1) Subject to section 145, where shares are issued to a nominee of a company mentioned in section 143(1), or are acquired by a nominee of such a company from a third person as partly paid up, then, for all purposes—
- (a) the shares are to be treated as held by the nominee on his own account; and
- (b) the company is to be regarded as having no beneficial interest in them.
- (2) Subject to that section, if a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in such a company which were issued to him, or which he otherwise acquired, as the company's nominee and he fails to pay that amount within 21 days from being called on to do so, then—
- (a) if the shares were issued to him as subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum, or
- (b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition,
- are jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of any such amount from any such subscriber or director under this section it appears to the court—
- (a) that he is or may be liable to pay that amount, but
- (b) that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused from liability,
- the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.
- (4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the court for relief; and the court has the same power to relieve him as it would have had in proceedings for the recovery of that amount.

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**Modifications etc. (not altering text)**

**C113** S. 144(1) excluded by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 144(4), 213(2), [Sch. 18 para. 35](#) (subject to the transitional and savings provisions mentioned in [S.I. 1990/1392, art. 6](#))

**145 Exceptions from s. 144.**

- (1) Section 144(1) does not apply to shares acquired otherwise than by subscription by a nominee of a public company, where a person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.
- (2) Section 144(1) and (2) do not apply—
  - (a) to shares acquired by a nominee of a company when the company has no beneficial interest in those shares, or
  - (b) to shares issued in consequence of an application made before 22nd December 1980, or transferred in pursuance of an agreement to acquire them made before that date.
- (3) Schedule 2 to this Act has effect for the interpretation of references in this section to a company having, or not having, a beneficial interest in shares.

**146 Treatment of shares held by or for public company.**

- (1) Except as provided by section 148, the following applies to a public company—
  - (a) where shares in the company are forfeited, or surrendered to the company in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares;
  - <sup>[F158]</sup>(aa) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the Building Societies Act 1986;
  - (b) where shares in the company are acquired by it (otherwise than by any of the methods mentioned in section 143(3)(a) to (d)) and the company has a beneficial interest in the shares;
  - (c) where the nominee of the company acquires shares in the company from a third person without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
  - (d) where a person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.

Schedule 2 to this Act has effect for the interpretation of references in this subsection to the company having a beneficial interest in shares.

- (2) Unless the shares or any interest of the company in them are previously disposed of, the company must, not later than the end of the relevant period from their forfeiture or surrender or, in a case within subsection (1)(b), (c) or (d), their acquisition—
  - (a) cancel them and diminish the amount of the share capital by the nominal value of the shares cancelled, and
  - (b) where the effect of cancelling the shares will be that the nominal value of the company's allotted share capital is brought below the authorised minimum,

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apply for re-registration as a private company, stating the effect of the cancellation.

- (3) For this purpose “the relevant period” is—
  - (a) 3 years in the case of shares forfeited or surrendered to the company in lieu of forfeiture, or acquired as mentioned in subsection (1)(b) or (c);
  - (b) one year in the case of shares acquired as mentioned in subsection (1)(d).
- (4) The company and, in a case within subsection (1)(c) or (d), the company’s nominee or (as the case may be) the other shareholder must not exercise any voting rights in respect of the shares; and any purported exercise of those rights is void.

#### Textual Amendments

**F158** S. 146(1)(aa) inserted (21.3.1997) by 1986 c. 53, s. 102C(5) (as inserted (21.3.1997) by 1997 c. 41, s. 1(1) (with s. 2(2))

#### Modifications etc. (not altering text)

**C114** Ss. 146–149 amended by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 6(2)

### 147 Matters arising out of compliance with s. 146(2).

- (1) The directors may take such steps as are requisite to enable the company to carry out its obligations under section 146(2) without complying with sections 135 and 136 (resolution to reduce share capital; application to court for approval).
- (2) The steps taken may include the passing of a resolution to alter the company’s memorandum so that it no longer states that the company is to be a public company; and the resolution may make such other alterations in the memorandum as are requisite in the circumstances.<sup>F159</sup>Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to such a resolution.]
- (3) The application for re-registration required by section 146(2)(b) must be in the prescribed form and be signed by a director or secretary of the company, and must be delivered to the registrar of companies together with a printed copy of the memorandum and articles of the company as altered by the resolution.
- (4) If the registrar is satisfied that the company may be re-registered under section 146, he shall retain the application and other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—
  - (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the resolution take effect accordingly, and
  - (b) the certificate is conclusive evidence that the requirements of sections 146 to 148 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company is a private company.

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#### Textual Amendments

**F159** Words in s. 147(2) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(6\)](#) (with art. 12)

#### Modifications etc. (not altering text)

**C115** Ss. 146–149 amended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 6(2)

### 148 Further provisions supplementing ss. 146, 147.

- (1) Where, after shares in a private company—
- (a) are forfeited in pursuance of the company’s articles or are surrendered to the company in lieu of forfeiture, or
  - (b) are acquired by the company (otherwise than by such surrender or forfeiture, and otherwise than by any of the methods mentioned in section 143(3)), the company having a beneficial interest in the shares, or
  - (c) are acquired by the nominee of a company in the circumstances mentioned in section 146(1)(c), or
  - (d) are acquired by any person in the circumstances mentioned in section 146(1)(d),

the company is re-registered as a public company, sections 146 and 147, and also section 149, apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, but with the modification required by the following subsection.

- (2) That modification is to treat any reference to the relevant period from the forfeiture, surrender or acquisition as referring to the relevant period from the re-registration of the company as a public company.
- (3) Schedule 2 to this Act has effect for the interpretation of the reference in subsection (1)(b) to the company having a beneficial interest in shares.
- (4) Where a public company or a nominee of a public company acquires shares in the company or an interest in such shares, and those shares are (or that interest is) shown in a balance sheet of the company as an asset, an amount equal to the value of the shares or (as the case may be) the value to the company of its interest in them shall be transferred out of profits available for dividend to a reserve fund and are not then available for distribution.

#### Modifications etc. (not altering text)

**C116** Ss. 146–149 amended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 6(2)

### 149 Sanctions for non-compliance.

- (1) If a public company required by section 146(2) to apply to be re-registered as a private company fails to do so before the end of the relevant period referred to in that

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subsection, [<sup>F160</sup>Chapter 1 of Part 20 of the Companies Act 2006] (restriction on public offers) applies to it as if it were a private company such as is mentioned in that section; but, subject to this, the company continues to be treated for the purpose of this Act as a public company until it is so re-registered.

- (2) If a company when required to do so by section 146(2) (including that subsection as applied by section 148(1)) fails to cancel any shares in accordance with paragraph (a) of that subsection or to make an application for re-registration in accordance with paragraph (b) of it, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### Textual Amendments

**F160** Words in s. 149(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), [Sch. 1 para. 68](#) (with arts. 6, 11, 12)

#### Modifications etc. (not altering text)

**C117** [Ss. 146–149](#) amended by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 6(2)

## 150 Charges of public companies on own shares.

- (1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise), except a charge permitted by any of the following subsections, is void.

This is subject to section 6 of the Consequential Provisions Act (saving for charges of old public companies on their own shares).

- (2) In the case of any description of company, a charge on its own shares is permitted if the shares are not fully paid and the charge is for any amount payable in respect of the shares.
- (3) In the case of a company whose ordinary business—
  - (a) includes the lending of money, or
  - (b) consists of the provision of credit or the bailment (in Scotland, hiring) of goods under a hire purchase agreement, or both,

a charge of the company on its own shares is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of its business.

- (4) In the case of a company which is re-registered or is registered under section 680 as a public company, a charge on its own shares is permitted if the charge was in existence immediately before the company's application for re-registration or (as the case may be) registration.

This subsection does not apply in the case of such a company as is referred to in section 6(3) of the Consequential Provisions Act (old public company remaining such after 22nd March 1982, not having applied to be re-registered as public company).

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**Modifications etc. (not altering text)**

**C118 S. 150** excluded by **Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 6(3)**

## CHAPTER VI

### FINANCIAL ASSISTANCE BY A COMPANY FOR ACQUISITION OF ITS OWN SHARES

*Provisions applying to both public and private companies*

#### **151 Financial assistance generally prohibited.**

- (1) Subject to the following provisions of this Chapter, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.
- (2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.
- (3) If a company acts in contravention of this section, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

#### **152 Definitions for this Chapter.**

- (1) In this Chapter—
  - (a) “financial assistance” means—
    - (i) financial assistance by way of gift,
    - (ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier’s own neglect or default, or by way of release or waiver,
    - (iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or
    - (iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets;
  - (b) “distributable profits”, in relation to the giving of any financial assistance—
    - (i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
    - (ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make



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a distribution of that asset, would under <sup>F161</sup>section 846 of the Companies Act 2006] (distributions in kind) be available for that purpose,

and

(c) “distribution” has the meaning given by <sup>F162</sup>section 829 of the Companies Act 2006].

(2) In subsection (1)(a)(iv), “net assets” means the aggregate of the company’s assets, less the aggregate of its liabilities (“liabilities” to include any <sup>F163</sup>provision for liabilities] within paragraph 89 of Schedule 4 [<sup>F164</sup>that is made in Companies Act individual accounts and any provision that is made in IAS individual accounts]).

(3) In this Chapter—

(a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and

(b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

#### Textual Amendments

- F161** Words in s. 152(1)(b)(ii) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 69(a)** (with arts. 6, 11, 12)
- F162** Words in s. 152(1)(c) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 69(b)** (with arts. 6, 11, 12)
- F163** S. 152(2): words in definition of “net assets” substituted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 15, **Sch. 7 para. 2**
- F164** S. 152(2): words in definition of “net assets” inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 3, **Sch. 1 para. 2**

#### Modifications etc. (not altering text)

- C119** S. 152(2) applied (E.W.) (16.1.1990 as mentioned in [S.I. 1989/2445](#), **art. 4** and so far as not already in force 7.10.1993) by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), **s. 69(4)(a)**; [S.I. 1989/2445](#), **art. 4**; [S.I. 1993/2410](#), **art.3**

### 153 Transactions not prohibited by s. 151.

(1) Section 151(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if—

- (a) the company’s principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and
- (b) the assistance is given in good faith in the interests of the company.

(2) Section 151(2) does not prohibit a company from giving financial assistance if—

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- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and
  - (b) the assistance is given in good faith in the interests of the company.
- (3) Section 151 does not prohibit—
- (a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,
  - (b) the allotment of bonus shares,
  - (c) a reduction of capital confirmed by order of the court under section 137,
  - (d) a redemption or purchase of shares made in accordance with Chapter VII of this Part,
  - (e) anything done in pursuance of an order of the court under [F165]section 899 of the Companies Act 2006] (compromises and arrangements with creditors and members),
  - (f) anything done under an arrangement made in pursuance of [F166]section 110 of the Insolvency Act] (acceptance of shares by liquidator in winding up as consideration for sale of property), or
  - (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of [F167]Part I of the Insolvency Act].
- (4) Section 151 does not prohibit—
- (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,
  - [F168](b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme,]
  - [F169](bb) without prejudice to paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or [F170]a company in the same group]) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons—
    - (i) the bona fide employees or former employees of that company or of another company in the same group; or
    - (ii) the [F171]spouses, civil partners, surviving spouses, surviving civil partners] , children or step-children under the age of eighteen of any such employees or former employees.]
  - (c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- [F172](5) For the purposes of subsection (4)(bb) a company is in the same group as another company if it is a holding company or subsidiary of that company, or a subsidiary of a holding company of that company.]

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### Textual Amendments

- F165** Words in s. 153(3)(e) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 70** (with arts. 6, 11, 12)
- F166** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**
- F167** Words substituted by virtue of [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**
- F168** S. 153(4)(b) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 132, 213(2)**
- F169** S. 153(4)(bb) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 196(2)**
- F170** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 144(4), 213(2), **Sch. 18 para. 33(2)**
- F171** Words in s. 153(4)(bb) substituted (23.12.2005) by [The Civil Partnership Act 2004 \(International Immunities and Privileges, Companies and Adoption\) Order 2005 \(S.I. 2005/3542\)](#), **art. 3(1)**
- F172** S. 153(5) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 196(3)** and substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 144(4), 213(2), **Sch. 18 para. 33(3)**

## 154 Special restriction for public companies.

- (1) In the case of a public company, section 153(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.
- (2) For this purpose the following definitions apply—
  - (a) “net assets” means the amount by which the aggregate of the company’s assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company’s accounting records immediately before the financial assistance is given);
  - (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for any liability [<sup>F173</sup>the nature of which is clearly defined and] which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

### Textual Amendments

- F173** Words in s. 154(2)(b) substituted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 15, **Sch. 7 para. 3**

### *Private companies*

## 155 Relaxation of s. 151 for private companies.

- (1) Section 151 does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this section, and sections 156 to 158, are complied with as respects the giving of that assistance.
- (2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits.

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Section 154(2) applies for the interpretation of this subsection.

- (3) This section does not permit financial assistance to be given by a subsidiary, in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.
  - (4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section must be approved by special resolution of the company in general meeting.
  - (5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly-owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.
  - (6) [<sup>F174</sup>Subject to subsection (6A), the directors of the company] proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form complying with the section next following.
- [<sup>F175</sup>(6A) In place of the statutory declaration referred to in subsection (6), there may be delivered to the registrar of companies under section 156(5) a statement made by the persons mentioned in subsection (6) above complying with the section next following.]

#### Textual Amendments

**F174** Words in s. 155(6) substituted (22.12.2000) by S.I. 2000/3373, art. 10(1)(2)

**F175** S. 155(6A) inserted (22.12.2000) by S.I. 2000/3373, art. 10(1)(3)

### 156 Statutory declaration under s. 155.

- (1) A statutory declaration made by a company's directors under section 155(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.
- [<sup>F176</sup>(1A) A statement made by a company's directors under section 155(6A) shall state—
- (a) the names and addresses of all the directors of the company,
  - (b) whether the business of the company is that of a banking company or insurance company or some other business,
  - (c) that the company or (as the case may be) a company (naming such company) of which it is the holding company is proposing to give financial assistance in connection with the acquisition of shares in the company or (as the case may be) its holding company (naming that holding company),
  - (d) whether the assistance is for the purpose of that acquisition or for reducing or discharging a liability incurred for the purpose of that acquisition,

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- (e) the name and address of the person to whom the assistance is to be given (and in the case of a company its registered office),
  - (f) the name of the person who has acquired or will acquire the shares and the number and class of the shares acquired or to be acquired,
  - (g) the principal terms on which the assistance will be given,
  - (h) the form the financial assistance will take (stating the amount of cash or value of any asset to be transferred to the person assisted), and
  - (i) the date on which the assistance is to be given.]
- (2) The declaration [F177 under section 155(6) or (as the case may be) statement under section 155(6A)] shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either—
- (a) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up, or
  - (b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.
- (3) In forming their opinion for purposes of subsection (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under [F178 section 122 of the Insolvency Act] (winding up by the court) to the question whether the company is unable to pay its debts.
- (4) The directors' statutory declaration [F179 or statement] shall have annexed to it a report addressed to them by their company's auditors stating that—
- (a) they have enquired into the state of affairs of the company, and
  - (b) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration [F179 or statement] as to any of the matters mentioned in subsection (2) of this section is unreasonable in all the circumstances.
- (5) The statutory declaration [F179 or statement] and auditors' report shall be delivered to the registrar of companies—
- (a) together with a copy of any special resolution passed by the company under section 155 and delivered to the registrar in compliance with [F180 section 30 of the Companies Act 2006] , or
  - (b) where no such resolution is required to be passed, within 15 days after the making of the declaration.
- (6) If a company fails to comply with subsection (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (7) A director of a company who makes a statutory declaration [F179 or statement] under section 155 without having reasonable grounds for the opinion expressed in it is liable to imprisonment or a fine, or both.

#### Textual Amendments

**F176** S. 156(1A) inserted (22.12.2000) by S.I. 2000/3373, art. 11(1)(2)

**F177** Words in s. 156(2) inserted (22.12.2000) by S.I. 2000/3373, art. 11(1)(3)

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- F178** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)
- F179** Words in s. 156(4)(5)(7) inserted (22.12.2000) by [S.I. 2000/3373](#), [art. 11\(1\)\(4\)](#)
- F180** Words in s. 156(5)(a) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(7\)](#) (with art. 12)

## 157 Special resolution under s. 155.

- (1) A special resolution required by section 155 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company make the statutory declaration required by that section in connection with the giving of that assistance, or within the week immediately following that date.
- (2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution—
  - (a) by the holders of not less in the aggregate than 10 per cent. in nominal value of the company's issued share capital or any class of it, or
  - (b) if the company is not limited by shares, by not less than 10 per cent. of the company's members;
 but the application shall not be made by a person who has consented to or voted in favour of the resolution.
- (3) Subsections (3) to (10) of section 54 (litigation to cancel resolution under section 53) apply to applications under this section as to applications under section 54.
- (4) A special resolution passed by a company is not effective for purposes of section 155—
  - (a) unless the declaration [<sup>F181</sup>or statement] made in compliance with subsection (6) of that section by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed,
  - (b) if it is cancelled by the court on an application under this section.

### Textual Amendments

- F181** Words in s. 157(4) inserted (22.12.2000) by [S.I. 2000/3373](#), [art. 31\(2\)](#)

## 158 Time for giving financial assistance under s. 155.

- (1) This section applies as to the time before and after which financial assistance may not be given by a company in pursuance of section 155.
- (2) Where a special resolution is required by that section to be passed approving the giving of the assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with—
  - (a) the date on which the special resolution is passed, or
  - (b) where more than one such resolution is passed, the date on which the last of them is passed,
 unless, as respects that resolution (or, if more than one, each of them), every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.

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- (3) If application for the cancellation of any such resolution is made under section 157, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.
- (4) The assistance shall not be given after the expiry of the period of 8 weeks beginning with—
  - (a) the date on which the directors of the company proposing to give the assistance made their statutory declaration [<sup>F182</sup>or statement] under section 155, or
  - (b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration [<sup>F182</sup>or statement], the date on which the earliest of the declarations [<sup>F182</sup>or statements] is made,unless the court, on an application under section 157, otherwise orders.

#### Textual Amendments

**F182** Words in s. 158(4) inserted (22.12.2000) by S.I. 2000/3373, art. 31(2)

## CHAPTER VII

### REDEEMABLE SHARES; PURCHASE BY A COMPANY OF ITS OWN SHARES

#### *Redemption and purchase generally*

#### **159 Power to issue redeemable shares.**

- (1) Subject to the provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.
- (2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.
- (3) Redeemable shares may not be redeemed unless they are fully paid; and the terms of redemption must provide for payment on redemption.

#### **[<sup>F183</sup>159A] Terms and manner of redemption.**

- (1) Redeemable shares may not be issued unless the following conditions are satisfied as regards the terms and manner of redemption.
- (2) The date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's articles or, if the articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued.
- (3) Any other circumstances in which the shares are to be or may be redeemed must be specified in the company's articles.

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- (4) The amount payable on redemption must be specified in, or determined in accordance with, the company's articles, and in the latter case the articles must not provide for the amount to be determined by reference to any person's discretion or opinion.
- (5) Any other terms and conditions of redemption shall be specified in the company's articles.
- (6) Nothing in this section shall be construed as requiring a company to provide in its articles for any matter for which provision is made by this Act.]

#### Textual Amendments

**F183** S. 159A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 133(2), 213(2), 215(2)

### 160 Financing etc. of redemption.

- (1) Subject to the next subsection and to sections 171 (private companies redeeming or purchasing own shares out of capital) and 178(4) (terms of redemption or purchase enforceable in a winding up)—
  - (a) redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and
  - (b) any premium payable on redemption must be paid out of distributable profits of the company.
- (2) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—
  - (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or
  - (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),
 whichever is the less; and in that case the amount of the company's share premium account shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.
- <sup>F184</sup>(3) Subject to the following provisions of this Chapter, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.]
- (4) Shares [<sup>F185</sup>redeemed under this section][<sup>F185</sup>redeemed under this Chapter] shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.
- (5) Without prejudice to subsection (4), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.



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**Textual Amendments**

**F184** S. 160(3) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 133(3)(a), 212, 213(2), 215(2), **Sch. 24**

**F185** Words “redeemed under this Chapter” substituted (*prosp.*) for “redeemed under this section” by Companies Act 1989 (c. 40, SIF 27), **ss. 133(3)(b)**, 213(2), 215(2)

**161** <sup>F186</sup> .....

**Textual Amendments**

**F186** S. 161 repealed by Finance Act 1988 (c. 39, SIF 63:1), s. 148, **Sch. 14 Pt. XI**

**162 Power of company to purchase own shares.**

(1) Subject to the following provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

[<sup>F187</sup>(2) Sections 159 and 160 apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares.

This is subject to subsections (2A) and (2B).

(2A) The terms and manner of a purchase under this section need not be determined by the articles as required by section 160(3).

(2B) Where a company makes a purchase of qualifying shares out of distributable profits under this section, section 162A applies to the shares purchased; and accordingly section 160(4) does not apply to those shares.]

(3) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares [<sup>F188</sup>or shares held as treasury shares] .

[<sup>F189</sup>(4) For the purposes of this Chapter “qualifying shares” are shares which—

- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 <sup>F190</sup>,
- (b) are traded on the market known as the Alternative Investment Market established under the rules of London Stock Exchange plc,
- (c) are officially listed in an EEA State, or
- (d) are traded on a market established in an EEA State which is a regulated market [<sup>F191</sup>which appears on the list drawn up by that State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,]

and in paragraph (a) “the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.]

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### Textual Amendments

- F187** S. 162(2)(2A)(2B) substituted for s.162(2) (1.12.2003) by [The Companies \(Acquisition of Own Shares\) \(Treasury Shares\) Regulations 2003 \(S.I. 2003/1116\)](#), **reg. 2(2)**
- F188** Words in s. 162(3) inserted (1.12.2003) by [The Companies \(Acquisition of Own Shares\) \(Treasury Shares\) Regulations 2003 \(S.I. 2003/1116\)](#), **reg. 2(3)**
- F189** S. 162(4) inserted (1.12.2003) by [The Companies \(Acquisition of Own Shares\) \(Treasury Shares\) Regulations 2003 \(S.I. 2003/1116\)](#), **reg. 2(4)**
- F190** 2000 c. 8.
- F191** Words in s. 162(4)(d) substituted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), reg. 3(6), **Sch. 6 para. 7(3)**

## 162A Treasury shares

- (1) Where qualifying shares are purchased by a company out of distributable profits in accordance with section 162, the company may—
  - (a) hold the shares (or any of them), or
  - (b) deal with any of them, at any time, in accordance with section 162D.
- (2) Where shares are held under subsection (1)(a) then, for the purposes of section 352, the company must be entered in the register as the member holding those shares.
- (3) In this Act, references to a company holding shares as treasury shares are references to the company holding shares which—
  - (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and
  - (b) have been held by the company continuously since they were so purchased.

## 162B Treasury shares: maximum holdings

- (1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the company at that time.
- (2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the shares in that class at that time.
- (3) Where subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 162D, before the end of the period of 12 months beginning with the day on which that contravention occurs.

For this purpose “the excess shares” means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

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## 162C Treasury shares: voting and other rights

- (1) This section applies to shares which are held by a company as treasury shares (“the treasury shares”).
- (2) The company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.
- (3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including [<sup>F192</sup>meetings summoned under section 896 of the Companies Act 2006]).
- (4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company’s assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.
- (5) Nothing in this section is to be taken as preventing—
  - (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or
  - (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).
- (6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 162A(1) applied.

### Textual Amendments

**F192** Words in s. 162C(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), [Sch. 1 para. 71](#) (with arts. 6, 11, 12)

## 162D Treasury shares: disposal and cancellation

- (1) Where shares are held as treasury shares, a company may at any time—
  - (a) sell the shares (or any of them) for cash,
  - (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme, or
  - (c) cancel the shares (or any of them).
- (2) For the purposes of subsection (1)(a), “cash”, in relation to a sale of shares by a company, means—
  - (a) cash (including foreign currency) received by the company, or
  - (b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid, or
  - (c) a release of a liability of the company for a liquidated sum, or
  - (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.
- (3) But if the company receives a notice under [<sup>F193</sup>section 979 of the Companies Act 2006](right of offeror to buy out minority shareholders) that a person desires to acquire

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any of the shares, the company must not, under subsection (1), sell or transfer the shares to which the notice relates except to that person.

- (4) If under subsection (1) the company cancels shares held as treasury shares, the company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.
- (5) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) without complying with sections 135 and 136 (resolution to reduce issued share capital; application to court for approval).

#### Textual Amendments

**F193** Words in s. 162D(3) substituted (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), art. 6(1), [Sch. 3 para. 1](#)

### 162E Treasury shares: mandatory cancellation

- (1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with section 162D.
- (2) For the purposes of subsection (1), shares are not to be regarded as ceasing to be qualifying shares by virtue only of—
  - (a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or
  - (b) the suspension of their trading in accordance with—
    - (i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and
    - (ii) in any other case, the rules of the regulated market on which they are traded.
- (3) For the purposes of this section “regulated market” means a market which [<sup>F194</sup> appears on the list drawn up by an EEA State pursuant to Article 47 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments] .

#### Textual Amendments

**F194** Words in s. 162E(3) substituted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), reg. 3(6), [Sch. 6 para. 7\(4\)](#)

### 162F Treasury shares: proceeds of sale

- (1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this section.

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- (2) Where the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds shall be treated for the purposes of [F195Part 23 of the Companies Act 2006] as a realised profit of the company.
- (3) Where the proceeds of sale exceed the purchase price paid by the company for the shares—
  - (a) that part of the proceeds of sale that is equal to the purchase price paid shall be treated for the purposes of Part 8 as a realised profit of the company, and
  - (b) a sum equal to the excess shall be transferred to the company’s share premium account.
- (4) The purchase price paid by the company for the shares shall be determined by the application of a weighted average price method.
- (5) Where the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them shall, for the purposes of subsection (4), be treated as being nil.

#### Textual Amendments

**F195** Words in s. 162F(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 72** (with arts. 6, 11, 12)

### 162G Treasury shares: penalty for contravention

If a company contravenes any provision of sections 162A to 162F every officer of it who is in default is liable to a fine.

### 163 Definitions of “off-market” and “market” purchase.

- (1) A purchase by a company of its own shares is “off-market” if the shares either—
    - (a) are purchased otherwise than on [F196a recognised investment exchange], or
    - (b) are purchased on [F196a recognised investment exchange] but are not subject to a marketing arrangement on [F197that investment exchange].
  - (2) For this purpose, a company’s shares are subject to a marketing arrangement on a recognised stock exchange if either—
    - (a) they are listed [F198Part 6 of the Financial Services and Markets Act 2000]; or
    - (b) the company has been afforded facilities for dealings in those shares to take place on [F199that investment exchange] without prior permission for individual transactions from the authority governing [F199that investment exchange] and without limit as to the time during which those facilities are to be available.
  - (3) A purchase by a company of its own shares is a “market purchase” if it is a purchase made on a recognised stock exchange, other than a purchase which is an off-market purchase by virtue of subsection (1)(b).
- [F200(4) “Recognised investment exchange” means a recognised investment exchange other than an overseas investment exchange.
- [F200(5) Expressions used in the definition contained in subsection (4) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.]

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### Textual Amendments

- F196** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 212(2), [Sch. 16 para. 17\(a\)](#)  
**F197** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 212(2), [Sch. 16 para. 17\(b\)](#)  
**F198** Words in [s. 163\(2\)\(a\)](#) substituted (1.12.2001) by [S.I. 2001/3649](#), [art. 6\(1\)\(2\)](#)  
**F199** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 212(2), [Sch. 16 para. 17\(c\)](#)  
**F200** [S. 163\(4\)\(5\)](#) substituted (1.12.2001) for [s. 163\(4\)](#) by [S.I. 2001/3649](#), [art. 6\(1\)\(3\)](#)

### Modifications etc. (not altering text)

- C120** [S. 163\(2\)\(b\)](#) extended (21.8.2002) by [S.I. 2001/1335](#), [art. 8A\(4\)\(a\)](#) (as inserted by [S.I. 2002/2157](#), [art. 3\(2\)](#))  
**C121** [S. 163\(2\)\(b\)](#) modified (1.7.2005) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) Order 2005 \(S.I. 2005/1529\)](#), [art. 8A\(3\)](#) (with [art. 10](#))

## 164 Authority for off-market purchase.

- (1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this section or under section 165 below.
- (2) The terms of the proposed contract must be authorised by a special resolution of the company before the contract is entered into; and the following subsections apply with respect to that authority and to resolutions conferring it.
- (3) Subject to the next subsection, the authority may be varied, revoked or from time to time renewed by special resolution of the company.
- (4) In the case of a public company, the authority conferred by the resolution must specify a date on which the authority is to expire; and in a resolution conferring or renewing authority that date must not be later than 18 months after that on which the resolution is passed.
- (5) A special resolution to confer, vary, revoke or renew authority is not effective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

For this purpose—

- (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
  - (b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and
  - (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.
- (6) Such a resolution is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both—
- (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed, and
  - (b) at the meeting itself.

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A memorandum of contract terms so made available must include the names of any members holding shares to which the contract relates; and a copy of the contract so made available must have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

- (7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorised by a special resolution of the company before it is agreed to; and subsections (3) to (6) above apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (6).

#### **165 Authority for contingent purchase contract.**

- (1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—
- (a) which does not amount to a contract to purchase those shares, but
  - (b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.
- (2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into; and subsections (3) to (7) of section 164 apply to the contract and its terms.

#### **166 Authority for market purchase.**

- (1) A company shall not make a market purchase of its own shares unless the purchase has first been authorised by the company in general meeting.
- (2) That authority—
- (a) may be general for that purpose, or limited to the purchase of shares of any particular class or description, and
  - (b) may be unconditional or subject to conditions.
- (3) The authority must—
- (a) specify the maximum number of shares authorised to be acquired,
  - (b) determine both the maximum and the minimum prices which may be paid for the shares, and
  - (c) specify a date on which it is to expire.
- (4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to subsection (3) above; and in a resolution to confer or renew authority, the date on which the authority is to expire must not be later than 18 months after that on which the resolution is passed.
- (5) A company may under this section make a purchase of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c), if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiration.

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- (6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for purchase by—
- (a) specifying a particular sum, or
  - (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

[<sup>F201</sup>(7) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution of a company conferring, varying, revoking or renewing authority under this section.]

#### Textual Amendments

**F201** S. 166(7) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 1\(8\)](#) (with art. 12)

#### **167 Assignment or release of company's right to purchase own shares.**

- (1) The rights of a company under a contract approved under section 164 or 165, or under a contract for a purchase authorised under section 166, are not capable of being assigned.
- (2) An agreement by a company to release its rights under a contract approved under section 164 or 165 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into; and subsections (3) to (7) of section 164 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

#### **168 Payments apart from purchase price to be made out of distributable profits.**

- (1) A payment made by a company in consideration of—
  - (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under section 165, or
  - (b) the variation of a contract approved under section 164 or 165, or
  - (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under section 164 or 165 or under a contract for a purchase authorised under section 166,
 must be made out of the company's distributable profits.
- (2) If the requirements of subsection (1) are not satisfied in relation to a contract—
  - (a) in a case within paragraph (a) of the subsection, no purchase by the company of its own shares in pursuance of that contract is lawful under this Chapter,
  - (b) in a case within paragraph (b), no such purchase following the variation is lawful under this Chapter, and
  - (c) in a case within paragraph (c), the purported release is void.

#### **169 Disclosure by company of purchase of own shares.**

- (1) Within the period of 28 days beginning with the date on which any shares purchased by a company under this Chapter are delivered to it, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with



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respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

[<sup>F202</sup>(1A) But in the case of a company which has purchased its own shares in circumstances in which section 162A applies, the requirement to deliver a return under subsection (1) shall apply only where some or all of the shares have been cancelled forthwith after the date of their delivery in accordance with section 162D(1) and in those circumstances the particulars required by that subsection to be stated with respect to the shares purchased shall apply only to such of the shares as have been so cancelled.

(1B) Where a company has purchased its own shares in circumstances in which section 162A applies, the company shall within the period of 28 days beginning with the date on which such shares are delivered to it (except where all of the shares have been cancelled forthwith after the date of their delivery in the circumstances referred to in subsection (1A)) deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class purchased (other than any shares which have been cancelled in the circumstances referred to in subsection (1A)) the number and nominal value of each of those shares which are held as treasury shares and the date on which they were delivered to the company.]

(2) In the case of a public company, [<sup>F203</sup>any return under subsection (1) or (1B)] shall also state—

- (a) the aggregate amount paid by the company for the shares; and
- (b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return [<sup>F204</sup>under either subsection (1) or (1B)] to the registrar; and in such a case the amount required to be stated under subsection (2) (a) is the aggregate amount paid by the company for all the shares to which the return relates.

(4) Where a company enters into a contract approved under section 164 or 165, or a contract for a purchase authorised under section 166, the company shall keep at its registered office—

- (a) if the contract is in writing, a copy of it; and
- (b) if not, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

(5) Every copy and memorandum so required to be kept shall <sup>F205</sup> . . . be open to inspection without charge—

- (a) by any member of the company, and
- (b) if it is a public company, by any other person.

(6) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) If default is made in complying with subsection (4), or if an inspection required under subsection (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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- (8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.
- (9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

#### Textual Amendments

- F202** S. 169(1A)(1B) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 12(2)}
- F203** Words in s. 169(2) substituted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 12(3)}
- F204** Words in s. 169(3) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 12(4)} (and the said words repealed (18.12.2003) by The Companies (Acquisition of Own Shares) (Treasury Shares) No. 2 Regulations 2003 (S.I. 2003/3031), {reg. 3(1)} and then inserted (18.12.2003) by S.I. 2003/3031, **reg. 3(2)**)
- F205** Words in s. 169(5) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(2), 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(2)(b)(c)**.

#### Modifications etc. (not altering text)

- C122** S. 169(5) explained (1.11.1991) by S.I. 1991/1998, **reg. 3(1)**.

### 169A Disclosure by company of cancellation or disposal of treasury shares

- (1) Subsection (2) applies in relation to any shares held by a company as treasury shares if—
  - (a) the company is or was required to make a return under section 169(1B) in relation to the shares, and
  - (b) the shares have—
    - (i) been cancelled in accordance with section 162D(1), or
    - (ii) been sold or transferred for the purposes of or pursuant to an employees' share scheme under section 162D(1).
- (2) Within the period of 28 days beginning with the date on which such shares are cancelled or disposed of, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class cancelled or disposed of—
  - (a) the number and nominal value of those shares, and
  - (b) the date on which they were cancelled or disposed of.
- (3) Particulars of shares cancelled or disposed of on different dates may be included in a single return to the registrar.
- (4) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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## 170 The capital redemption reserve.

- (1) Where under this Chapter shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 160(4) on cancellation of the shares redeemed or purchased [<sup>F206</sup>, or in accordance with section 162D(4) on cancellation of shares held as treasury shares,] shall be transferred to a reserve, called "the capital redemption reserve".
- (2) Of the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.
- (3) But subsection (2) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under section 171.
- (4) The provisions of this Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

### Textual Amendments

**F206** Words in s. 170(1) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 14}

*Redemption or purchase of own shares out of capital (private companies only)*

## 171 Power of private companies to redeem or purchase own shares out of capital.

- (1) Subject to the following provisions of this Chapter, a private company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles, make a payment in respect of the redemption or purchase under section 160 or (as the case may be) section 162, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.
- (2) References below in this Chapter to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.
- (3) The payment which may (if authorised in accordance with the following provisions of this Chapter) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with—
  - (a) any available profits of the company, and
  - (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,

is equal to the price of redemption or purchase; and the payment permissible under this subsection is referred to below in this Chapter as the permissible capital payment for the shares.

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- (4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.
- (5) Subject to subsection (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased—
- (a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and
  - (b) any amount representing unrealised profits of the company for the time being standing to the credit of <sup>F207</sup>any revaluation reserve maintained by the company in accordance with regulations made under section 396 of the Companies Act 2006],
- may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.
- (6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

#### Textual Amendments

**F207** Words in s. 171(5)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 73** (with arts. 6, 11, 12)

### 172 Availability of profits for purposes of s. 171.

- (1) The reference in section 171(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of <sup>F208</sup>Part 23 of the Companies Act 2006]; but the question whether a company has any profits so available and the amount of any such profits are to be determined for purposes of that section in accordance with the following subsections, instead of <sup>F209</sup>Chapter 2 of that Part].
- (2) Subject to the next subsection, that question is to be determined by reference to <sup>F210</sup>the following items as stated in the relevant accounts for determining the permissible capital payments for shares]—
- (a) profits, losses, assets and liabilities,
  - (b) <sup>F211</sup>the following provisions—
    - (i) in the case of Companies Act individual accounts, ] provisions of any of the kinds mentioned in paragraphs 88 and 89 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.<sup>F212</sup>, and
    - (ii) in the case of IAS individual accounts, provisions of any kind]), and
  - (c) share capital and reserves (including undistributable reserves),
- <sup>F213</sup> .....
- (3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as

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are necessary to enable a reasonable judgment to be made as to the amounts of any of the items mentioned in subsection (2)(a) to (c) above.

- (4) For purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.
- (5) The reference in subsection (4) to distributions lawfully made by the company includes—
  - (a) financial assistance lawfully given out of distributable profits in a case falling within section 154 or 155,
  - (b) any payment lawfully made by the company in respect of the purchase by it of any shares in the company (except a payment lawfully made otherwise than out of distributable profits), and
  - (c) a payment of any description specified in section 168(1) lawfully made by the company.
- (6) References in this section to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with subsection (3) of the section next following.

#### Textual Amendments

- F208** Words in s. 172(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para.74(a)** (with arts. 6, 11, 12)
- F209** Words in s. 172(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para.74(b)** (with arts. 6, 11, 12)
- F210** Words in s. 172(2) inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 3, **Sch. 1 para. 3(a)**
- F211** S. 172(2)(b)(i) and preceding words inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 3, **Sch. 1 para. 3(b)(i)**
- F212** S. 172(2)(b)(ii) and preceding word inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 3, **Sch. 1 para. 3(b)(ii)**
- F213** Words in s. 172(2) omitted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by virtue of [The Companies Act 1985 \(International Accounting Standards and Other Accounting Amendments\) Regulations 2004 \(S.I. 2004/2947\)](#), reg. 3, **Sch. 1 para. 3(c)**

### 173 Conditions for payment out of capital.

- (1) Subject to any order of the court under section 177, a payment out of capital by a private company for the redemption or purchase of its own shares is now lawful unless the requirements of this and the next two sections are satisfied.
- (2) The payment out of capital must be approved by a special resolution of the company.
- (3) The company's directors must make a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having

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made full inquiry into the affairs and prospects of the company, they have formed the opinion—

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and
  - (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.
- (4) In forming their opinion for purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under <sup>F214</sup>section 122 of the Insolvency Act] (winding up by the court) to the question whether a company is unable to pay its debts.
- (5) The directors' statutory declaration must be in the prescribed form and contain such information with respect to the nature of the company's business as may be prescribed, and must in addition have annexed to it a report addressed to the directors by the company's auditors stating that—
- (a) they have inquired into the company's state of affairs; and
  - (b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 171 and 172; and
  - (c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances.
- (6) A director who makes a declaration under this section without having reasonable grounds for the opinion expressed in the declaration is liable to imprisonment or a fine, or both.

#### **Textual Amendments**

**F214** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

#### **174 Procedure for special resolution under s. 173.**

- (1) The resolution required by section 173 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that section; and the payment out of capital must be made no earlier than 5 nor more than 7 weeks after the date of the resolution.
- (2) The resolution is ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.
- (3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll; and

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notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

- (4) The resolution is ineffective unless the statutory declaration and auditors' report required by the section are available for inspection by members of the company at the meeting at which the resolution is passed.
- (5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

## **175 Publicity for proposed payment out of capital.**

- (1) Within the week immediately following the date of the resolution for payment out of capital the company must cause to be published in the Gazette a notice—
  - (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);
  - (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under section 173;
  - (c) stating that the statutory declaration of the directors and the auditors' report required by that section are available for inspection at the company's registered office; and
  - (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 176 for an order prohibiting the payment.
- (2) Within the week immediately following the date of the resolution the company must also either cause a notice to the same effect as that required by subsection (1) to be published in an appropriate national newspaper or give notice in writing to that effect to each of its creditors.
- (3) "An appropriate national newspaper" means a newspaper circulating throughout England and Wales (in the case of a company registered in England and Wales), and a newspaper circulating throughout Scotland (in the case of a company registered in Scotland).
- (4) References below in this section to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).
- (5) Not later than the first notice date the company must deliver to the registrar of companies a copy of the statutory declaration of the directors and of the auditors' report required by section 173.
- (6) The statutory declaration and auditors' report—
  - (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital, and
  - (b) shall <sup>F215</sup> . . . be open to the inspection of any member or creditor of the company without charge.
- (7) If an inspection required under subsection (6) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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- (8) In the case of refusal of an inspection required under subsection (6) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

#### **Textual Amendments**

**F215** Words in s. 175(6) repealed (01.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(3), 212, 213(2), Sch. 24; S.I. 1991/1996, art. 2(2)(b)(c).

#### **Modifications etc. (not altering text)**

**C123** S. 175(6) explained (1.11.1991) by S.I. 1991/1998, reg. 3(1).

### **176 Objections by company’s members or creditors.**

- (1) Where a private company passes a special resolution approving for purposes of this Chapter any payment out of capital for the redemption or purchase of any of its shares—
- (a) any member of the company other than one who consented to or voted in favour of the resolution; and
  - (b) any creditor of the company,
- may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.
- (2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.
- (3) If an application is made, the company shall—
- (a) forthwith give notice in the prescribed form of that fact to the registrar of companies; and
  - (b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the registrar.
- (4) A company which fails to comply with subsection (3), and any officer of it who is in default, is liable to a fine and for continued contravention, to a daily default fine.

### **177 Powers of court on application under s. 176.**

- (1) On the hearing of an application under section 176 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court’s satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be); and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in this Chapter which applies to the redemption or purchase of shares to which the resolution refers.



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- (3) The court's order may, if the court thinks fit, 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 may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.
- (4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.
- (5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

### *Supplementary*

#### **178 Effect of company's failure to redeem or purchase.**

- (1) This section has effect where a company has, on or after 15th June 1982,—
  - (a) issued shares on terms that they are or are liable to be redeemed, or
  - (b) agreed to purchase any of its own shares.
- (2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.
- (3) Subsection (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure; but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.
- (4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company; and when shares are redeemed or purchased under this subsection, they are treated as cancelled.
- (5) However, subsection (4) does not apply if—
  - (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or
  - (b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (6) There shall be paid in priority to any amount which the company is liable under subsection (4) to pay in respect of any shares—
  - (a) all other debts and liabilities of the company (other than any due to members in their character as such),
  - (b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

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but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

(7) ..... F216

#### Textual Amendments

**F216** S. 178(7) repealed (E.W.S.) by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 235, [Sch. 10 Pt. II](#), and [Insolvency Act 1986 \(c.45, SIF 66\)](#), s. 437, [Sch. 11 para. 7](#)

### 179 Power for Secretary of State to modify this Chapter.

- (1) The Secretary of State may by regulations made by statutory instrument modify the provisions of this Chapter with respect to any of the following matters—
  - (a) the authority required for a purchase by a company of its own shares,
  - (b) the authority required for the release by a company of its rights under a contract for the purchase of its own shares or a contract under which the company may (subject to any conditions) become entitled or obliged to purchase its own shares,
  - (c) the information to be included in a return delivered by a company to the registrar of companies in accordance with section 169(1),
  - (d) the matters to be dealt with in the statutory declaration of the directors under section 173 with a view to indicating their opinion of their company’s ability to make a proposed payment out of capital with due regard to its financial situation and prospects, and
  - (e) the contents of the auditors’ report required by that section to be annexed to that declaration.
- (2) The Secretary of State may also by regulations so made make such provision (including modification of the provisions of this Chapter) as appears to him to be appropriate—
  - (a) for wholly or partly relieving companies from the requirement of section 171(3)(a) that any available profits must be taken into account in determining the amount of the permissible capital payment for shares under that section, or
  - (b) for permitting a company’s share premium account to be applied, to any extent appearing to the Secretary of State to be appropriate, in providing for the premiums payable on the redemption or purchase by the company of any of its own shares.
- (3) Regulations under this section—
  - (a) may make such further modification of any provisions of this Chapter as appears to the Secretary of State to be reasonably necessary in consequence of any provision made under such regulations by virtue of subsection (1) or (2),
  - (b) may make different provision for different cases or classes of case, and
  - (c) may contain such further consequential provisions, and such incidental and supplementary provisions, as the Secretary of State thinks fit.
- (4) No regulations shall be made under this section unless a draft of the instrument containing them has been laid before Parliament and approved by resolution of each House.

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#### Modifications etc. (not altering text)

C124 S. 179 amended by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), [ss. 76\(6\), 79\(3\), 124\(3\)](#)

### 180 Transitional cases arising under this Chapter; and savings.

- (1) Any preference shares issued by a company before 15th June 1982 which could but for the repeal by the <sup>M14</sup>Companies Act 1981 of section 58 of the <sup>M15</sup>Companies Act 1948 (power to issue redeemable preference shares) have been redeemed under that section are subject to redemption in accordance with the provisions of this Chapter.
- (2) In a case to which sections 159 and 160 apply by virtue of this section, any premium payable on redemption may, notwithstanding the repeal by the 1981 Act of any provision of the 1948 Act, be paid out of the share premium account instead of out of profits, or partly out of that account and partly out of profits (but subject to the provisions of this Chapter so far as payment is out of profits).
- (3) Any capital redemption reserve fund established before 15th June 1982 by a company for the purposes of section 58 of the Act of 1948 is to be known as the company's capital redemption reserve and be treated as if it had been established for the purposes of section 170 of this Act; and accordingly, a reference in any enactment or in the articles of any company, or in any other instrument, to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

#### Marginal Citations

M14 1981 c. 62.

M15 1948 c. 38.

### 181 Definitions for Chapter VII.

In this Chapter—

- (a) “distributable profits”, in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution (within the meaning given by <sup>F217</sup>section 829 of the Companies Act 2006]) equal in value to the payment, and
- (b) “permissible capital payment” means the payment permitted by section 171; and references to payment out of capital are to be construed in accordance with section 171.

#### Textual Amendments

F217 Words in s. 181(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), [Sch. 1 para. 75](#) (with arts. 6, 11, 12)

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## CHAPTER VIII

### MISCELLANEOUS PROVISIONS ABOUT SHARES AND DEBENTURES

#### *Share and debenture certificates, transfers and warrants*

#### **182 Nature, transfer and numbering of shares.**

- (1) The shares or other interest of any member in a company—
- (a) are personal estate or, in Scotland, moveable property and are not in the nature of real estate or heritage,
  - (b) <sup>F218</sup> .....
- (2) Each share in a company having a share capital shall be distinguished by its appropriate number; except that, if at any time all the issued shares in a company, or all the issued shares in it of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

#### **Textual Amendments**

**F218** S. 182(1)(b) repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

#### **183 Transfer and registration.**

<sup>F219</sup> .....

#### **Textual Amendments**

**F219** S. 183 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

#### **184 Certification of transfers.**

<sup>F220</sup> .....

#### **Textual Amendments**

**F220** S. 184 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

#### **185 Duty of company as to issue of certificates.**

<sup>F221</sup> .....

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**Textual Amendments**

**F221** S. 185 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

**186 Certificate to be evidence of title.**

**F222** .....

**Textual Amendments**

**F222** S. 186 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

**187 Evidence of grant of probate or confirmation as executor.**

**F223** .....

**Textual Amendments**

**F223** S. 187 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

**188 Issue and effect of share warrant to bearer.**

**F224** .....

**Textual Amendments**

**F224** S. 188 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

**189 Offences in connection with share warrants (Scotland).**

**F225** .....

**Textual Amendments**

**F225** S. 189 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

*Debentures*

**190 Register of debenture holders.**

**F226** .....

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#### Textual Amendments

**F226** S. 190 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

### 191 Right to inspect register.

**F227** .....

#### Textual Amendments

**F227** S. 191 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

### 192 Liability of trustees of debentures.

**F228** .....

#### Textual Amendments

**F228** S. 192 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

### 193 Perpetual debentures.

**F229** .....

#### Textual Amendments

**F229** S. 193 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

### 194 Power to re-issue redeemed debentures.

**F230** .....

#### Textual Amendments

**F230** S. 194 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

### 195 Contract to subscribe for debentures.

**F231** .....

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**Textual Amendments**

**F231** S. 195 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

**196 Payment of debts out of assets subject to floating charge (England and Wales).**

**F232** .....

**Textual Amendments**

**F232** S. 196 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

**197 Debentures to bearer (Scotland).**

**F233** .....

**Textual Amendments**

**F233** S. 197 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 22(2))

**PART VI**

DISCLOSURE OF INTERESTS IN SHARES

*Individual and group acquisitions*

**198 Obligation of disclosure: the cases in which it may arise and “the relevant time”.**

**F234** .....

**Textual Amendments**

**F234** S. 198 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**199 Interests to be disclosed.**

**F235** .....

**Textual Amendments**

**F235** S. 199 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

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## 200 “Percentage level” in relation to notifiable interests.

F236 .....

### Textual Amendments

**F236** S. 200 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

## F237 201 .....

### Textual Amendments

**F237** S. 201 repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

## 202 Particulars to be contained in notification.

F238 .....

### Textual Amendments

**F238** S. 202 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

## 203 Notification of family and corporate interests.

F239 .....

### Textual Amendments

**F239** S. 203 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

## 204 Agreement to acquire interests in a particular company.

F240 .....

### Textual Amendments

**F240** S. 204 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

## 205 Obligation of disclosure arising under s. 204.

F241 .....



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**Textual Amendments**

**F241** S. 205 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**206 Obligation of persons acting together to keep each other informed.**

**F242** .....

**Textual Amendments**

**F242** S. 206 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**207 Interests in shares by attribution.**

**F243** .....

**Textual Amendments**

**F243** S. 207 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**208 Interests in shares which are to be notified.**

**F244** .....

**Textual Amendments**

**F244** S. 208 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**209 Interests to be disregarded.**

**F245** .....

**Textual Amendments**

**F245** S. 209 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**210 Other provisions about notification under this Part.**

**F246** .....

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#### Textual Amendments

**F246** S. 210 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### 210A Power to make further provision by regulations.

**F247** .....

#### Textual Amendments

**F247** S. 210A repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### *Registration and investigation of share acquisitions and disposals*

### 211 Register of interests in shares.

**F248** .....

#### Textual Amendments

**F248** S. 211 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### 212 Company investigations.

**F249** .....

#### Textual Amendments

**F249** S. 212 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### 213 Registration of interests disclosed under s. 212.

**F250** .....

#### Textual Amendments

**F250** S. 213 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### 214 Company investigation on requisition by members.

**F251** .....

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**Textual Amendments**

**F251** S. 214 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**215 Company report to members.**

**F252** .....

**Textual Amendments**

**F252** S. 215 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**216 Penalty for failure to provide information.**

**F253** .....

**Textual Amendments**

**F253** S. 216 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**217 Removal of entries from register.**

**F254** .....

**Textual Amendments**

**F254** S. 217 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**218 Otherwise, entries not to be removed.**

**F255** .....

**Textual Amendments**

**F255** S. 218 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**219 Inspection of register and reports.**

**F256** .....

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### Textual Amendments

**F256** S. 219 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

## *Supplementary*

### 220 Definitions for Part VI.

**F257** .....

### Textual Amendments

**F257** S. 220 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(b)**, Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

## PART VII

### ACCOUNTS AND AUDIT

#### Modifications etc. (not altering text)

- C125** Pt. VII (ss. 221–262) applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**
- C126** Part VII (ss. 221–262) continued by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 13(1)(a)**
- C127** Part VII (ss. 221–262) amended by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 1(2)(5)**
- C128** Part VII (ss. 221–262) extended by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 1(3)(5)**
- C129** Part VII (ss. 221–262) modified by S.I. 1990/355, arts. 6, 7, Sch. 2 paras. 1(4)(5), **3(2)(3)**
- C130** Part VII (ss. 221–262) excluded by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 3(1)(3)**
- C131** Part VII (ss. 221–262) restricted by S.I. 1990/355, arts. 6, 7, **Sch. 2 para. 13(1)(b)**  
 Pt. VII (ss. 221–262) applied (with modifications) (21.7.1993) by S.I. 1993/1820, reg. 4, Sch. paras. 1, 2 (as amended (1.10.2005) by S.I. 2005/1987, **reg. 3**)  
 Pt. VII (ss. 221–262) applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 3, Sch. 1 (as amended (4.3.2004) by S.I. 2004/355, **art. 8**, (1.10.2005) by S.I. 2005/1989, reg. 2, **Sch. 1** and (12.1.2006) by S.I. 2005/3442, **reg. 2(2)(b)**, **Sch. 2 para. 3(1)**)
- C132** Pt. 7 (ss. 221–262) modified (1.8.2007) by The European Grouping of Territorial Cooperation Regulations 2007 (S.I. 2007/1949), regs. 6, 7, **Sch. Pt. 1**

## CHAPTER I

### PROVISIONS APPLYING TO COMPANIES GENERALLY

#### *Accounting records*

### 221 Duty to keep accounting records.

**F258** .....

**Status:** Point in time view as at 26/05/2008. This version of this Act contains provisions that are not valid for this point in time.

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**Textual Amendments**

**F258** S. 221 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12)

**222 Where and for how long records to be kept.**

**F259** .....

**Textual Amendments**

**F259** S. 222 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12)

*A company's financial year and accounting reference periods*

**223 A company's financial year.**

**F260** .....

**Textual Amendments**

**F260** S. 223 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12)

**224 Accounting reference periods and accounting reference date.**

**F261** .....

**Textual Amendments**

**F261** S. 224 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12)

**225 Alteration of accounting reference date.**

**F262** .....

**Textual Amendments**

**F262** S. 225 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12)

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### Annual accounts

#### 226 Duty to prepare individual accounts.

F263 .....

##### Textual Amendments

**F263** S. 226 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

#### 226A Companies Act individual accounts

F264 .....

##### Textual Amendments

**F264** S. 226A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

#### 226B IAS individual accounts

F265 .....

##### Textual Amendments

**F265** S. 226B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

#### 227 Duty to prepare group accounts.

F266 .....

##### Textual Amendments

**F266** S. 227 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

#### 227A Companies Act group accounts

F267 .....

##### Textual Amendments

**F267** S. 227A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

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## 227B IAS group accounts

F268 .....

### Textual Amendments

**F268** S. 227B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

## 227C Consistency of accounts

F269 .....

### Textual Amendments

**F269** S. 227C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

## 228 Exemption for parent companies included in accounts of larger group.

F270 .....

### Textual Amendments

**F270** S. 228 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

## 228A Exemption for parent companies included in non-EEA group accounts

F271 .....

### Textual Amendments

**F271** S. 228A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

## 229 Subsidiary undertakings included in the consolidation.

F272 .....

### Textual Amendments

**F272** S. 229 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

## 230 Treatment of individual profit and loss account where group accounts prepared.

F273 .....

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#### Textual Amendments

**F273** S. 230 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

### 231 Disclosure required in notes to accounts: related undertakings.

**F274** .....

#### Textual Amendments

**F274** S. 231 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

### 231A Disclosure required in notes to annual accounts: particulars of staff

**F275** .....

#### Textual Amendments

**F275** S. 231A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

### 232 Disclosure required in notes to accounts: emoluments and other benefits of directors and others.

**F276** .....

#### Textual Amendments

**F276** S. 232 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

### *Approval and signing of accounts*

### 233 Approval and signing of accounts

**F277** .....

#### Textual Amendments

**F277** S. 233 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)



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*[<sup>F278</sup>Directors' report]*

**Textual Amendments**

**F278** Cross-heading and ss. 234, 234ZZA, 234ZZB substituted for s. 234 and preceding cross-heading (22.3.2005) by [The Companies Act 1985 \(Operating and Financial Review and Directors' Report etc.\) Regulations 2005 \(S.I. 2005/1011\)](#), [reg. 2](#)

**234 Duty to prepare directors' report.**

**F279** .....

**Textual Amendments**

**F279** S. 234 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/3495, [art. 8\(a\)](#), [Sch. 2 Pt. 1](#) (with arts. 7, 12)

**234ZZA Directors' report: general requirements**

**F280** .....

**Textual Amendments**

**F280** S. 234ZZA repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/3495, [art. 8\(a\)](#), [Sch. 2 Pt. 1](#) (with arts. 7, 12)

**234ZZB Directors' report: business review**

**F281** .....

**Textual Amendments**

**F281** S. 234ZZB repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), [Sch. 2 Pt. 1](#) (with art. 12)

**234ZA Statement as to disclosure of information to auditors**

**F282** .....

**Textual Amendments**

**F282** S. 234ZA repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/3495, [art. 8\(a\)](#), [Sch. 2 Pt. 1](#) (with arts. 7, 12, [Sch. 4 paras. 9\(2\), 12\(2\)](#))

**234A Approval and signing of directors' report.**

**F283** .....

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#### Textual Amendments

**F283** S. 234A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

F284  
.....

#### Textual Amendments

**F284** Heading before s. 234AA omitted (12.1.2006) by virtue of The Companies Act 1985 (Operating and Financial Review) (Repeal) Regulations 2005 (S.I. 2005/3442), reg. 2(2)(a), **Sch. 1 para. 2**

### 234AA Duty to prepare operating and financial review

F285  
.....

#### Textual Amendments

**F285** S. 234AA repealed (12.1.2006) by The Companies Act 1985 (Operating and Financial Review) (Repeal) Regulations 2005 (S.I. 2005/3442), **reg. 2(1)**

### 234AB Approval and signing of operating and financial review

F286  
.....

#### Textual Amendments

**F286** S. 234AB omitted (12.1.2006) by virtue of The Companies Act 1985 (Operating and Financial Review) (Repeal) Regulations 2005 (S.I. 2005/3442), reg. 2(2)(a), **Sch. 1 para. 3**

*Quoted companies: directors' remuneration report*

### 234B Duty to prepare directors' remuneration report

F287  
.....

#### Textual Amendments

**F287** S. 234B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 234C Approval and signing of directors' remuneration report

F288  
.....

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**Textual Amendments**

**F288** S. 234C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

*Auditors' report*

**235 Auditors' report.**

**F289** .....

**Textual Amendments**

**F289** S. 235 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

**236 Signature of auditors' report.**

**F290** .....

**Textual Amendments**

**F290** S. 236 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

**237 Duties of auditors.**

**F291** .....

**Textual Amendments**

**F291** S. 237 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

*Publication of accounts and reports*

**238 Persons entitled to receive copies of accounts and reports.**

**F292** .....

**Textual Amendments**

**F292** S. 238 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

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## [<sup>F293</sup> 238A Time allowed for sending out copies of accounts and reports

<sup>F294</sup> .....

### Textual Amendments

**F293** S. 238A inserted (1.10.2007 with effect as mentioned in Sch. 4 para. 3(8) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 3(3)** (with art. 12)

**F294** S. 238A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## 239 Rights to demand copies of accounts and reports.

<sup>F295</sup> .....

### Textual Amendments

**F295** S. 239 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## 240 Requirements in connection with publication of accounts.

<sup>F296</sup> .....

### Textual Amendments

**F296** S. 240 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### *Laying and delivering of accounts and reports*

## 241 Accounts and reports to be laid before company in general meeting.

<sup>F297</sup> .....

### Textual Amendments

**F297** S. 241 repealed (1.10.2007 with application to private companies) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

## 241A Members' approval of directors' remuneration report

<sup>F298</sup> .....

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**Textual Amendments**

**F298** S. 241A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

**242 Accounts and reports to be delivered to the registrar.**

**F299** .....

**Textual Amendments**

**F299** S. 242 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

**242A Civil penalty for failure to deliver accounts.**

**F300** .....

**Textual Amendments**

**F300** S. 242A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2)); table in s. 242A(2) expressed to be substituted and s. 242A(2A) expressed to be inserted (6.4.2008 with application in accordance with reg. 1 of the amending S.I.) by The Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008 (S.I. 2008/497), **reg. 5** and {reg. 3} respectively

**242B Delivery and publication of accounts in ECUs**

**F301** .....

**Textual Amendments**

**F301** S. 242B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

**243 Accounts of subsidiary undertakings to be appended in certain cases.**

**F302** .....

**Textual Amendments**

**F302** S. 243 omitted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by virtue of The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 15, **Sch. 7 para. 6**

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## 244 Period allowed for laying and delivering accounts and reports.

F303

### Textual Amendments

**F303** S. 244 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### *Revision of defective accounts and reports*

## 245 Voluntary revision of annual accounts or directors' report.

F304

### Textual Amendments

**F304** S. 245 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## 245A Secretary of State's notice in respect of annual accounts.

F305

### Textual Amendments

**F305** S. 245A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## 245B Application to court in respect of defective accounts.

F306

### Textual Amendments

**F306** S. 245B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## 245C Other persons authorised to apply to court.

F307

### Textual Amendments

**F307** S. 245C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

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## **245D Disclosure of information held by Inland Revenue to persons authorised to apply to court**

F308 .....

### **Textual Amendments**

**F308** S. 245D repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## **245E Restrictions on use and further disclosure of information disclosed under section 245D**

F309 .....

### **Textual Amendments**

**F309** S. 245E repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## **245F Power of authorised persons to require documents, information and explanations**

F310 .....

### **Textual Amendments**

**F310** S. 245F repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## **245G Restrictions on further disclosure of information obtained under section 245F**

F311 .....

### **Textual Amendments**

**F311** S. 245G repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## **CHAPTER II**

### *EXEMPTIONS, EXCEPTIONS AND SPECIAL PROVISIONS*

#### *Small and medium-sized companies and groups*

## **246 Special provisions for small companies**

F312 .....

*Status: Point in time view as at 26/05/2008. This version of this Act contains provisions that are not valid for this point in time.*

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#### Textual Amendments

**F312** S. 246 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 246A Special provisions for medium-sized companies

F313

#### Textual Amendments

**F313** S. 246A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 247 Qualification of company as small or medium-sized.

F314

#### Textual Amendments

**F314** S. 247 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 247A Cases in which special provisions do not apply

F315

#### Textual Amendments

**F315** S. 247A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 247B Special auditors' report

F316

#### Textual Amendments

**F316** S. 247B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 248 Exemption for small and medium-sized groups.

F317



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#### Textual Amendments

**F317** S. 248 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 248A Group accounts prepared by small company

F318

#### Textual Amendments

**F318** S. 248A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 249 Qualification of group as small or medium-sized.

F319

#### Textual Amendments

**F319** S. 249 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

*[<sup>F320</sup> Exemptions from audit for certain categories of small company]*

#### Textual Amendments

**F320** Ss. 249A-249E and preceding cross-heading inserted (11.8.1994) by S.I. 1994/1935, **reg. 2**

### 249A Exemptions from audit

F321

#### Textual Amendments

**F321** S. 249A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### 249AA Dormant companies

F322

#### Textual Amendments

**F322** S. 249AA repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

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## 249B Cases where exemptions not available

F323

### Textual Amendments

**F323** S. 249B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## 249C The report required for the purposes of section 249A(2).

F324

### Textual Amendments

**F324** S. 249C repealed (1.4.2008) by Companies Act 2006 (c. 46), ss. 1175, 1295, 1300, Sch. 9 para. 5, **Sch. 16**; S.I. 2008/674, **art. 3**, Sch. 1 (with savings in art. 6)

## 249D The reporting accountant

F325

### Textual Amendments

**F325** S. 249D repealed (1.4.2008) by Companies Act 2006 (c. 46), ss. 1175, 1295, 1300, Sch. 9 para. 5, **Sch. 16**; S.I. 2008/674, **art. 3**, Sch. 1 (with savings in art. 6)

## 249E Effect of exemptions

F326

### Textual Amendments

**F326** S. 249E repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

## *Dormant companies*

## 250 .....

F327

### Textual Amendments

**F327** S. 250 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

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### *Listed public companies*

#### **251** [<sup>F328</sup> *Summary financial statement*]

F329 .....

##### **Textual Amendments**

- F328** S. 251: heading substituted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), **reg. 11(1)**
- F329** S. 251 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 9(2), 12(2))

### *Private companies*

#### **252 Election to dispense with laying of accounts and reports before general meeting.**

F330 .....

##### **Textual Amendments**

- F330** S. 252 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **253 Right of shareholder to require laying of accounts.**

F331 .....

##### **Textual Amendments**

- F331** S. 253 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### *Unlimited companies*

#### **254 Exemption from requirement to deliver accounts and reports.**

F332 .....

##### **Textual Amendments**

- F332** S. 254 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

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*Banking and insurance companies and groups*

**255 Special provisions for banking and insurance companies.**

F333 .....

**Textual Amendments**  
**F333** S. 255 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**255A Special provisions for banking and insurance groups.**

F334 .....

**Textual Amendments**  
**F334** S. 255A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**255B Modification of disclosure requirements in relation to banking company or group.**

F335 .....

**Textual Amendments**  
**F335** S. 255B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**255C** .....

F336 .....

**Textual Amendments**  
**F336** S. 255C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**255D Power to apply provisions to banking partnerships.**

F337 .....

**Textual Amendments**  
**F337** S. 255D repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

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### *Welsh private companies*

#### **255E Delivery of accounting documents in Welsh only.**

F338 .....

##### **Textual Amendments**

**F338** S. 255E repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## **CHAPTER III**

### **SUPPLEMENTARY PROVISIONS**

#### *Accounting standards*

#### **256 Accounting standards.**

F339 .....

##### **Textual Amendments**

**F339** S. 256 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

#### **256A Reporting standards**

F340 .....

##### **Textual Amendments**

**F340** S. 256A omitted (12.1.2006) by virtue of The Companies Act 1985 (Operating and Financial Review) (Repeal) Regulations 2005 (S.I. 2005/3442), reg. 2(2)(a), **Sch. 1 para. 15**

#### *Power to alter accounting requirements*

#### **257 Power of Secretary of State to alter accounting requirements.**

F341 .....

##### **Textual Amendments**

**F341** S. 257 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

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### *Parent and subsidiary undertakings*

#### **258 Parent and subsidiary undertakings.**

F342 .....

##### **Textual Amendments**

**F342** S. 258 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

### *Other interpretation provisions*

#### **259 Meaning of “undertaking” and related expressions.**

F343 .....

##### **Textual Amendments**

**F343** S. 259 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

#### **260 Participating interests.**

F344 .....

##### **Textual Amendments**

**F344** S. 260 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

#### **261 Notes to the accounts.**

F345 .....

##### **Textual Amendments**

**F345** S. 261 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

#### **262 Minor definitions.**

F346 .....

##### **Textual Amendments**

**F346** S. 262 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2)) and subject to amendments (1.7.2009 for

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certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), **23**

## 262A Index of defined expressions.

F347 .....

### Textual Amendments

**F347** S. 262A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## PART VIII

### DISTRIBUTION OF PROFITS AND ASSETS

#### *Limits of company's power of distribution*

## 263 Certain distributions prohibited.

F348 .....

### Textual Amendments

**F348** S. 263 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 264 Restriction on distribution of assets.

F349 .....

### Textual Amendments

**F349** S. 264 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 265 Other distributions by investment companies.

F350 .....

### Textual Amendments

**F350** S. 265 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

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## 266 Meaning of “investment company”.

F351

### Textual Amendments

**F351** S. 266 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 267 Extension of ss. 265, 266 to other companies.

F352

### Textual Amendments

**F352** S. 267 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 268 Realised profits of insurance company with long term business.

F353

### Textual Amendments

**F353** S. 268 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 269 Treatment of development costs.

F354

### Textual Amendments

**F354** S. 269 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

### *Relevant accounts*

## 270 Distribution to be justified by reference to company’s accounts.

F355

### Textual Amendments

**F355** S. 270 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))



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## 271 Requirements for last annual accounts.

F356 .....

### Textual Amendments

**F356** S. 271 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 272 Requirements for interim accounts.

F357 .....

### Textual Amendments

**F357** S. 272 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 273 Requirements for initial accounts.

F358 .....

### Textual Amendments

**F358** S. 273 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 274 Method of applying s. 270 to successive distributions.

F359 .....

### Textual Amendments

**F359** S. 274 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 275 Treatment of assets in the relevant accounts.

F360 .....

### Textual Amendments

**F360** S. 275 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

## 276 Distributions in kind.

F361 .....

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**Textual Amendments**

**F361** S. 276 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

*Supplementary*

**277 Consequences of unlawful distribution.**

F362 .....

**Textual Amendments**

**F362** S. 277 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**278 Saving for provision in articles operative before Act of 1980.**

F363 .....

**Textual Amendments**

**F363** S. 278 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**279 Distributions by banking or insurance companies.**

F364 .....

**Textual Amendments**

**F364** S. 279 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**280 Definitions for Part VIII.**

F365 .....

**Textual Amendments**

**F365** S. 280 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**281 Saving for other restraints on distribution.**

F366 .....

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**Textual Amendments**

**F366** S. 281 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 33(2))

**PART IX**

**A COMPANY’S MANAGEMENT; DIRECTORS AND SECRETARIES;  
THEIR QUALIFICATIONS, DUTIES AND RESPONSIBILITIES**

*Officers and registered office*

**282 Directors.**

**F367** .....

**Textual Amendments**

**F367** S. 282 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**283 Secretary.**

**F368** .....

**Textual Amendments**

**F368** S. 283 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 5(2))

**284 Acts done by person in dual capacity.**

**F369** .....

**Textual Amendments**

**F369** S. 284 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 5(2))

**285 Validity of acts of directors.**

**F370** .....

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#### Textual Amendments

**F370** S. 285 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

## 286 Qualifications of company secretaries.

F371 .....

#### Textual Amendments

**F371** S. 286 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 5(2))

## [<sup>F372</sup>287 Registered office.

- (1) A company shall at all times have a registered office to which all communications and notices may be addressed.
- (2) On incorporation the situation of the company's registered office is that specified in the statement sent to the registrar under section 10.
- (3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.
- (4) 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 its previous registered office.
- (5) For the purposes of any duty of a company—
  - (a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
  - (b) to mention the address of its registered office in any document,
 a company which has given notice to the registrar of a change in the situation 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.
- (6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation 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 shall not be treated as having failed to comply with that duty.
- (7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason of the matters referred to in that subsection (6) no offence was committed.]

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**Textual Amendments**

**F372** S. 287 substituted (subject to the saving and transitional provisions in S.I. 1990/355, art. 12) by Companies Act 1989 (c. 40, SIF 27), ss. 136, 213(2)

**Modifications etc. (not altering text)**

**C133** S. 287 modified by S.I. 1985/680, arts. 4–6, Sch.

**C134** S. 287 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**288 Register of directors and secretaries.**

- (1) Every company shall keep at its registered office a register of its directors and secretaries; and the register shall, with respect to the particulars to be contained in it of those persons, comply with sections 289 and 290 below.
- (2) The company shall, within the period of 14 days from the occurrence of—
  - (a) any change among its directors or in its secretary, or
  - (b) any change in the particulars contained in the register, send to the registrar of companies a notification in the prescribed form of the change and of the date on which it occurred; and a notification of a person having become a director or secretary, or one of joint secretaries, of the company shall contain a consent, signed by that person, to act in the relevant capacity.
- (3) The register shall <sup>F373</sup> . . . be open to the inspection of any member of the company without charge and of any other person on payment of [<sup>F374</sup>such fee as may be prescribed].
- (4) If an inspection required under this section is refused, or if default is made in complying with subsection (1) or (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.
- [<sup>F375</sup>(5A) Where a confidentiality order made under section 723B is in force in respect of a director or secretary of a company, subsections (3) and (5) shall not apply in relation to that part of the register of the company as contains particulars of the usual residential address of that individual.]
- (6) For purposes of this and the next section, a shadow director of a company is deemed a director and officer of it.
- (7) <sup>F376</sup> . . . . .

**Textual Amendments**

**F373** Words in s. 288(3) repealed (1.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(6), 212, 213(2), Sch. 24; S.I. 1991/1996, art. 2(2)(b)(c).

**F374** Words in s. 288(3) substituted (1.11.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(6), 213(2); S.I. 1991/1996, art. 2(2)(b).

**F375** S. 288(5A) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, Sch. 2 para. 2(2)

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**F376** S. 288(7) repealed (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 2(3)**

**Modifications etc. (not altering text)**

**C135** S. 288 applied (with modifications) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C136** S. 288 modified (1.2.2001) by 2000 c. 38, s. 56(4)(5)(a)(8); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 1 Pt. II**)

**C137** S. 288 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), arts. 1(2), 17(1), **Sch. para. 1(a)**

**C138** S. 288 modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), art. 7, **Sch. 1 para. 1**

**C139** S. 288(2) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 45(8)-(10), 65; S.I. 2004/3322, art. 2(3), **Sch. 3** (subject to arts. 3-13)

**C140** S. 288(2) excluded (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 46(12), 65; S.I. 2004/3322, art. 2(3), **Sch. 3** (subject to arts. 3-13)

**C141** S. 288(3) explained (1.11.1991) by S.I. 1991/1998, reg. 3(1).

**288A**

If an individual in respect of whom a confidentiality order under section 723B as applied to limited liability partnerships becomes a member of a limited liability partnership—

- (a) the notice to be delivered to the registrar under section 9(1) of the Limited Liability Partnerships Act 2000 shall contain the address for the time being notified by the member to the limited liability partnership under the Limited Liability Partnerships (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 but shall not contain his usual residential address; and
- (b) with that notice the limited liability partnership shall deliver to the registrar a notice in the prescribed form containing the usual residential address of that member.

**289 Particulars of directors to be registered under s. 288.**

(1) Subject to the provisions of this section, the register kept by a company under section 288 shall contain the following particulars with respect to each director—

- (a) in the case of an individual—
  - (i) his present [<sup>F377</sup>name],
  - (ii) any former [<sup>F378</sup>name],
  - (iii) his usual residential address,
  - (iv) his nationality,
  - (v) his business occupation (if any),
  - (vi) particulars of any other directorships held by him or which have been held by him, and
  - [<sup>F379</sup>(vii) the date of his birth;]
- (b) in the case of a corporation [<sup>F380</sup>or Scottish firm], its corporate [<sup>F380</sup>or firm] name and registered or principal office.

[<sup>F381</sup>(1A) Where a confidentiality order made under section 723B is in force in respect of a director, the register shall contain, in addition to the particulars specified in

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subsection (1)(a), such address as is for the time being notified by the director to the company under regulations made under sections 723B to 723F.]

[<sup>F382</sup>(2) In subsection (1)(a)—

- (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or 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; and
- (b) the reference to a former name does not include—
  - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
  - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
  - (iii) in the case of a married woman, the name by which she was known previous to the marriage.]

(3) It is not necessary for the register to contain on any day particulars of a directorship—

- (a) which has not been held by a director at any time during the 5 years preceding that day,
- (b) which is held by a director in a company which—
  - (i) is dormant or grouped with the company keeping the register, and
  - (ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,
- (c) which was held by a director for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the company keeping the register.

(4) For purposes of subsection (3), “company” includes any body corporate incorporated in Great Britain; and—

- (a) [<sup>F383</sup>section 481 of the Companies Act 2006] applies as regards whether and when a company is or has been dormant, and
- (b) a company is to be regarded as being, or having been, grouped with another at any time if at that time it is or was a company of which the other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company of which that other is or was a wholly-owned subsidiary.

#### Textual Amendments

- F377** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 145, 213(2), [Sch. 19 para. 2\(2\)\(a\)](#) (subject to the saving and transitional provisions in [S.I. 1990/1707](#), [art. 6](#))
- F378** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 145, 213(2), [Sch. 19 para. 2\(2\)\(a\)](#) (subject to the saving and transitional provisions in [S.I. 1990/1707](#), [art. 6](#))
- F379** [S. 289\(1\)\(a\)\(vii\)](#) substituted (subject to the saving and transitional provisions in [S.I. 1990/1707](#), [art. 6](#)) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 145, 213(2), [Sch. 19 para. 2\(2\)\(b\)](#)
- F380** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 145, 213(2), [Sch. 19 para. 2\(3\)](#) (subject to the saving and transitional provisions in [S.I. 1990/1707](#), [art. 6](#))
- F381** [S. 289\(1A\)](#) inserted (2.4.2002) by [The Companies \(Particulars of Usual Residential Address\) \(Confidentiality Orders\) Regulations 2002 \(S.I. 2002/912\)](#), reg. 16, [Sch. 2 para. 3\(2\)](#)

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**F382** S. 289(2) substituted (subject to the saving and transitional provisions in S.I. 1990/1707, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 2(4)**

**F383** Words in s. 289(4)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 77** (with arts. 6, 11, 12)

**Modifications etc. (not altering text)**

**C142** S. 289(2) applied by S.I. 1989/638, **regs. 5(4), 21**

**290 Particulars of secretaries to be registered under s. 288.**

- (1) The register to be kept by a company under section 288 shall contain the following particulars with respect to the secretary [<sup>F384</sup>(if any)] or, where there are joint secretaries, with respect to each of them—
- (a) in the case of an individual, his present [<sup>F385</sup>name], any former [<sup>F385</sup>name] and his usual residential address, and
  - (b) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office.
- [<sup>F386</sup>(1A) Where a confidentiality order made under section 723B is in force in respect of a secretary the register shall contain, in addition to the particulars specified in subsection (1)(a), such address as is for the time being notified by the secretary to the company under regulations made under sections 723B to 723F.]
- (2) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the particulars specified above.
- [<sup>F387</sup>(3) Section 289(2)(a) and (b) apply for the purposes of the obligation under subsection (1) (a) of this section to state the name or former name of an individual.]

**Textual Amendments**

**F384** Words in s. 290(1) inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 78** (with arts. 6, 11, 12)

**F385** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 3(2)**

**F386** S. 290(1A) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 4(2)**

**F387** S. 290(3) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 3(3)**

*Provisions governing appointment of directors*

**291 Share qualification of directors.**

- (1) It is the duty of every director who is by the company’s articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.
- (2) For the purpose of any provision of the articles requiring a director or manager to hold any specified share qualification, the bearer of a share warrant is not deemed the holder of the shares specified in the warrant.



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- (3) The office of director of a company is vacated if the director does not within 2 months from the date of his appointment (or within such shorter time as may be fixed by the articles) obtain his qualification, or if after the expiration of that period or shorter time he ceases at any time to hold his qualification.
- (4) A person vacating office under this section is incapable of being reappointed to be a director of the company until he has obtained his qualification.
- (5) If after the expiration of that period or shorter time any unqualified person acts as a director of the company, he is liable to a fine and, for continued contravention, to a daily default fine.

## 292 Appointment of directors to be voted on individually.

F388 .....

### Textual Amendments

**F388** S. 292 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), [Sch. 2 Pt. 1](#) (with [art. 12](#))

## 293 Age limit for directors.

F389 .....

### Textual Amendments

**F389** S. 293 repealed (6.4.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2006/3428, [art. 4\(2\)\(c\)](#), (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#) (as amended by S.I. 2007/3495, [art. 11](#), [Sch. 5](#)))

## 294 Duty of director to disclose his age.

F390 .....

### Textual Amendments

**F390** S. 294 repealed (6.4.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2006/3428, [art. 4\(2\)\(c\)](#), (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#) (as amended by S.I. 2007/3495, [art. 11](#), [Sch. 5](#)))

## *Disqualification*

F391 295-.....  
299

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**Textual Amendments**

**F391** Ss. 295–299 repealed by [Company Directors Disqualification Act 1986 \(c. 46, SIF 27\)](#), s. 23(2), **Sch. 4**

<sup>F392</sup>**300** .....

**Textual Amendments**

**F392** S. 300 repealed by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), **Sch. 10 Pt. II**, [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 437, **Sch. 11 para. 7**

<sup>F393</sup>**301**, .....  
**302.**

**Textual Amendments**

**F393** Ss. 301, 302 repealed by [Company Directors Disqualification Act 1986 \(c. 46, SIF 27\)](#), s. 23(2), **Sch. 4**

*Removal of directors*

**303 Resolution to remove director.**

<sup>F394</sup> .....

**Textual Amendments**

**F394** S. 303 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8, Sch. 2 Pt. 1** (with art. 12)

**304 Director’s right to protest removal.**

<sup>F395</sup> .....

**Textual Amendments**

**F395** S. 304 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8, Sch. 2 Pt. 1** (with art. 12)

*Other provisions about directors and officers*

**305 Directors’ names on company correspondence, etc.**

- (1) A company to which this section applies shall not state, in any form, the name of any of its directors (otherwise than in the text or as a signatory) on any business letter on

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which the company's name appears unless it states on the letter in legible characters [F396the name of every director of the company].

- (2) This section applies to—
- (a) every company registered under this Act or under the former Companies Acts (except a company registered before 23rd November 1916); and
  - (b) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before that date.
- (3) If a company makes default in complying with this section, every officer of the company who is in default is liable for each offence to a fine; and for this purpose, where a corporation is an officer of the company, any officer of the corporation is deemed an officer of the company.
- [F397(4) For the purposes of the obligation under section (1) to state the name of every director of the company, a person's "name" means—
- (a) in the case of an individual, his Christian name (or other forename) and surname; and
  - (b) in the case of a corporation or Scottish firm, its corporate or firm name.
- (5) The initial or a recognised abbreviation of a person's Christian name or other forename may be stated instead of the full Christian name or other forename.
- (6) In the case of a peer, or 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.
- (7) In this section "director" includes a shadow director and the reference in subsection (3) to an "officer" shall be construed accordingly.]

#### Textual Amendments

**F396** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), Sch. 19 para. 4(2)

**F397** S. 305(4)–(7) substituted for s. 305(4) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), Sch. 19 para. 4(3)

#### Modifications etc. (not altering text)

**C143** S. 305 modified (1.2.2001) by 2000 c. 38, s. 56(4)(5)(b)(8); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provisions and saving in Sch. 2 Pt. II)

**C144** S. 305 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), arts. 1(2), 17(1), Sch. para. 1(b)

### 306 Limited company may have directors with unlimited liability.

- (1) In the case of a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.
- (2) In the case of a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes any person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited.

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- (3) Before the person accepts the office or acts in it, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely—
- (a) the promoters of the company,
  - (b) the directors of the company,
  - (c) any managers of the company,
  - (d) the company secretary.
- (4) If a director, manager or proposer makes default in adding such a statement, or if a promoter, director, manager or secretary makes default in giving the notice required by subsection (3), then—
- (a) he is liable to a fine, and
  - (b) he is also liable for any damage which the person so elected or appointed may sustain from the default;
- but the liability of the person elected or appointed is not affected by the default.

### **307 Special resolution making liability of directors unlimited.**

- (1) A limited company, if so authorised by its articles, may by special resolution alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.
- (2) When such a special resolution is passed, its provisions are as valid as if they had been originally contained in the memorandum.

### **308 Assignment of office by directors.**

- (1) If provision is made by a company’s articles, or by any agreement entered into between any person and the company, for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of that provision is (notwithstanding anything to the contrary contained in the provision) of no effect unless and until it is approved by a special resolution of the company.

### **309 Directors to have regard to interests of employees.**

F398 .....

#### **Textual Amendments**

**F398** S. 309 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), Sch. 2 Pt. 1 (with [art. 12](#))

### **309A Provisions protecting directors from liability**

F399 .....

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**Textual Amendments**

**F399** S. 309A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**309B Qualifying third party indemnity provisions**

**F400** .....

**Textual Amendments**

**F400** S. 309B repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**309C Disclosure of qualifying third party indemnity provisions**

**F401** .....

**Textual Amendments**

**F401** S. 309C repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**310 Provisions protecting auditors from liability.**

**F402** .....

**Textual Amendments**

**F402** S. 310 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

**PART X**

ENFORCEMENT OF FAIR DEALING BY DIRECTORS

*Restrictions on directors taking financial advantage*

**311 Prohibition on tax-free payments to directors.**

**F403** .....

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#### Textual Amendments

**F403** S. 311 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), **7(c)**, Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### 312 Payment to director for loss of office etc.

F404 .....

#### Textual Amendments

**F404** S. 312 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 313 Company approval for property transfer.

F405 .....

#### Textual Amendments

**F405** S. 313 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 314 Director's duty of disclosure on takeover, etc.

F406 .....

#### Textual Amendments

**F406** S. 314 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 315 Consequences of non-compliance with s. 314.

F407 .....

#### Textual Amendments

**F407** S. 315 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 316 Provisions supplementing ss. 312 to 315.

F408 .....

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### Textual Amendments

**F408** S. 316 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

## 317 Directors to disclose interest in contracts.

- (1) It is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.
- (2) In the case of a proposed contract, the declaration shall be made—
  - (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or
  - (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested;and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes so interested.
- (3) For purposes of this section, a general notice given to the directors of a company by a director to the effect that—
  - (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or
  - (b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of section 346 below),is deemed a sufficient declaration of interest in relation to any such contract.
- (4) However, no such notice is of effect unless either it is given at a meeting of the directors or 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.
- (5) A reference in this section to a contract includes any transaction or arrangement (whether or not constituting a contract) made or entered into on or after 22nd December 1980.
- (6) For purposes of this section, a transaction or arrangement of a kind described in [F409 section 197, 198, 200, 201 or 203 of the Companies Act 2006] (prohibition of loans, quasi-loans etc. to directors) made by a company for a director of the company or a person connected with such a director is treated (if it would not otherwise be so treated, and whether or not it is prohibited by that section) as a transaction or arrangement in which that director is interested.
- (7) A director who fails to comply with this section is liable to a fine.
- (8) This section applies to a shadow director as it applies to a director, except that a shadow director shall declare his interest, not at a meeting of the directors, but by a notice in writing to the directors which is either—
  - (a) a specific notice given before the date of the meeting at which, if he had been a director, the declaration would be required by subsection (2) to be made; or

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(b) a notice which under subsection (3) falls to be treated as a sufficient declaration of that interest (or would fall to be so treated apart from subsection (4)).

(9) Nothing in this section prejudices the operation of any rule of law restricting directors of a company from having an interest in contracts with the company.

#### Textual Amendments

**F409** Words in s. 317(6) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 5** (with art. 12)

#### Modifications etc. (not altering text)

**C145** S. 317 modified (1.2.2001) by 2000 c. 38, s. 56(4)(5)(c)(8); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in **Sch. 2 Pt. II**)

**C146** S. 317 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), arts. 1(2), 17(1), **Sch. para. 1(c)**

### 318 Directors' service contracts to be open to inspection.

**F410** .....

#### Textual Amendments

**F410** S. 318 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, art. 8, **Sch. 2 Pt. 1** (with art. 12)

### 319 Director's contract of employment for more than 5 years.

**F411** .....

#### Textual Amendments

**F411** S. 319 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, art. 8, **Sch. 2 Pt. 1** (with art. 12)

### 320 Substantial property transactions involving directors, etc.

**F412** .....

#### Textual Amendments

**F412** S. 320 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, art. 8, **Sch. 2 Pt. 1** (with art. 12); s. 320 is expressed to be modified (22.2.2008) by S.I. 2008/432, arts. 1(2), 17(1), **Sch. para. 1(d)**



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### 321 Exceptions from s. 320.

F413 .....

#### Textual Amendments

**F413** S. 321 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

### 322 Liabilities arising from contravention of s. 320.

F414 .....

#### Textual Amendments

**F414** S. 322 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

### <sup>F415</sup>322A Invalidation of certain transactions involving directors, etc.

- (1) This section applies where a company enters into a transaction to which the parties include—
  - (a) a director of the company or of its holding company, or
  - (b) a person connected with such a director or a company with whom such a director is associated,and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company's constitution.
- (2) 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 (1)(a) or (b), and any director of the company who authorised the transaction, is liable—
  - (a) to account to the company for any gain which 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) Nothing in the above provisions shall be construed 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.
- (5) 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

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- (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.
- (6) 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.
- (7) This section does not affect the operation of section 35A in relation to any party to the transaction not within subsection (1)(a) or (b).

But where a transaction is voidable by virtue of this section and valid by virtue of that section in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

- (8) In this section “transaction” includes any act; and the reference in subsection (1) to limitations under the company’s constitution includes limitations deriving—
- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
  - (b) from any agreement between the members of the company or of any class of shareholders.]

#### Textual Amendments

**F415** S. 322A inserted (4.2.1991) (subject to the saving and transitional provisions in S.I. 1990/2569, **art. 7**) by Companies Act 1989 (c. 40, SIF 27), **ss. 109(1)**, 213(2)

#### Modifications etc. (not altering text)

**C147** S. 322A modified (4.2.1991) by Charities Act 1960 (c. 58, SIF 19), **s. 30B(4)** as inserted (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 111(1)**, 213(2)

**C148** S. 322A excluded by S.I. 1990/2569, **art. 7(3)**

**C149** S. 322A applied with modifications by S.I. 1985/680, **arts. 4–6, Sch.** as amended (4.2.1991) by S.I. 1990/2571, **art. 2(c)**

### 322B Contracts with sole members who are directors

F416 .....

#### Textual Amendments

**F416** S. 322B repealed (1.10.2007) by Companies Act 2006 (c. 46), **ss. 1295, 1300, Sch. 16**; S.I. 2007/2194, **art. 8, Sch. 2 Pt. 1** (with **art. 12**)

*Share dealings by directors and their families*

### 323 Prohibition on directors dealing in share options.

F417 .....

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**Textual Amendments**

**F417** S. 323 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), **7(c)**, Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); s. 323 is expressed to be modified (22.2.2008) by S.I. 2008/432, arts. 1(2), 17(1), **Sch. para. 1(e)**

**324 Duty of director to disclose shareholdings in own company.**

**F418** .....

**Textual Amendments**

**F418** S. 324 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), **7(c)**, Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); s. 324 is expressed to be modified (22.2.2008) by S.I. 2008/432, arts. 1(2), 17(1), **Sch. para. 1(f)**

**325 Register of directors' interests notified under s. 324.**

**F419** .....

**Textual Amendments**

**F419** S. 325 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), **7(c)**, Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); s. 325 is expressed to be modified (22.2.2008) by S.I. 2008/432, arts. 1(2), 17(1), **Sch. para. 1(g)**

**326 Sanctions for non-compliance.**

**F420** .....

**Textual Amendments**

**F420** S. 326 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), **7(c)**, Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**327 Extension of s. 323 to spouses [<sup>F421</sup>, civil partners] and children.**

**F422** .....

**Textual Amendments**

**F421** S. 327: words in heading inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 100(3)**; S.I. 2005/3175, art. 2(2)

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**F422** S. 327 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### **328 Extension of s. 324 to spouses [<sup>F423</sup>, civil partners] and children.**

**F424**  
 .....

#### **Textual Amendments**

**F423** Words in s. 328 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 101(4)**; S.I. 2005/3175, **art. 2(2)**

**F424** S. 328 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### **329 Duty to notify stock exchange of matters notified under preceding sections.**

**F425**  
 .....

#### **Textual Amendments**

**F425** S. 329 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

*Restrictions on a company's power to make loans,  
 etc., to directors and persons connected with them*

### **330 General restriction on loans etc. to directors and persons connected with them.**

**F426**  
 .....

#### **Textual Amendments**

**F426** S. 330 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12); s. 330 is expressed to be modified (22.2.2008) by S.I. 2008/432, arts. 1(2), 17(1), **Sch. para. 1(h)**

### **331 Definitions for ss. 330 ff.**

**F427**  
 .....

#### **Textual Amendments**

**F427** S. 331 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

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### 332 Short-term quasi-loans.

F428 .....

#### Textual Amendments

**F428** S. 332 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 333 Inter-company loans in same group.

F429 .....

#### Textual Amendments

**F429** S. 333 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 334 Loans of small amounts.

F430 .....

#### Textual Amendments

**F430** S. 334 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 335 Minor and business transactions.

F431 .....

#### Textual Amendments

**F431** S. 335 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 336 Transactions at behest of holding company.

F432 .....

#### Textual Amendments

**F432** S. 336 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 337 Funding of director's expenditure on duty to company.

F433 .....

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**Textual Amendments**

**F433** S. 337 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**337A Funding of director’s expenditure on defending proceedings**

**F434** .....

**Textual Amendments**

**F434** S. 337A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**338 Loan or quasi-loan by money-lending company.**

**F435** .....

**Textual Amendments**

**F435** S. 338 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**339 “Relevant amounts” for purposes of ss. 334 ff.**

**F436** .....

**Textual Amendments**

**F436** S. 339 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**340 “Value” of transactions and arrangements.**

**F437** .....

**Textual Amendments**

**F437** S. 340 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**341 Civil remedies for breach of s. 330.**

**F438** .....

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**Textual Amendments**

**F438** S. 341 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**342 Criminal penalties for breach of s. 330.**

**F439** .....

.....

**Textual Amendments**

**F439** S. 342 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**343 Record of transactions not disclosed in company accounts.**

**F440** .....

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**Textual Amendments**

**F440** S. 343 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), **7(c)**, Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**344 Exceptions from s. 343.**

**F441** .....

.....

**Textual Amendments**

**F441** S. 344 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1177, 1295, 1300, **Sch. 16**; S.I. 2006/3428, arts. 4(1)(c), **7(c)**, Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

*Supplementary*

**345 Power to increase financial limits.**

**F442** .....

.....

**Textual Amendments**

**F442** S. 345 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

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### 346 “Connected persons”, etc.

F443  
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#### Textual Amendments

**F443** S. 346 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 347 Transactions under foreign law.

F444  
.....

#### Textual Amendments

**F444** S. 347 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

## PART XA

### CONTROL OF POLITICAL DONATIONS

#### Modifications etc. (not altering text)

**C150** Pt. XA (ss. 347A-347K) applied (16.2.2001) by S.I. 1985/680, **Sch.** (as inserted (16.2.2001) by S.I. 2001/86, **reg. 2**)

### 347A Introductory provisions.

F445  
.....

#### Textual Amendments

**F445** S. 347A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 347B Exemptions.

F446  
.....

#### Textual Amendments

**F446** S. 347B repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)



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### 347C Prohibition on donations and political expenditure by companies.

F447 .....

#### Textual Amendments

F447 S. 347C repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

### 347D Special rules for subsidiaries.

F448 .....

#### Textual Amendments

F448 S. 347D repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

### 347E Special rule for parent company of non-GB subsidiary undertaking.

F449 .....

#### Textual Amendments

F449 S. 347E repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

### 347F Remedies for breach of prohibitions on company donations etc.

F450 .....

#### Textual Amendments

F450 S. 347F repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

### 347G Remedy for unauthorised donation or expenditure by non-GB subsidiary.

F451 .....

#### Textual Amendments

F451 S. 347G repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

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### 347H Exemption of directors from liability in respect of unauthorised donation or expenditure.

F452 .....

#### Textual Amendments

**F452** S. 347H repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 347I Enforcement of directors' liabilities by shareholder action.

F453 .....

#### Textual Amendments

**F453** S. 347I repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 347J Costs of shareholder action.

F454 .....

#### Textual Amendments

**F454** S. 347J repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 347K Information for purposes of shareholder action.

F455 .....

#### Textual Amendments

**F455** S. 347K repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

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## PART XI

### COMPANY ADMINISTRATION AND PROCEDURE

#### CHAPTER I

##### COMPANY IDENTIFICATION

#### 348 Company name to appear outside place of business.

- (1) Every company shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.
- (2) If a company does not paint or affix its name as required above, the company and every officer of it who is in default is liable to a fine; and if a company does not keep its name painted or affixed as so required, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

C151 S. 348 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

#### 349 Company's name to appear in its correspondence, etc.

- (1) Every company shall have its name mentioned in legible characters—
  - (a) in all business letters [<sup>F456</sup>and order forms] of the company,
  - (b) in all its notices and other official publications,
  - <sup>F457</sup>(ba) on all its websites,
  - (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and
  - (d) in all its bills of parcels, invoices, receipts and letters of credit.
- (2) If a company fails to comply with subsection (1) it is liable to a fine.
- (3) If an officer of a company or a person on its behalf—
  - (a) issues or authorises the issue of any business letter [<sup>F458</sup>or order form] of the company, or any notice or other official publication of the company, in which the company's name is not mentioned as required by subsection (1), <sup>F459</sup> . . .
  - <sup>F460</sup>(aa) causes or authorises the appearance of a website of the company on which the company's name is not so mentioned, or]
  - (b) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company in which its name is not so mentioned,he is liable to a fine.
- (4) If an officer of a company or a person on its behalf signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned as required by subsection (1), he is liable to a fine; and he is further personally liable to the holder

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of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

[<sup>F461</sup>(5) References in this section to a document of any type are to a document of that type in hard copy, electronic or any other form.]

#### Textual Amendments

- F456** Words in s. 349(1)(a) inserted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6, **Sch. 1 para. 1(2)(a)**
- F457** S. 349(1)(ba) inserted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6, **Sch. 1 para. 1(2)(b)**
- F458** Words in s. 349(3)(a) inserted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6, **Sch. 1 para. 1(3)(a)**
- F459** Word in s. 349(3)(a) omitted (1.1.2007) by virtue of The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6, **Sch. 1 para. 1(3)(b)**
- F460** S. 349(3)(aa) inserted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6, **Sch. 1 para. 1(3)(c)**
- F461** S. 349(5) inserted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6, **Sch. 1 para. 1(4)**

#### Modifications etc. (not altering text)

- C152** S. 349 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C153** S. 349(2)–(4) applied (S.) (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 112(8)**, 213(2)  
S. 349(2)–(4) applied (with modifications) (E.W.) (1.8.1993) by 1993 c. 10, **ss. 68(3)**, 99(1)

### 350 Company seal.

[<sup>F462</sup>(1) A company which has a common seal shall have its name engraved in legible characters on the seal; and if it fails to comply with this subsection it is liable to a fine.]

(2) If an officer of a company or a person on its behalf uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved as required by subsection (1), he is liable to a fine.

#### Textual Amendments

- F462** S. 350(1) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 130(7)**, 213(2), **Sch. 17 para. 7**

#### Modifications etc. (not altering text)

- C154** S. 350 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

### 351 Particulars in correspondence, etc.

(1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company [<sup>F463</sup>, and on all the company's websites,], that is to say—

- (a) the company's place of registration and the number with which it is registered,
- (b) the address of its registered office,

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- (c) in the case of an investment company (<sup>F464</sup>as defined for the purposes of Part 23 of the Companies Act 2006 (see section 833 of that Act)), the fact that it is such a company, and
- (d) in the case of a limited company exempt from the obligation to use the word “limited” as part of its name [<sup>F465</sup>under section 30 or a community interest company which is not a public company], the fact that it is a limited company.

[<sup>F466</sup>(2) If in the case of a company having a share capital there is a reference to the amount of share capital—

- (a) on the stationery used for any such letters,
- (b) on the company's order forms, or
- (c) on any of the company's websites,

the reference must be to paid-up share capital.]

<sup>F467</sup>(3) . . . . .

<sup>F467</sup>(4) . . . . .

(5) As to contraventions of this section, the following applies—

- (a) if a company fails to comply with subsection (1) or (2), it is liable to a fine,
- (b) if an officer of a company or a person on its behalf issues or authorises the issue of any business letter or order form not complying with those subsections, he is liable to a fine, <sup>F468</sup> . . .

[<sup>F469</sup>(ba) if an officer of a company or a person on its behalf causes or authorises the appearance of a website not complying with those subsections, he is liable to a fine.]

<sup>F468</sup>(c) . . . . .

[<sup>F470</sup>(6) References in this section to a document of any type are to a document of that type in hard copy, electronic or any other form.]

### Textual Amendments

- F463** Words in s. 351(1) inserted (1.1.2007) by [The Companies \(Registrar, Languages and Trading Disclosures\) Regulations 2006 \(S.I. 2006/3429\)](#), reg. 6, **Sch. 1 para. 2(2)**
- F464** Words in s. 351(1)(c) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 79** (with arts. 6, 11, 12)
- F465** Words in s. 351(1)(d) inserted (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 33, 65, **Sch. 6 para. 8**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)
- F466** S. 351(2) substituted (1.1.2007) by [The Companies \(Registrar, Languages and Trading Disclosures\) Regulations 2006 \(S.I. 2006/3429\)](#), reg. 6, **Sch. 1 para. 2(3)**
- F467** S. 351(3)(4) repealed (1.2.1994) by 1993 c. 38, s. 31, **Sch. 2**; S.I. 1994/115, **art. 2(2)**
- F468** S. 351(5)(c) and the word “and” immediately preceding it repealed (1.2.1994) by 1993 c. 38, ss. 35(1), **Sch.2**
- F469** S. 351(5)(ba) inserted (1.1.2007) by [The Companies \(Registrar, Languages and Trading Disclosures\) Regulations 2006 \(S.I. 2006/3429\)](#), reg. 6, **Sch. 1 para. 2(4)**
- F470** S. 351(6) inserted (1.1.2007) by [The Companies \(Registrar, Languages and Trading Disclosures\) Regulations 2006 \(S.I. 2006/3429\)](#), reg. 6, **Sch. 1 para. 2(5)**

### Modifications etc. (not altering text)

- C155** S. 351 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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C156 S. 351(1)(2)(5)(a) applied with modifications by S.I. 1985/680, regs. 4–6, Sch.

**CHAPTER II**

**REGISTER OF MEMBERS**

**352 Obligation to keep and enter up register.**

- (1) Every company shall keep a register of its members and enter in it the particulars required by this section.
- (2) There shall 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) The following applies in the case of a company having a share capital—
  - (a) with the names and addresses of the members there shall be entered a statement—
    - (i) of the shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class, and
    - (ii) of the amount paid or agreed to be considered as paid on the shares of each member;
  - (b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in paragraph (a).
- [<sup>F471</sup>(3A) Where a company purchases one or more of its own shares in circumstances in which section 162A applies—
  - (a) the requirements of subsection (2) and (3) must be complied with unless the company cancels all of the shares forthwith after the purchase in accordance with section 162D(1), but
  - (b) any share which is so cancelled must be disregarded for the purposes of subsection (3).]
- (4) In the case of a company which does not have a share capital but has more than one class of members, there shall be entered in the register, with the names and addresses of the members, the class to which each member belongs.
- (5) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) <sup>F472</sup> .....
- (7) <sup>F472</sup> .....

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#### Textual Amendments

- F471** S. 352(3A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 18}
- F472** S. 352(6)(7) repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, **Sch. 2 Pt. 1** (with arts. 7, 12)

#### Modifications etc. (not altering text)

- C157** S. 352 applied (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 19(1)** (with regs. 39, 45)
- C158** S. 352 restricted (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 2(4)(5)** (with regs. 39, 45)
- C159** S. 352 modified (12.2.1992) by S.I. 1992/225, reg. 16, **Sch. 2 para. 1(1)**.
- C160** S. 352 extended (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 14(4)** (with s. 63); S.I. 2004/1832, **art. 2**
- C161** S. 352(5) applied (26.11.2001) S.I. 2001/3755, **reg. 20(7)** (with regs. 39, 45)  
S. 352(5) applied (26.11.2001) by S.I. 2001/3755, **reg. 21(4)** (with regs. 39, 45)  
S. 352(5) applied (26.11.2001) by S.I. 2001/3755, **reg. 22(4)** (with regs. 39, 45)
- C162** S. 352(5) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 56(5)**.  
S. 352(5) applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 5(4)** (with regs. 39, 45)
- C163** S. 352(5) modified (E.W.) (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 34, 181(1), **Sch. 3 para. 14(4)** (with s. 63); S.I. 2004/1832, **art. 2**

### [<sup>F473</sup>352A Statement that company has only one member

- (1) If the number of members of a private company limited by shares or by guarantee falls to one 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—
  - (i) a statement that the company has only one member, and
  - (ii) the date on which the company became a company having only one member.
- (2) If the membership of a private company limited by shares or by guarantee 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 statement that the company has ceased to have only one member together with the date on which that event occurred.
- (3) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.]

#### Textual Amendments

- F473** S. 352A inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 4(1)**.

#### Modifications etc. (not altering text)

- C164** S. 352A applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 3** (with regs. 39, 45)

### 353 Location of register.

- (1) A company's register of members shall be kept at its registered office, except that—

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- (a) if the work of making it up is done at another office of the company, it may be kept there; and
- (b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other, it may be kept at the office of the other at which the work is done;

but it must not be kept, in the case of a company registered in England and Wales, at any place elsewhere than in England and Wales or, in the case of a company registered in Scotland, at any place elsewhere than in Scotland.

- (2) Subject as follows, every company shall send notice in the prescribed form to the registrar of companies of the place where its register of members is kept, and of any change in that place.
- (3) The notice need not be sent if the register has, at all times since it came into existence (or, in the case of a register in existence on 1st July 1948, at all times since then) been kept at the company's registered office.
- (4) If a company makes default for 14 days in complying with subsection (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

**C165** S. 353 excluded (26.11.2001) by reg. 23(4), Sch. 4 para. 6(5)(6) (with regs. 39, 45)

**C166** S. 353(1)(2)(4) applied (12.2.1992) by S.I. 1992/225, **reg. 26(1)**.

**C167** S. 353(4) extended by S.I. 1985/724, **reg. 3(5)**

S. 353(4) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg. 26(1)**.

**354 Index of members.**

- (1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.
- (2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.
- (3) The index shall be at all times kept at the same place as the register of members.
- (4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

**C168** S. 354 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 7(4)(5)** (with regs. 39, 45)



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### 355 Entries in register in relation to share warrants.

- (1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered in it as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—
  - (a) the fact of the issue of the warrant;
  - (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
  - (c) the date of the issue of the warrant.
- (2) 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.
- (3) 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.
- (4) Until the warrant is surrendered, the particulars specified in subsection (1) are deemed to be those required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered.
- (5) Except as provided by section 291(2) (director's share qualification), 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.

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#### Modifications etc. (not altering text)

**C169** S. 355 applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), **Sch. 4 para. 8** (with regs. 39, 45)

### 356 Inspection of register and index.

F474 .....

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#### Textual Amendments

**F474** S. 356 repealed (1.10.2007) by **Companies Act 2006 (c. 46)**, ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8, Sch. 2 Pt. 1** (with **art. 12**)

### 357 Non-compliance with ss. 353, 354, 356; agent's default.

Where under section 353(1)(b), the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

- section 353(2) (notice to registrar),
- section 354(3) (index to be kept with register), or

F475 .....

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or with any requirement of this Act as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default <sup>F475</sup> . . .

#### Textual Amendments

**F475** Words in s. 357 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

#### Modifications etc. (not altering text)

**C170** S. 357 excluded (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 para. 6(5)(6) (with regs. 39, 45)

**C171** S. 357 applied (12.2.1992) by S.I. 1992/225, reg. 26(3).

### 358 Power to close register.

A company may, on giving notice by advertisement in a newspaper circulating in the district in which the company's registered office is situated, close the register of members for any time or times not exceeding in the whole 30 days in each year.

#### Modifications etc. (not altering text)

**C172** S. 358 excluded (12.2.1992) by S.I. 1992/225, reg. 16, Sch. 2 para. 1(3).

S. 358 excluded (19.12.1995) by S.I. 1995/3272, reg. 22

S. 258 excluded (26.11.2001) by S.I. 2001/3755, reg. 26 (with regs. 39, 45)

### 359 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.

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**Modifications etc. (not altering text)**

C173 S. 359 restricted (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 para. 11 (with regs. 39, 45)

C174 S. 359 excluded (12.2.1992) by S.I. 1992/225, reg. 73(2).

C175 S. 359(1)(a) applied (with modifications) (12.2.1992) by S.I. 1992/225, reg. 73(1).

C176 S. 359(2)-(4) applied (with modifications) (12.2.1992) by S.I. 1992/225, reg. 73(1).

**360 Trusts not to be entered on register in England and Wales.**

No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England and Wales.

**Modifications etc. (not altering text)**

C177 S. 360 amended (12.2.1992) by S.I. 1992/225, reg. 67(2).

**361 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.

**Modifications etc. (not altering text)**

C178 S. 361 excluded (26.11.2001) by S.I. 2001/3755, reg. 24(4) (with regs. 39, 45)

**362 Overseas branch registers.**

- (1) A company having a share capital whose objects comprise the transaction of business in any of the countries or territories specified in Part I of Schedule 14 to this Act may cause to be kept in any such country or territory in which it transacts business a branch register of members resident in that country or territory.
- (2) Such a branch register is to be known as an “overseas branch register”; and—
  - (a) any dominion register kept by a company under section 119 of the <sup>M16</sup>Companies Act 1948 is to become known as an overseas branch register of the company;
  - (b) where any Act or instrument (including in particular a company’s articles) refers to a company’s dominion register, that reference is to be read (unless the context otherwise requires) as being to an overseas branch register kept under this section; and
  - (c) references to a colonial register occurring in articles registered before 1st November 1929 are to be read as referring to an overseas branch register.
- (3) Part II of Schedule 14 has effect with respect to overseas branch registers kept under this section; and Part III of the Schedule enables corresponding facilities in Great Britain to be accorded to companies incorporated in other parts of the world.
- (4) The <sup>M17</sup>Foreign Jurisdiction Act 1890 has effect as if subsection (1) of this section, and Part II of Schedule 14, were included among the enactments which by virtue of

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section 5 of that Act may be applied by Order in Council to foreign countries in which for the time being Her Majesty has jurisdiction.

- (5) Her Majesty may by Order in Council direct that subsection (1) above and Part II of Schedule 14 shall extend, with such exceptions, modifications or adaptations (if any) as may be specified in the Order, to any territories under Her Majesty's protection to which those provisions cannot be extended under the Foreign Jurisdiction Act 1890.

#### Marginal Citations

**M16** 1948 c. 38.

**M17** 1890 c. 37.

## [<sup>F476</sup>CHAPTER III

### ANNUAL RETURN]

#### Textual Amendments

**F476** Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, **arts. 4, 5**) by Companies Act 1989 (c. 40, SIF 27), **ss. 139(1), 213(2)**

#### Modifications etc. (not altering text)

**C179** Chapter III (ss. 363–365) excluded by S.I. 1990/1707, **art. 5(4)(7)**

### 363 Duty to deliver annual returns.

- (1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's "return date", that is—
- (a) the anniversary of the company's incorporation, or
  - (b) if the company's last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.
- (2) Each return shall—
- (a) be in the prescribed form,
  - (b) contain the information required by or under the following provisions of this Chapter, and
  - (c) be signed by a director or the secretary of the company;
- and it shall be delivered to the registrar within 28 days after the date to which it is made up.
- (3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of subsection (2) (except as to date of delivery) is delivered by the company to the registrar.

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- (4) Where a company is guilty of an offence under subsection (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.
- (5) The references in this section to a return being delivered “in accordance with this Chapter” are—
  - (a) in relation to a return made [<sup>F477</sup>on or after 1st October 1990], to a return with respect to which all the requirements of subsection (2) are complied with;
  - (b) in relation to a return made before [<sup>F478</sup>1st October 1990], to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

**Textual Amendments**

**F477** Words substituted by S.I. 1990/1707, art. 7(a)

**F478** Words substituted by S.I. 1990/1707, art. 7(b)

**Modifications etc. (not altering text)**

**C180** S. 363 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.

**C181** S. 363 excluded by S.I. 1985/724, reg. 4(4)

**C182** S. 363 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**[<sup>F479</sup>364 Contents of annual return: general.**

- (1) Every annual return shall state the date to which it is made up and shall contain the following information—
  - (a) the address of the company’s registered office;
  - (b) the type of company it is and its principal business activities;
  - (c) the name and address of the company secretary [<sup>F480</sup>(if any)];
  - (d) the name and address of every director of the company;
  - (e) in the case of each individual director—
    - (i) his nationality, date of birth and business occupation, <sup>F481</sup> . . .
    - <sup>F481</sup>(ii) . . . . .
  - <sup>F482</sup>(f) . . . . .
  - (g) if the register of members is not kept at the company’s registered office, the address of the place where it is kept;
  - (h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company’s registered office, the address of the place where it is kept;
  - <sup>F483</sup>(i) . . . . .
- (2) The information as to the company’s type shall be given by reference to the classification scheme prescribed for the purposes of this section.
- (3) The information as to the company’s principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.
- (4) A person’s “name” and “address” mean, respectively—

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- (a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;
  - (b) in the case of a corporation or Scottish firm, its corporate or firm name and its registered or principal office.
- (5) In the case of a peer, or 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.
- (6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.]

#### Textual Amendments

- F479** Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, arts. 4, 5) by Companies Act 1989 (c. 40, SIF 27), ss. 139(1), 213(2)
- F480** Words in s. 364(1)(c) inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), Sch. 1 para. 80 (with arts. 6, 11, 12)
- F481** S. 364(1)(e)(ii) and preceding word repealed (13.9.1999) by S.I. 1999/2322, reg. 2(a)
- F482** S. 364(1)(f) repealed (13.9.1999) by S.I. 1999/2322, reg. 2(b)
- F483** S. 364(1)(i) repealed (13.9.1999) by S.I. 1999/2322, reg. 2(c)

#### Modifications etc. (not altering text)

- C183** S. 364 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.
- C184** S. 364 excluded by S.I. 1985/724, reg. 4(4)
- C185** S. 364 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### [<sup>F484</sup>364A Contents of annual return: particulars of share capital and shareholders.

- (1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.
- (2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.
- (3) The return shall state with respect to each class of shares in the company—
  - (a) the nature of the class, and
  - (b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.
- (4) The return shall contain a list of the names and addresses of every person who—
  - (a) is a member of the company on the date to which the return is made up, or
  - (b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);
 and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.
- (5) The return shall also state—
  - (a) the number of shares of each class held by each member of the company at the date to which the return is made up, and

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- (b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.
- (6) The return may, if either of the two immediately preceding returns has given the full particulars required by subsections (4) and (5), give only such particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.
- (7) Subsections (4) and (5) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.
- Those particulars shall be included in the company's next annual return after they are received.
- (8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.]

#### Textual Amendments

**F484** Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, arts. 4, 5) by Companies Act 1989 (c. 40, SIF 27), ss. 139(1), 213(2)

#### Modifications etc. (not altering text)

**C186** S. 364A modified (12.2.1992) by S.I. 1992/225, reg. 121, Sch. 8 para.3.

VALID FROM 01/10/2008

#### **364B Contents of annual return: information about shareholders: non-traded companies**

- (1) The annual return of a company that was a non-traded company throughout the return period must also contain the following information.
- (2) The return must contain a list of the names of every person who was a member of the company at any time during the return period. If the names are not arranged in alphabetical order the return must have annexed to it an index sufficient to enable the name of any person in the list to be easily found.
- (3) The return must also state—
- (a) the number of shares of each class held at the end of the date to which the return is made up by each person who was a member of the company at that time,
  - (b) the number of shares of each class transferred during the return period by or to each person who was a member of the company at any time during that period, and
  - (c) the dates of registration of those transfers.

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- (4) If either of the two immediately preceding returns has given the full particulars required by subsections (2) and (3), the return need only give such particulars as relate—
  - (a) to persons who became, or ceased to be, members during the return period, and
  - (b) to shares transferred during that period.
- (5) Subsections (2) and (3) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up. Those particulars must be included in the company's next annual return after they are received.

VALID FROM 01/10/2008

#### **364C Contents of annual return: information about shareholders: traded companies**

- (1) The annual return of a company that was a traded company at any time during the return period must also contain the following information.
- (2) The return must contain a list of the names and addresses of every person who held at least 5% of the issued shares of any class of the company at any time during the return period. If the names are not arranged in alphabetical order the return must have annexed to it an index sufficient to enable the name of any person in the list to be easily found.
- (3) The return must also state—
  - (a) the number of shares of each class held at the end of the date to which the return is made up by each person who held at least 5% of the issued shares of any class of the company at that time,
  - (b) the number of shares of each class transferred during the return period by or to each person who held at least 5% of the issued shares of any class of the company at any time during the return period, and
  - (c) the dates of registration of those transfers.
- (4) If either of the two immediately preceding returns has given the full particulars required by subsections (2) and (3), the return need only give such particulars as relate—
  - (a) to persons who came to hold, or ceased to hold, at least 5% of the issued shares of any class of the company during the return period, and
  - (b) to shares transferred during that period.
- (5) Subsections (2) and (3) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up. Those particulars must be included in the company's next annual return after they are received.



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VALID FROM 01/10/2008

### 364D Contents of annual return: information about shareholders: supplementary

(1) In sections 364, 364B and 364C—

“non-traded company” means a company none of whose shares are shares admitted to trading on a regulated market (so that “traded company” means a company any of whose shares are shares admitted to trading on a regulated market);

“regulated market” means a market which appears on the list drawn up by an EEA State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>F485</sup>; and

“return period”, in relation to an annual return, means the period beginning immediately after the date to which the last return was made up (or, in the case of the first return, with the incorporation of the company) and ending with the date to which the return is made up.

(2) Where a company has converted any of its shares into stock, the return must give information in relation to that stock corresponding to that required by section 364B or 364C (as the case may be) in relation to shares of the company, stating the amount of stock instead of the number of shares.

#### Textual Amendments

**F485** OJ No. L145, 30.4.2004, p.1.

### [<sup>F486</sup>365 Supplementary provisions: regulations and interpretation.

(1) The Secretary of State may by regulations make further provision as to the information to be given in a company’s annual return, which may amend or repeal the provisions of sections 364 and 364A.

(2) Regulations 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.

(3) For the purposes of this Chapter, except section 363(2)(c) (signature of annual return), a shadow director shall be deemed to be a director.]

#### Textual Amendments

**F486** Chapter III (ss. 363–365) substituted (subject to the transitional and saving provisions in S.I. 1990/1707, arts. 4, 5) by Companies Act 1989 (c. 40, SIF 27), ss. 139(1), 213(2)

#### Modifications etc. (not altering text)

**C187** S. 365 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.

**C188** S. 365 modified by S.I. 1990/355, art. 10, Sch. 4 para. 2 (as amended by 1990/1707 art. 8(1))

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## CHAPTER IV

### MEETINGS AND RESOLUTIONS

#### *Meetings*

#### **366 Annual general meeting.**

F487 .....

##### **Textual Amendments**

**F487** S. 366 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **366A Election by private company to dispense with annual general meetings.**

F488 .....

##### **Textual Amendments**

**F488** S. 366A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **367 Secretary of State's power to call meeting in default.**

F489 .....

##### **Textual Amendments**

**F489** S. 367 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **368 Extraordinary general meeting on members' requisition.**

F490 .....

##### **Textual Amendments**

**F490** S. 368 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **369 Length of notice for calling meetings.**

F491 .....

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**Textual Amendments**

**F491** S. 369 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**370 General provisions as to meetings and votes.**

**F492** .....

**Textual Amendments**

**F492** S. 370 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**370A Quorum at meetings of the sole member**

**F493** .....

**Textual Amendments**

**F493** S. 370A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**371 Power of court to order meeting.**

**F494** .....

**Textual Amendments**

**F494** S. 371 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**372 Proxies.**

**F495** .....

**Textual Amendments**

**F495** S. 372 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**373 Right to demand a poll.**

**F496** .....

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#### Textual Amendments

**F496** S. 373 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 374 Voting on a poll.

**F497** .....

#### Textual Amendments

**F497** S. 374 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 375 Representation of corporations at meetings.

**F498** .....

#### Textual Amendments

**F498** S. 375 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

## *Resolutions*

### 376 Circulation of members' resolutions.

**F499** .....

#### Textual Amendments

**F499** S. 376 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 377 In certain cases, compliance with s. 376 not required.

**F500** .....

#### Textual Amendments

**F500** S. 377 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### 378 Extraordinary and special resolutions.

**F501** .....

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**Textual Amendments**

**F501** S. 378 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8, Sch. 2 Pt. 1** (with **art. 12**)

**379 Resolution requiring special notice.**

**F502** .....

**Textual Amendments**

**F502** S. 379 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8, Sch. 2 Pt. 1** (with **art. 12**)

[<sup>F503</sup>**379A** Elective resolution of private company.

- (1) An election by a private company for the purposes of—
  - (a) section 80A (election as to duration of authority to allot shares),
  - (b) <sup>F504</sup> .....
  - (c) <sup>F504</sup> .....
  - (d) <sup>F504</sup> .....
  - (e) <sup>F504</sup> .....

shall be made by resolution of the company in general meeting in accordance with this section.

Such a resolution is referred to in this Act as an “elective resolution”.

- (2) An elective resolution is not effective unless—
  - (a) at least 21 days’ notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and
  - (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

[ An elective resolution is effective notwithstanding the fact that less than 21 days’  
<sup>F505</sup>(2A) notice in writing of the meeting is given if all the members entitled to attend and vote at the meeting so agree.]

- (2B) <sup>F506</sup> .....
- (2C) <sup>F506</sup> .....
- (2D) <sup>F506</sup> .....
- (2E) <sup>F506</sup> .....
- (2F) <sup>F506</sup> .....

- (3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.
- (4) An elective resolution shall cease to have effect if the company is re-registered as a public company.

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(5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in [F507 subsections (1) and (2B) to (2E)] have effect, notwithstanding any contrary provision in the company’s articles of association.]

(5A) F506 .....

**Textual Amendments**

**F503** S. 379A inserted by Companies Act 1989 (c. 40, SIF 27), ss. 116(2), 213(2)

**F504** S. 379A(1)(b)-(e) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

**F505** S. 379A(2A) inserted (19.6.1996) by S.I. 1996/1471, art. 2

**F506** S. 379A(2B)-(2F)(5A) repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**F507** Words in s. 379A(5) substituted (22.12.2000) by S.I. 2000/3373, art. 21(1)(3)

**380 Registration, etc. of resolutions and agreements.**

(1) A copy of every resolution or agreement to which this section applies shall, within 15 days after it is passed or made, be forwarded to the registrar of companies and recorded by him; and it must be either a printed copy or else a copy in some other form approved by the registrar.

(2) Where articles have been registered, a copy of [F508 every such resolution, and every resolution or agreement to which Chapter 3 of Part 3 of the Companies Act 2006 applies (resolutions and agreements affecting a company's constitution), which is] for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of 5 pence or such less sum as the company may direct.

(4) This section applies to—

- (a) F509 .....
- (b) F510 .....
- [F511(bb) an elective resolution or a resolution revoking such a resolution;]
- (c) F509 .....
- (d) F509 .....
- (e) F509 .....
- (f) F509 .....
- (g) F509 .....
- (h) F509 .....
- (j) F509 .....
- (k) F509 .....
- (l) F509 .....
- (m) F509 .....

[F512(4ZA) This section does not, despite paragraphs (a) to (c) of subsection (4), apply to any resolution of a company which is—

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- (a) registered as a company in Scotland, and
- (b) entered in the Scottish Charity Register,

where that resolution is of either of the types mentioned in section 56(5) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).]

[<sup>F513</sup>(4A) For the purposes of this section, references to a member 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, and accordingly, in such circumstances, the company is not, for those purposes, to be treated as a member of any class of the company's shareholders.]

- (5) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) If a company fails to comply with subsection (2) or (3), the company and every officer of it who is in default is liable to a fine.
- (7) For purposes of subsections (5) and (6), a liquidator of a company is deemed an officer of it.

#### Textual Amendments

- F508** Words in s. 380(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 81** (with arts. 6, 11, 12)
- F509** S. 380(4)(a)(c)-(m) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, **Sch. 2 Pt. 1** (with **art. 12**) (as substituted by S.I. 2007/2607, **art. 4(2)(a)**)
- F510** S. 380(4)(b) repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, **Sch. 2 Pt. 1** (with arts. 7, 12)
- F511** S. 380(4)(bb) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 116(3)**, 213(2)
- F512** S. 380(4ZA) inserted (S.) (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), ss. 104, 107(2), **Sch. 4 para. 6**; S.S.I. 2006/189, **art. 2(1)**, **Sch. Pt. 1** (with **art. 3(1)(2)**)
- F513** S. 380(4A) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {**Sch. para. 25**}

#### Modifications etc. (not altering text)

- C189** S. 380 applied (E.W.) (1.9.1992) by Charities Act 1992 (c. 41), **s. 5(2)**; S.I. 1992/1900, **art. 2(1)**, **Sch. 1**.  
S. 380 applied (E.W.) (1.8.1993) by 1993 c. 10, **ss. 7(2)**, 99(1)
- C190** S. 380(6) extended (12.2.1992) by S.I. 1992/225, **regs. 77(2)**, 89(4).

### 381 Resolution passed at adjourned meeting.

<sup>F514</sup> .....

#### Textual Amendments

- F514** S. 381 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, **Sch. 2 Pt. 1** (with **art. 12**)

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### *Written resolutions of private companies*

#### **381A Written resolutions of private companies.**

F515 .....

##### **Textual Amendments**

**F515** S. 381A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **381B Duty to notify auditors of proposed written resolution**

F516 .....

##### **Textual Amendments**

**F516** S. 381B repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **381C Written resolutions: supplementary provisions.**

F517 .....

##### **Textual Amendments**

**F517** S. 381C repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### *Records of proceedings*

#### **382 Minutes of meetings.**

F518 .....

##### **Textual Amendments**

**F518** S. 382 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### **382A Recording of written resolutions.**

F519 .....



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**Textual Amendments**

**F519** S. 382A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**382B Recording of decisions by the sole member**

**F520** .....

.....

**Textual Amendments**

**F520** S. 382B repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**383 Inspection of minute books.**

**F521** .....

.....

**Textual Amendments**

**F521** S. 383 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

*[<sup>F522</sup> Appointment of auditors*

.....

**Textual Amendments**

**F522** New ss. 384–388A inserted (subject to the savings and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), ss. **118**, 119(1), 213(2), (as part of the text inserted to replace Chapter V as mentioned in s. 118 of the 1989 Act)

**384 Duty to appoint auditors.**

**F523** .....

.....

**Textual Amendments**

**F523** S. 384 repealed (1.10.2007 with application to private companies) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**385 Appointment at general meeting at which accounts laid.**

**F524** .....

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#### Textual Amendments

**F524** S. 385 repealed (1.10.2007 with application to private companies) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), Sch. 2 Pt. 1 (with [art. 12](#))

### **385A Appointment by private company which is not obliged to lay accounts.**

F525 .....

#### Textual Amendments

**F525** S. 385A repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), Sch. 2 Pt. 1 (with [art. 12](#))

### **386 Election by private company to dispense with annual appointment.**

F526 .....

#### Textual Amendments

**F526** S. 386 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), Sch. 2 Pt. 1 (with [art. 12](#))

### **387 Appointment by Secretary of State in default of appointment by company.**

F527 .....

#### Textual Amendments

**F527** S. 387 repealed (1.10.2007 with application to private companies) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), Sch. 2 Pt. 1 (with [art. 12](#))

### **388 Filling of casual vacancies.**

F528 .....

#### Textual Amendments

**F528** S. 388 repealed (1.10.2007 with application to private companies) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); S.I. 2007/2194, [art. 8](#), Sch. 2 Pt. 1 (with [art. 12](#))

### **388A Certain companies exempt from obligation to appoint auditors**

F529 .....]

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**Textual Amendments**

**F529** S. 388A repealed (1.10.2007 with application to private companies) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

<sup>F530</sup>**389** .....

**Textual Amendments**

**F530** S. 389 repealed (01.10.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**; S.I. 1991/1996, **art. 2(1)(c)(i)**.

*Rights of auditors*

**389A Rights to information.**

<sup>F531</sup> .....

**Textual Amendments**

**F531** S. 389A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**389B Offences relating to the provision of information to auditors**

<sup>F532</sup> .....

**Textual Amendments**

**F532** S. 389B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**390 Right to attend company meetings, &c.**

<sup>F533</sup> .....

**Textual Amendments**

**F533** S. 390 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

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### *Remuneration of auditors*

#### **390A Remuneration of auditors.**

F534 .....

##### **Textual Amendments**

**F534** S. 390A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

#### **390B Disclosure of services provided by auditors or associates and related remuneration**

F535 .....

##### **Textual Amendments**

**F535** S. 390B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

### *Removal, resignation, &c. of auditors*

#### **391 Removal of auditors.**

F536 .....

##### **Textual Amendments**

**F536** S. 391 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

#### **391A Rights of auditors who are removed or not re-appointed.**

F537 .....

##### **Textual Amendments**

**F537** S. 391A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

#### **392 Resignation of auditors.**

F538 .....

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**Textual Amendments**

**F538** S. 392 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**392A Rights of resigning auditors.**

**F539** .....

**Textual Amendments**

**F539** S. 392A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 paras. 11(2)(3), 12(2)(4), 13(2), 14(2), 15(2))

**393 Termination of appointment of auditors not appointed annually.**

**F540** .....

**Textual Amendments**

**F540** S. 393 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

**394 Statement by person ceasing to hold office as auditor.**

**F541** .....

**Textual Amendments**

**F541** S. 394 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 16(2))

**394A Offences of failing to comply with s. 394.**

**F542** .....

**Textual Amendments**

**F542** S. 394A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 16(2))

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## PART XII

### REGISTRATION OF CHARGES

#### Modifications etc. (not altering text)

**C191** Pt. XII (ss. 395 - 424) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 4**

**C192** Pt. XII (ss. 395-424) excluded (21.2.2009) by **Banking Act 2009 (c. 1)**, ss. {252(2)(a)}, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, **Sch. para. 11**

## CHAPTER I

### REGISTRATION OF CHARGES (ENGLAND AND WALES)

#### <sup>X1</sup>**395 Certain charges void if not registered.**

- (1) Subject to the provisions of this Chapter, a charge created by a company registered in England and Wales and being a charge to which this section applies is, so far as any security on the company's property or undertaking is conferred by the charge, void against the liquidator [<sup>F543</sup>or administrator] and any creditor of the company, unless the prescribed particulars of the charge together with the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in the manner required by this Chapter within 21 days after the date of the charge's creation.
- (2) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.

#### Editorial Information

**X1** Ss. 395-424 are prospectively replaced by **Companies Act 1989 (c. 40)**, **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Textual Amendments

**F543** Words inserted by **Insolvency Act 1985 (c. 65, SIF 27)**, s. 109, **Sch. 6 para. 10**

#### Modifications etc. (not altering text)

**C193** S. 395 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C194** S. 395 excluded (26.12.2003) by **The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226)**, **reg. 4(4)**

#### <sup>X2</sup>**396 Charges which have to be registered.**

- (1) Section 395 applies to the following charges—
  - (a) a charge for the purpose of securing any issue of debentures,
  - (b) a charge on uncalled share capital of the company,

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- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,
  - (d) a charge on land (wherever situated) or any interest in it, but not including a charge for any rent or other periodical sum issuing out of the land,
  - (e) a charge on book debts of the company,
  - (f) a floating charge on the company's undertaking or property,
  - (g) a charge on calls made but not paid,
  - (h) a charge on a ship or aircraft, or any share in a ship,
  - (j) a charge on goodwill, [<sup>F544</sup>or on any intellectual property].
- (2) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company is not, for purposes of section 395, to be treated as a charge on those book debts.
- (3) The holding of debentures entitling the holder to a charge on land is not for purposes of this section deemed to be an interest in land.
- [<sup>F545</sup>(3A) The following are 'intellectual property' for the purposes of this section—
- (a) any patent, trade mark, <sup>F546</sup> . . . registered design, copyright or design right;
  - (b) any licence under or in respect of any such right.]
- (4) In this Chapter, "charge" includes mortgage.

#### Editorial Information

**X2** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here.

#### Textual Amendments

**F544** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), **Sch. 7 para. 31(2)**

**F545** S. 396(3A) inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), **Sch. 7 para. 31(2)**

**F546** Words in s. 396(3A)(a) repealed (31.10.1994) by 1994 c. 26, s. 106(2), **Sch. 5**; S.I. 1994/2550, **art. 2**

#### Modifications etc. (not altering text)

**C195** S. 396 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C196** S. 396(1)(j) extended by [Patents, Designs and Marks Act 1986 \(c. 39, SIF 67A\)](#), s. 2, **Sch. 2 Pt. I para. 1(k)(i)**

**C197** S. 396(3A)(a) amended (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 1(2)**; S.I. 1994/2550, **art. 2**

### <sup>x3</sup>**397 Formalities of registration (debentures).**

- (1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it is for purposes of section 395 sufficient if there are delivered to or received by the registrar, within 21 days after the execution of the deed containing the charge (or, if there is no such deed, after the execution of any debentures of the series), the following particulars in the prescribed form—

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- (a) the total amount secured by the whole series, and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and
- (c) a general description of the property charged, and
- (d) the names of the trustees (if any) for the debenture holders,

together with the deed containing the charge or, if there is no such deed, one of the debentures of the series:

Provided that there shall be sent to the registrar of companies, for entry in the register, particulars in the prescribed form of the date and amount of each issue of debentures of the series, but any omission to do this does not affect the validity of any of those debentures.

- (2) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of his—
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures of the company, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,

the particulars required to be sent for registration under section 395 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but omission to do this does not affect the validity of the debentures issued.

- (3) The deposit of debentures as security for a debt of the company is not, for the purposes of subsection (2), treated as the issue of the debentures at a discount.

#### **Editorial Information**

**X3** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### **Modifications etc. (not altering text)**

**C198** S. 397 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

### **<sup>X4</sup>398 Verification of charge on property outside United Kingdom.**

- (1) In the case of a charge created out of the United Kingdom comprising property situated outside the United Kingdom, the delivery to and the receipt by the registrar of companies of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced has the same effect for purposes of sections 395 to 398 as the delivery and receipt of the instrument itself.
- (2) In that case, 21 days after the date on which the instrument or copy could, in due course of post (and if despatched with due diligence), have been received in the United Kingdom are substituted for the 21 days mentioned in section 395(1) (or as the case may be, section 397(1)) as the time within which the particulars and instrument or copy are to be delivered to the registrar.
- (3) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be



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sent for registration under section 395 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

- (4) Where a charge comprises property situated in Scotland or Northern Ireland and registration in the country where the property is situated is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland (as the case may be) on the date on which it was so presented has, for purposes of sections 395 to 398, the same effect as the delivery and receipt of the instrument itself.

#### Editorial Information

**X4** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), [Pt. IV](#) (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C199** [S. 398](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

### <sup>x5</sup>**399** Company's duty to register charges it creates.

- (1) It is a company's duty to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under sections 395 to 398; but registration of any such charge may be effected on the application of any person interested in it.
- (2) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.
- (3) If a company fails to comply with subsection (1), then, unless the registration has been effected on the application of some other person, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### Editorial Information

**X5** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), [Pt. IV](#) (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C200** [S. 399](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

### <sup>x6</sup>**400** Charges existing on property acquired.

- (1) This section applies where a company is registered in England and Wales acquires property which is subject to a charge of any such kind as would, if it had been

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created by the company after the acquisition of the property, have been required to be registered under this Chapter.

- (2) The company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Chapter within 21 days after the date on which the acquisition is completed.
- (3) However, if the property is situated and the charge was created outside Great Britain, 21 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the United Kingdom is substituted for the 21 days above-mentioned as the time within which the particulars and copy of the instrument are to be delivered to the registrar.
- (4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### Editorial Information

**X6** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), Pt. IV (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C201** [S. 400](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, [Sch. 2 Pt. I](#)

### <sup>x7</sup> 401 Register of charges to be kept by registrar of companies.

- (1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Chapter; and he shall enter in the register with respect to such charges the following particulars—
  - (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, the particulars specified in section 397(1),
  - (b) in the case of any other charge—
    - (i) if it is a charge created by the company, the date of its creation, and if it is a charge which was existing on property acquired by the company, the date of the acquisition of the property, and
    - (ii) the amount secured by the charge, and
    - (iii) short particulars of the property charged, and
    - (iv) the persons entitled to the charge.
- (2) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Chapter, stating the amount secured by the charge.  
The certificate—
  - (a) shall be either signed by the registrar, or authenticated by his official seal, and
  - (b) is conclusive evidence that the requirements of this Chapter as to registration have been satisfied.
- (3) The register kept in pursuance of this section shall be open to inspection by any person.

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**Changes to legislation:** Companies Act 1985 is up to date with all changes known to be in force on or before 17 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Editorial Information

**X7** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), [Pt. IV](#) (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C202** S. 401 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

### <sup>X8</sup>**402** Endorsement of certificate on debentures.

- (1) The company shall cause a copy of every certificate of registration given under section 401 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered.
- (2) But this does not require a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.
- (3) If a person knowingly and wilfully authorises or permits the delivery of a debenture or certificate of debenture stock which under this section is required to have endorsed on it a copy of a certificate of registration, without the copy being so endorsed upon it, he is liable (without prejudice to any other liability) to a fine.

#### Editorial Information

**X8** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), [Pt. IV](#) (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C203** S. 402 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

**C204** S. 402 excluded (12.2.1992) by [S.I. 1992/225](#), [reg. 91\(1\)](#).

### <sup>X9</sup>**403** Entries of satisfaction and release.

- (1) [<sup>F547</sup>Subject to subsection (1A), the registrar] of companies, on receipt of a statutory declaration in the prescribed form verifying, with respect to a registered charge,—
  - (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
  - (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be).

[<sup>F548</sup>(1A) The registrar of companies may make any such entry as is mentioned in subsection (1) where, instead of receiving such a statutory declaration as is mentioned in that subsection, he receives a statement by a director, secretary, administrator

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or administrative receiver of the company which is contained in an electronic communication and that statement—

- (a) verifies the matters set out in paragraph (a) or (b) of that subsection,
- (b) contains a description of the charge,
- (c) states the date of creation of the charge and the date of its registration under this Chapter,
- (d) states the name and address of the chargee or, in the case of a debenture, trustee, and
- (e) where paragraph (b) of subsection (1) applies, contains short particulars of the property or undertaking which has been released from the charge, or which has ceased to form part of the company's property or undertaking (as the case may be).]

- (2) Where the registrar enters a memorandum of satisfaction in whole, he shall if required furnish the company with a copy of it.

[<sup>F549</sup>(2A) Any person who makes a false statement under subsection (1A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

#### Editorial Information

**X9** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

#### Textual Amendments

**F547** Words in [s. 403\(1\)](#) substituted (22.12.2000) by [S.I. 2000/3373](#), **art. 22(1)(2)**

**F548** [S. 403\(1A\)](#) inserted (22.12.2000) by [S.I. 2000/3373](#), **art. 22(1)(3)**

**F549** [S. 403\(2A\)](#) inserted (22.12.2000) by [S.I. 2000/3373](#), **art. 22(1)(4)**

#### Modifications etc. (not altering text)

**C205** [S. 403](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), **reg. 4**, **Sch. 2 Pt. I**

### <sup>X10</sup>**404 Rectification of register of charges.**

- (1) The following applies if the court is satisfied that the omission to register a charge within the time required by this Chapter or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief.
- (2) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

#### Editorial Information

**X10** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

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**Modifications etc. (not altering text)**

C206 S. 404 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

<sup>X11</sup>**405 Registration of enforcement of security.**

- (1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar of companies; and the registrar shall enter the fact in the register of charges.
- (2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect, and the registrar shall enter the fact in the register of charges.
- (3) A notice under this section shall be in the prescribed form.
- (4) If a person makes default in complying with the requirements of this section, he is liable to a fine and, for continued contravention, to a daily default fine.

**Editorial Information**

X11 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), Pt. IV (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

**Modifications etc. (not altering text)**

C207 S. 405 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

<sup>X12</sup>**406 Companies to keep copies of instruments creating charges.**

- (1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Chapter to be kept at its registered office.
- (2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

**Editorial Information**

X12 Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), Pt. IV (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been bought into force, they are not reproduced here

**Modifications etc. (not altering text)**

C208 S. 406 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

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### <sup>X13</sup>**407 Company’s register of charges.**

- (1) Every limited company shall keep at its registered office a register of charges and enter in it all charges specifically affecting property of the company and all floating charges on the company’s undertaking or any of its property.
- (2) The entry shall in each case give a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to it.
- (3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he is liable to a fine.

#### **Editorial Information**

**X13** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), [Pt. IV](#) (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### **Modifications etc. (not altering text)**

**C209** [S. 407](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

### <sup>X14</sup>**408 Right to inspect instruments which create charges, etc.**

- (1) The copies of instruments creating any charge requiring registration under this Chapter with the registrar of companies, and the register of charges kept in pursuance of section 407, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) to the inspection of any creditor or member of the company without fee.
- (2) The register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding 5 pence, for each inspection, as the company may prescribe.
- (3) If inspection of the copies referred to, or of the register, is refused, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (4) If such a refusal occurs in relation to a company registered in England and Wales, the court may by order compel an immediate inspection of the copies or register.

#### **Editorial Information**

**X14** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), [Pt. IV](#) (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### **Modifications etc. (not altering text)**

**C210** [S. 408](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

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**X15 409 Charges on property in England and Wales created by overseas company.**

- (1) This Chapter extends to charges on property in England and Wales which are created, and to charges on property in England and Wales which is acquired, by a company (whether a company within the meaning of this Act or not) incorporated outside Great Britain which has an established place of business in England and Wales.
- (2) In relation to such a company, sections 406 and 407 apply with the substitution, for the reference to the company's registered office, of a reference to its principal place of business in England and Wales.

**Editorial Information**

**X15** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

## CHAPTER II

### REGISTRATION OF CHARGES (SCOTLAND)

**X16 410 Charges void unless registered.**

- (1) The following provisions of this Chapter have effect for the purpose of securing the registration in Scotland of charges created by companies.
- (2) Every charge created by a company, being a charge to which this section applies, is, so far as any security on the company's property or any part of it is conferred by the charge, void against the liquidator [<sup>F550</sup>or administrator] and any creditor of the company unless the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in the manner required by this Chapter within 21 days after the date of the creation of the charge.
- (3) Subsection (2) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section the money secured by it immediately becomes payable.
- (4) This section applies to the following charges—
  - (a) a charge on land wherever situated, or any interest in such land (not including a charge for any rent [<sup>F551</sup>, ground annual] or other periodical sum payable in respect of the land, but including a charge created by a heritable security within the meaning of section 9(8) of the <sup>M18</sup>Conveyancing and Feudal Reform (Scotland) Act 1970),
  - (b) a security over the uncalled share capital of the company,
  - (c) a security over incorporeal moveable property of any of the following categories—
    - (i) the book debts of the company,
    - (ii) calls made but not paid,
    - (iii) goodwill,

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- (iv) a patent or a licence under a patent,
  - (v) a trademark,
  - (vi) a copyright or a licence under a copyright,
  - [<sup>F552</sup>(vii) a registered design or a licence in respect of such a design,
  - (viii) a design right or a licence under a design right,]
  - (d) a security over a ship or aircraft or any share in a ship, and
  - (e) a floating charge.
- (5) In this Chapter “company” (except in section 424) means an incorporated company registered in Scotland; “registrar of companies” means the registrar or other officer performing under this Act the duty of registration of companies in Scotland; and references to the date of creation of a charge are—
- (a) in the case of a floating charge, the date on which the instrument creating the floating charge was executed by the company creating the charge, and
  - (b) in any other case, the date on which the right of the person entitled to the benefit of the charge was constituted as a real right.

#### Editorial Information

**X16** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Textual Amendments

**F550** Words inserted by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 109, **Sch. 6 para. 10**

**F551** Words in s. 410(4)(a) repealed (S.) (28.11.2004 with effect as mentioned in [Sch. 12 para. 46\(3\)\(4\)](#) of the amending Act) by [2000 asp 5](#), ss. 76(1)(2), 77(4), [Sch. 12 Pt. 1 para. 46\(2\)\(b\)](#), [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75); [S.S.I. 2003/456](#), **art. 2**

**F552** S. 410(4)(c)(vii)(viii) inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), **Sch. 7 para. 31(3)**

#### Modifications etc. (not altering text)

**C211** S. 410 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

**C212** S. 410 excluded (26.12.2003) by [The Financial Collateral Arrangements \(No.2\) Regulations 2003 \(S.I. 2003/3226\)](#), **reg. 5**

**C213** S. 410(4)(c) extended by [Patents, Designs and Marks Act 1986 \(c. 39, SIF 67A\)](#), s. 2, **Sch. 2 Pt. I para. 1(k)(i)**

**C214** S. 410(4)(c)(v) amended (31.10.1994) by [1994 c. 26](#), s. 106(1), **Sch. 4 para. 1(2)**; [S.I. 1994/2550](#), **art. 2**

#### Marginal Citations

**M18** [1970 c. 35](#).

#### <sup>X17</sup>**411 Charges on property outside United Kingdom.**

- (1) In the case of a charge created out of the United Kingdom comprising property situated outside the United Kingdom, the period of 21 days after the date on which the copy of the instrument creating it could (in due course of post, and if despatched with due diligence) have been received in the United Kingdom is substituted for the period of



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21 days after the date of the creation of the charge as the time within which, under section 410(2), the particulars and copy are to be delivered to the registrar.

- (2) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the copy of the instrument creating or purporting to create the charge may be sent for registration under section 410 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

#### Editorial Information

**X17** Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), Pt. IV (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C215** S. 411 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### <sup>X18</sup>412 Negotiable instrument to secure book debts.

Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company is not, for purposes of section 410, to be treated as a charge on those book debts.

#### Editorial Information

**X18** Ss. 395-424 are prospectively replaced by Companies Act 1989 (c. 40), Pt. IV (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C216** S. 412 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### <sup>X19</sup>413 Charges associated with debentures.

- (1) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 410, deemed to be an interest in land.
- (2) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu*, is created by a company, it is sufficient for purposes of section 410 if there are delivered to or received by the registrar of companies within 21 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars in the prescribed form—
- the total amount secured by the whole series,
  - the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined,
  - a general description of the property charged,
  - the names of the trustees (if any) for the debenture holders, and

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- (e) in the case of a floating charge, a statement of any provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the power of the company to grant further securities ranking in priority to, or *pari passu* with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities,

together with a copy of the deed containing the charge or, if there is no such deed, of one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar of companies for entry in the register particulars (in the prescribed form) of the date and amount of each issue of debentures of the series, but any omission to do this does not affect the validity of any of those debentures.

- (3) Where any commission, allowance or discount has been paid or made, either directly or indirectly, by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any such debentures, the particulars required to be sent for registration under section 410 include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made; but any omission to do this does not affect the validity of the debentures issued.

The deposit of any debentures as security for any debt of the company is not, for purposes of this subsection, treated as the issue of the debentures at a discount.

#### Editorial Information

**X19** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C217** [S. 413](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

### <sup>X20</sup>**414 Charge by way of ex facie absolute disposition, etc.**

- (1) For the avoidance of doubt, it is hereby declared that, in the case of a charge created by way of an ex facie absolute disposition or assignation qualified by a back letter or other agreement, or by a standard security qualified by an agreement, compliance with section 410(2) does not of itself render the charge unavailable as security for indebtedness incurred after the date of compliance.
- (2) Where the amount secured by a charge so created is purported to be increased by a further back letter or agreement, a further charge is held to have been created by the ex facie absolute disposition or assignation or (as the case may be) by the standard security, as qualified by the further back letter or agreement; and the provisions of this Chapter apply to the further charge as if—
- (a) references in this Chapter (other than in this section) to the charge were references to the further charge, and
  - (b) references to the date of the creation of the charge were references to the date on which the further back letter or agreement was executed.

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#### Editorial Information

**X20** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C218** S. 414 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

### <sup>X21</sup>**415 Company's duty to register charges created by it.**

- (1) It is a company's duty to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under sections 410 to 414; but registration of any such charge may be effected on the application of any person interested in it.
- (2) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.
- (3) If a company makes default in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as above mentioned, then, unless the registration has been effected on the application of some other person, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### Editorial Information

**X21** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C219** S. 415 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

### <sup>X22</sup>**416 Duty to register charges existing on property acquired.**

- (1) Where a company acquires any property which is subject to a charge of any kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Chapter, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in the manner required by this Chapter within 21 days after the date on which the transaction was settled.
- (2) If, however, the property is situated and the charge was created outside Great Britain, 21 days after the date on which the copy of the instrument could (in due course of post, and if despatched with due diligence) have been received in the United Kingdom are substituted for 21 days after the settlement of the transaction as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

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- (3) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**Editorial Information**

**X22** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

**Modifications etc. (not altering text)**

**C220** [S. 416](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), **Sch. 2 Pt. I**

**<sup>X23</sup>417 Register of charges to be kept by registrar of companies.**

- (1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Chapter, and shall enter in the register with respect to such charges the particulars specified below.
- (2) In the case of a charge to the benefit of which the holders of a series of debentures are entitled, there shall be entered in the register the particulars specified in section 413(2).
- (3) In the case of any other charge, there shall be entered—
- (a) if it is a charge created by the company, the date of its creation, and if it was a charge existing on property acquired by the company, the date of the acquisition of the property,
  - (b) the amount secured by the charge,
  - (c) short particulars of the property charged,
  - (d) the persons entitled to the charge, and
  - (e) in the case of a floating charge, a statement of any of the provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the company's power to grant further securities ranking in priority to, or *pari passu* with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.
- (4) The register kept in pursuance of this section shall be open to inspection by any person.

**Editorial Information**

**X23** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

**Modifications etc. (not altering text)**

**C221** [S. 417](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), **Sch. 2 Pt. I**

**<sup>X24</sup>418 Certificate of registration to be issued.**

- (1) The registrar of companies shall give a certificate of the registration of any charge registered in pursuance of this Chapter.

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**Changes to legislation:** Companies Act 1985 is up to date with all changes known to be in force on or before 17 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) The certificate—

- (a) shall be either signed by the registrar, or authenticated by his official seal,
- (b) shall state the name of the company and the person first-named in the charge among those entitled to the benefit of the charge (or, in the case of a series of debentures, the name of the holder of the first such debenture to be issued) and the amount secured by the charge, and
- (c) is conclusive evidence that the requirements of this Chapter as to registration have been complied with.

**Editorial Information**

**X24** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

**Modifications etc. (not altering text)**

**C222** [S. 418](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), **Sch. 2 Pt. I**

<sup>X25</sup>**419 Entries of satisfaction and relief.**

- (1) [<sup>F553</sup>Subject to subsections (1A) and (1B), the registrar] of companies, on application being made to him in the prescribed form, and on receipt of a statutory declaration in the prescribed form verifying, with respect to any registered charge,—
- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
  - (b) that part of the property charged has been released from the charge or has ceased to form part of the company's property,

may enter on the register a memorandum of satisfaction (in whole or in part) regarding that fact.

[<sup>F554</sup>(1A) On an application being made to him in the prescribed form, the registrar of companies may make any such entry as is mentioned in subsection (1) where, instead of receiving such a statutory declaration as is mentioned in that subsection, he receives a statement by a director, secretary, liquidator, receiver or administrator of the company which is contained in an electronic communication and that statement—

- (a) verifies the matters set out in paragraph (a) or (b) of that subsection,
- (b) contains a description of the charge,
- (c) states the date of creation of the charge and the date of its registration under this Chapter,
- (d) states the name and address of the chargee or, in the case of a debenture, trustee, and
- (e) where paragraph (b) of subsection (1) applies, contains short particulars of the property which has been released from the charge, or which has ceased to form part of the company's property (as the case may be).

<sup>F554</sup>(1B) Where the statement under subsection (1A) concerns the satisfaction of a floating charge, then there shall be delivered to the registrar a further statement which—

- (a) is made by the creditor entitled to the benefit of the floating charge or a person authorised to act on his behalf;

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- (b) is incorporated into, or logically associated with, the electronic communication containing the statement; and
  - (c) certifies that the particulars contained in the statement are correct.]
- (2) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy of the memorandum.
- (3) Without prejudice to the registrar’s duty under this section to require to be satisfied as above mentioned, he shall not be so satisfied unless—
- (a) the creditor entitled to the benefit of the floating charge, or a person authorised to do so on his behalf, certifies as correct the particulars submitted to the registrar with respect to the entry on the register of a memorandum under this section, or
  - (b) the court, on being satisfied that such certification cannot readily be obtained, directs him accordingly.
- (4) Nothing in this section requires the company to submit particulars with respect to the entry in the register of a memorandum of satisfaction where the company, having created a floating charge over all or any part of its property, disposes of part of the property subject to the floating charge.
- (5) A memorandum or certification required for the purposes of this section shall be in such form as may be prescribed.
- [<sup>F555</sup>(5A) Any person who makes a false statement under subsection (1A) or (1B) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

#### Editorial Information

**X25** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Textual Amendments

**F553** Words in s. 419(1) substituted (22.12.2000) by [S.I. 2000/3373](#), **art. 23(1)(2)**

**F554** S. 419(1A)(1B) inserted (22.12.2000) by [S.I. 2000/3373](#), **art. 23(1)(3)**

**F555** S. 419(5A) inserted (22.12.2000) by [S.I. 2000/3373](#), **art. 23(1)(4)**

#### Modifications etc. (not altering text)

**C223** S. 419 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), **reg. 4**, **Sch. 2 Pt. I**

### <sup>X26</sup>420 Rectification of register.

The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that it is on other grounds just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended or (as the case may be) that the omission or mis-statement shall be rectified.

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#### Editorial Information

**X26** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C224** [S. 420](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

### <sup>X27</sup>**421 Copies of instruments creating charges to be kept by company.**

- (1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Chapter to be kept at the company's registered office.
- (2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

#### Editorial Information

**X27** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C225** [S. 421](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

### <sup>X28</sup>**422 Company's register of charges.**

- (1) Every company shall keep at its registered office a register of charges and enter in it all charges specifically affecting property of the company, and all floating charges on any property of the company.
- (2) There shall be given in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to it.
- (3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he is liable to a fine.

#### Editorial Information

**X28** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

#### Modifications etc. (not altering text)

**C226** [S. 422](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

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<sup>X29</sup>**423 Right to inspect copies of instruments, and company's register.**

- (1) The copies of instruments creating charges requiring registration under this Chapter with the registrar of companies, and the register of charges kept in pursuance of section 422, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) to the inspection of any creditor or member of the company without fee.
- (2) The register of charges shall be open to the inspection of any other person on payment of such fee, not exceeding 5 pence for each inspection, as the company may prescribe.
- (3) If inspection of the copies or register is refused, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (4) If such a refusal occurs in relation to a company, the court may by order compel an immediate inspection of the copies or register.

**Editorial Information**

**X29** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here

**Modifications etc. (not altering text)**

**C227** S. 423 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

<sup>X30</sup>**424 Extension of Chapter II.**

- (1) This Chapter extends to charges on property in Scotland which are created, and to charges on property in Scotland which is acquired, by a company incorporated outside Great Britain which has a place of business in Scotland.
- (2) In relation to such a company, sections 421 and 422 apply with the substitution, for the reference to the company's registered office, of a reference to its principal place of business in Scotland.

**Editorial Information**

**X30** Ss. 395-424 are prospectively replaced by [Companies Act 1989 \(c. 40\)](#), **Pt. IV** (ss. 92-107) but, having regard to the lapse of time since those amending provisions were enacted without having been brought into force, they are not reproduced here



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## PART XIII

### ARRANGEMENTS AND RECONSTRUCTIONS

#### Modifications etc. (not altering text)

- C228** Pt. XIII (ss. 425–430) power to modify conferred (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), [Sch. 25 para. 71\(2\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- C229** Part XIII modified by [S.I. 1989/1461](#), [reg. 2](#)
- C230** Part XIII (ss. 425–430) modified (E.W.) (1.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), [ss. 9\(1\), 17\(2\)](#)
- C231** Pt. XIII (ss. 425–430) power to modify conferred (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), [Sch. 25 para. 71\(2\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- C232** Part XIII modified by [S.I. 1989/1461](#), [reg. 2](#)

#### 425 Power of company to compromise with creditors and members.

F556 .....

#### Textual Amendments

- F556** S. 425 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); [S.I. 2007/3495](#), [art. 8\(a\)](#), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 36(2))

#### 426 Information as to compromise to be circulated.

F557 .....

#### Textual Amendments

- F557** S. 426 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); [S.I. 2007/3495](#), [art. 8\(a\)](#), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 36(2))

#### 427 Provisions for facilitating company reconstruction or amalgamation.

F558 .....

#### Textual Amendments

- F558** S. 427 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); [S.I. 2007/3495](#), [art. 8\(a\)](#), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 36(2))

#### 427A Application of ss. 425–427 to mergers and divisions of public companies.

F559 .....

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#### Textual Amendments

**F559** S. 427A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 36(2))

## F560 PART XIII A

### TAKEOVER OFFERS

#### Textual Amendments

**F560** Ss. 428–430F substituted for ss. 428–430 by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**

#### Modifications etc. (not altering text)

**C233** Pt. 13A excluded (20.5.2006) by The Takeovers Directive (Interim Implementation) Regulations 2006 (S.I. 2006/1183), **reg. 30**

**C234** Pt. XIII A (ss. 428-430F) modified (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 9(3)**.

#### 428 Takeover offers.

F561 .....

#### Textual Amendments

**F561** S. 428 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

#### 429 Right of offeror to buy out minority shareholders.

F562 .....

#### Textual Amendments

**F562** S. 429 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

#### 430 Effect of notice under s. 429.

F563 .....

#### Textual Amendments

**F563** S. 430 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

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### 430A Right of minority shareholder to be bought out by offeror.

F564 .....

#### Textual Amendments

**F564** S. 430A repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

### 430B Effect of requirement under s. 430A.

F565 .....

#### Textual Amendments

**F565** S. 430B repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

### 430C Applications to the court.

F566 .....

#### Textual Amendments

**F566** S. 430C repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

### 430D Joint offers.

F567 .....

#### Textual Amendments

**F567** S. 430D repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

### 430E Associates.

F568 .....

#### Textual Amendments

**F568** S. 430E repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with Sch. 6 para. 1)

### 430F Convertible securities.

F569 .....

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#### Textual Amendments

**F569** S. 430F repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1 (with **Sch. 6** para. 1)

## PART XIV

### INVESTIGATION OF COMPANIES AND THEIR AFFAIRS; REQUISITION OF DOCUMENTS

#### *Appointment and functions of inspectors*

#### **431 Investigation of a company on its own application or that of its members.**

- (1) The Secretary of State may appoint one or more competent inspectors to investigate the affairs of a company and to [<sup>F570</sup>report the result of their investigations to him] .
- (2) The appointment may be made—
  - (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued, [<sup>F571</sup>(excluding any shares held as treasury shares)]
  - (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
  - (c) in any case, on application of the company.
- (3) The application shall be supported by such evidence as the Secretary of State may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.
- (4) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

An order under this subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F570** Words in s. 431(1) substituted (1.10.2007) by Companies Act 2006 (c. 46), **ss. 1035(2)**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with **art. 12**, **Sch. 3** para. 48)

**F571** Words in s. 431(2)(a) inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 28}

#### Modifications etc. (not altering text)

**C235** S. 431 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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### 432 Other company investigations.

- (1) The Secretary of State shall appoint one or more competent inspectors to investigate the affairs of a company and [<sup>F572</sup>report the result of their investigations to him], if the court by order declares that its affairs out to be so investigated.
- (2) The Secretary of State may make such an appointment if it appears to him that there are circumstances suggesting—
  - (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or
  - (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
  - (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
  - (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

[<sup>F573</sup>(2A) Inspectors may be appointed under subsection (2) on terms that any report they may make is not for publication; and in such a case, the provisions of section 437(3) (availability and publication of inspectors' reports) do not apply.]

- (3) Subsections (1) and (2) are without prejudice to the powers of the Secretary of State under section 431; and the power conferred by subsection (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.
- (4) The reference in subsection (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

#### Textual Amendments

**F572** Words in s. 432(1) substituted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1035(3)**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with [art. 12](#), [Sch. 3 para. 48](#))

**F573** S. 432(2A) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 55**, 213(2)

#### Modifications etc. (not altering text)

**C236** S. 432 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), **Sch. 2 Pt. I**

**C237** S. 432(1)(2) extended (with modifications) by [S.I. 1989/638](#), [regs. 18, 21](#), **Sch. 4 para. 5**

### 433 Inspectors' powers during investigation.

- (1) If inspectors appointed under section 431 or 432 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of

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its affairs are relevant to the investigation of the affairs of the company first mentioned above.

<sup>F574</sup>(2) .....

#### Textual Amendments

**F574** S. 433(2) repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 182, 212(3), Sch. 13 para. 7, [Sch. 17 Pt. I](#)

#### Modifications etc. (not altering text)

**C238** S. 433 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, [Sch. 2 Pt. I](#)

### 434 Production of documents and evidence to inspectors.

- (1) When inspectors are appointed under section 431 or 432, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 433(1)—
- (a) to produce to the inspectors all [<sup>F575</sup>documents] of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
  - (b) to attend before the inspectors when required to do so, and
  - (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- [<sup>F576</sup>(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—
- (a) to produce to them any documents in his custody or power relating to that matter,
  - (b) to attend before them, and
  - (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;
- and it is that person's duty to comply with the requirement.]
- [<sup>F577</sup>(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.]
- (4) In this section a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and “agents”, in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.
- (5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 431 to 433, or as applied by any other section in this Part) may be used in evidence against him.
- [<sup>F578</sup>(5A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—
- (a) no evidence relating to the answer may be adduced, and

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(b) no question relating to it may be asked, by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(5B) Subsection (5A) applies to any offence other than—

- (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath); or
- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).]

[<sup>F579</sup>(6) In this section “document” includes information recorded in any form.

(7) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—

- (a) in hard copy form, or
- (b) in a form from which a hard copy can be readily obtained.

(8) An inspector may take copies of or extracts from a document produced in pursuance of this section.]

#### Textual Amendments

- F575** Words in s. 434(1)(a) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(2)**, 213(2)
- F576** S. 434(2) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(3)**, 213(2)
- F577** S. 434(3) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(4)**, 213(2)
- F578** S. 434(5A)(5B) inserted (14.4.2000 for E.W.N.I. and 1.1.2001 for S.) by 1999 c. 23, **ss. 59, 68(3)**, **Sch. 3 para. 5** (with **Sch. 7 para. 5(2)**); S.I. 2000/1034, **art. 2(a)**; S.S.I. 2000/445, **art. 2**
- F579** S. 434(6)-(8) substituted for s. 434(6) (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1038(1)**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48)

#### Modifications etc. (not altering text)

- C239** S. 434 extended (with modifications) by S.I. 1989/638, **regs. 18, 21**, **Sch. 4 para. 6**
- C240** S. 434 applied (with modifications) by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 94(3)(7)**  
S. 434 applied (with modifications) (6.1.1997) by S.I. 1996/2827, **reg. 22(3)(4)**
- C241** S. 434 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4**, **Sch. 2 Pt. I**
- C242** S. 434(4) amended (E.W.)(01.01.1992) by S.I. 1991/2684, **arts. 2(1), 4, 5**, **Sch. 1**.

<sup>F580</sup> **435** .....

#### Textual Amendments

- F580** S. 435 repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 212, 213(2)**, **Sch. 24**

### **436 Obstruction of inspectors treated as contempt of court.**

[<sup>F581</sup>(1) If any person—

- (a) fails to comply with section 434(1)(a) or (c),

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- (b) refuses to comply with a requirement under section 434(1)(b) or (2), or
- (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the court.]

- (3) The court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

#### Textual Amendments

**F581** S. 436(1) substituted for subsections (1)(2) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(6), 213(2)**

#### Modifications etc. (not altering text)

**C243** S. 436 applied (with modifications) by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 94(3)(7)**

S. 436 applied (with modifications) (6.1.1997) by [S.I. 1996/2827](#), **reg. 22(3)(4)**

**C244** S. 436 extended (with modifications) by [S.I. 1989/638](#), **regs. 18, 21**, **Sch. 4 para. 7**

**C245** S. 436 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), **reg. 4**, **Sch. 2 Pt. I**

### 437 Inspectors' reports.

- (1) The inspectors may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State, and on the conclusion of their investigation shall make a final report to him.

**F582** . . .

- [<sup>F583</sup>(1A) Any persons who have been appointed under section 431 or 432 may at any time and, if the Secretary of State directs them to do so, shall inform him of any matters coming to their knowledge as a result of their investigations.]

(1B) <sup>F584</sup> . . . . .

(1C) <sup>F584</sup> . . . . .

- (2) If the inspectors were appointed under section 432 in pursuance of an order of the court, the Secretary of State shall furnish a copy of any report of theirs to the court.

- (3) In any case the Secretary of State may, if he thinks fit—

- (a) forward a copy of any report made by the inspectors to the company's registered office,
- (b) furnish a copy on request and on payment of the prescribed fee to—
  - (i) any member of the company or other body corporate which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear to the Secretary of State to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and
- (c) cause any such report to be printed and published.



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#### Textual Amendments

- F582** Words in s. 437(1) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1035(4)(a), 1295, 1300, Sch. 16; S.I. 2007/2194, arts. 2(1)(k), 8, Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48)
- F583** S. 437(1A) inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 182, Sch. 13 para. 7
- F584** S. 437(1B)(1C) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1035(4)(b), 1295, 1300, Sch. 16; S.I. 2007/2194, arts. 2(1)(k), 8, Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48)

#### Modifications etc. (not altering text)

- C246** S. 437 extended (with modifications) by S.I. 1989/638, regs. 18, 21
- C247** S. 437 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 438 Power to bring civil proceedings on company's behalf.

F585 .....

#### Textual Amendments

- F585** S. 438 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(1), 1295, 1300, Sch. 16 (with s. 1176(4)); S.I. 2006/3428, arts. 4(1)(b), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

### 439 Expenses of investigating a company's affairs.

[<sup>F586</sup>(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Secretary of State, but he may recover those expenses from the persons liable in accordance with this section.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.]

(2) A person who is convicted on a prosecution instituted as a result of the investigation <sup>F587</sup> . . . may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) <sup>F588</sup> .....

(4) A body corporate dealt with by [<sup>F589</sup>an inspectors' report], where the inspectors were appointed otherwise than of the Secretary of State's own motion, is liable except where it was the applicant for the investigation, and except so far as the Secretary of State otherwise directs.

[<sup>F590</sup>(5) Where inspectors were appointed—

- (a) under section 431, or
- (b) on an application under section 442(3),

the applicant or applicants for the investigation is or are liable to such extent (if any) as the Secretary of State may direct.]

(6) The report of inspectors appointed otherwise than of the Secretary of State's own motion may, if they think fit, and shall if the Secretary of State so directs, include a

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recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subsection (4) or (5) of this section.

- (7) <sup>F591</sup> . . . . .
- (8) Any liability to repay the Secretary of State imposed by [<sup>F592</sup>subsection (2)] above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subsections (4) and (5) <sup>F593</sup> . . . .
- (9) A person liable under any one of those subsections is entitled to contribution from any other person liable under the same subsection, according to the amount of their respective liabilities under it.
- (10) Expenses to be defrayed by the Secretary of State under this section shall, so far as not recovered under it, be paid out of money provided by Parliament.

#### Textual Amendments

- F586** S. 439(1) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 59(2), 213(2)
- F587** Words in s. 439(2) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(2)(a), 1295, 1300, Sch. 16 (with s. 1176(4)); S.I. 2006/3428, arts. 4(1)(b), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))
- F588** S. 439(3) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(2)(b), 1295, 1300, Sch. 16 (with s. 1176(4)); S.I. 2006/3428, art. 4(1)(b), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))
- F589** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 59(3), 213(2)
- F590** S. 439(5) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 59(4), 213(2)
- F591** S. 439(7) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(2)(b), 1295, 1300, Sch. 16 (with s. 1176(4)); S.I. 2006/3428, art. 4(1)(b), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))
- F592** Words in s. 439(8) substituted (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(2)(c)(i), 1300 (with s. 1176(4)); S.I. 2006/3428, art. 4(1)(b) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))
- F593** Words in s. 439(8) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(2)(c)(ii), 1295, 1300, Sch. 16 (with s. 1176(4)); S.I. 2006/3428, art. 4(1)(b), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

#### Modifications etc. (not altering text)

- C248** S. 439 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 8
- C249** S. 439 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

#### <sup>F594</sup>440 Power of Secretary of State to present winding-up petition.

. . . . .

#### Textual Amendments

- F594** S. 440 repealed and superseded by Companies Act 1989 (c. 40, SIF 27), ss. 60, 212, 213(2), Sch. 24 and amended by 1995 c. 40, s. 5, Sch. 4 para. 56

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#### 441 Inspectors' report to be evidence.

- (1) A copy of any report of inspectors appointed under [<sup>F595</sup>this Part], certified by the Secretary of State to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report [<sup>F596</sup>and, in proceedings on an application under [<sup>F597</sup>section 8 of the Company Directors Disqualification Act 1986], as evidence of any fact stated therein].
- (2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

#### Textual Amendments

**F595** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 61, 213(2)

**F596** Words inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, Sch. 6 para. 3

**F597** Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), Sch. 13 Pt. I

#### Modifications etc. (not altering text)

**C250** S. 441 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 9

**C251** S. 441 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

#### *Other powers of investigation available to the Secretary of State*

#### 442 Power to investigate company ownership.

- (1) Where it appears to the Secretary of State that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.
- (2) <sup>F598</sup> .....
- [<sup>F599</sup>(3) If an application for investigation under this section with respect to particular shares or debentures of a company is made to the Secretary of State by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under section 431(2)(a) or (b), then, subject to the following provisions, the Secretary of State shall appoint inspectors to conduct the investigation applied for.
- (3A) The Secretary of State shall not appoint inspectors if he is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Secretary of State is satisfied that it is unreasonable for it to be investigated.
- (3B) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

An order under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (3C) If on an application under subsection (3) it appears to the Secretary of State that the powers conferred by section 444 are sufficient for the purposes of investigating the matters which inspectors would be appointed to investigate, he may instead conduct the investigation under that section.]
- (4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

#### Textual Amendments

**F598** S. 442(2) repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1035(5), 1295, 1300, [Sch. 16](#); S.I. 2007/2194, arts. 2(1)(k), [8](#), [Sch. 2 Pt. 1](#) (with art. 12, [Sch. 3 para. 48](#))

**F599** S. 442(3)–(3C) substituted for s. 442(3) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. [62](#), 213(2)

#### 443 Provisions applicable on investigation under s. 442.

- (1) For purposes of an investigation under section 442, sections 433(1), 434, 436 and 437 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to the following subsections.
- (2) Those sections apply to—
- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and
  - (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,
- as they apply in relation to officers and agents of the company or the other body corporate (as the case may be).
- (3) If the Secretary of State is of opinion that there is good reason for not divulging any part of a report made by virtue of section 442 and this section, he may under section 437 disclose the report with the omission of that part; and he may cause to be kept by the registrar of companies a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

<sup>F600</sup>(4) .....

#### Textual Amendments

**F600** S. 443(4) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), [Sch. 24](#)

#### 444 Power to obtain information as to those interested in shares, etc.

- (1) If it appears to the Secretary of State that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person whom he has reasonable

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cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Secretary of State.

- (2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.
- (3) A person who fails to give information required of him under this section, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, [<sup>F601</sup>commits an offence] .
- [<sup>F602</sup>(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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum;
    - (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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.]

#### Textual Amendments

**F601** Words in s. 444(3) substituted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1124, 1300, [Sch. 3 para. 1\(1\)](#) (with s. 1133); S.I. 2007/2194, [art. 2\(1\)\(k\)](#) (with [art. 12](#), [Sch. 3 para. 48](#) and subject to [Sch. 1](#) (as amended by S.I. 2007/3495, art. 10; S.I. 2008/674, Sch. 3 paras. 1, 2 and revoked by S.I. 2008/2860, art. 6))

**F602** S. 444(4) added (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1124, 1300, [Sch. 3 para. 1\(2\)](#) (with s. 1133); S.I. 2007/2194, [art. 2\(1\)\(k\)](#) (with [art. 12](#), [Sch. 3 para. 48](#) and subject to [Sch. 1](#)) (as amended by S.I. 2007/3495, art. 10; S.I. 2008/674, Sch. 3 paras. 1, 2 and revoked by S.I. 2008/2860, art. 6)

#### 445 Power to impose restrictions on shares and debentures.

- (1) If in connection with an investigation under either section 442 or 444 it appears to the Secretary of State that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), he may by order direct that the shares shall until further order be subject to the restrictions of Part XV of this Act.
- [<sup>F603</sup>(1A) If the Secretary of State is satisfied that an order under subsection (1) may unfairly affect the rights of third parties in respect of shares then the Secretary of State, for the purpose of protecting such rights and subject to such terms as he thinks fit, may direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order, shall not constitute a breach of the restrictions of Part XV of this Act.]

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- (2) This section, and Part XV in its application to orders under it, apply in relation to debentures as in relation to shares [<sup>F604</sup>save that subsection (1A) shall not so apply.]

#### Textual Amendments

**F603** S. 445(1A) inserted by [S.I. 1991/1646, reg. 5\(a\)](#)

**F604** Words in s. 445(2) inserted by [S.I. 1991/1646, reg. 5\(b\)](#)

### 446 Investigation of share dealings.

F605

#### Textual Amendments

**F605** S. 446 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); [S.I. 2007/2194](#), [art. 8](#), [Sch. 2 Pt. 1](#) (with [art. 12](#))

PROSPECTIVE

### *[<sup>F606</sup>Powers of Secretary of State to give directions to inspectors*

#### Textual Amendments

**F606** Ss. 446A, 446B and preceding cross-heading inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), [ss. 1035\(1\)](#), 1300; [S.I. 2007/2194](#), [art. 2\(1\)\(k\)](#) (with [art. 12](#), [Sch. 3 para. 48](#))

### 446A General powers to give directions

- (1) In exercising his functions an inspector shall comply with any direction given to him by the Secretary of State under this section.
- (2) The Secretary of State may give an inspector appointed under section 431, 432(2) or 442(1) a direction—
  - (a) as to the subject matter of his investigation (whether by reference to a specified area of a company's operation, a specified transaction, a period of time or otherwise), or
  - (b) which requires the inspector to take or not to take a specified step in his investigation.
- (3) The Secretary of State may give an inspector appointed under any provision of this Part a direction requiring him to secure that a specified report under section 437—
  - (a) includes the inspector's views on a specified matter,
  - (b) does not include any reference to a specified matter,
  - (c) is made in a specified form or manner, or
  - (d) is made by a specified date.
- (4) A direction under this section—
  - (a) may be given on an inspector's appointment,

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- (b) may vary or revoke a direction previously given, and
  - (c) may be given at the request of an inspector.
- (5) In this section—
- (a) a reference to an inspector's investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary);
  - (b) “specified” means specified in a direction under this section.

**Modifications etc. (not altering text)**

**C252** S. 446A applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

**446B Direction to terminate investigation**

- (1) The Secretary of State may direct an inspector to take no further steps in his investigation.
- (2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that—
  - (a) matters have come to light in the course of the inspector's investigation which suggest that a criminal offence has been committed, and
  - (b) those matters have been referred to the appropriate prosecuting authority.
- (3) Where the Secretary of State gives a direction under this section, any direction already given to the inspector under section 437(1) to produce an interim report, and any direction given to him under section 446A(3) in relation to such a report, shall cease to have effect.
- (4) Where the Secretary of State gives a direction under this section, the inspector shall not make a final report to the Secretary of State unless—
  - (a) the direction was made on the grounds mentioned in subsection (2) and the Secretary of State directs the inspector to make a final report to him, or
  - (b) the inspector was appointed under section 432(1) (appointment in pursuance of order of the court).
- (5) An inspector shall comply with any direction given to him under this section.
- (6) In this section, a reference to an inspector's investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary).]

**Modifications etc. (not altering text)**

**C253** S. 446B applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

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PROSPECTIVE

## *<sup>F607</sup>Resignation, removal and replacement of inspectors*

### Textual Amendments

**F607** Ss. 446C, 446D and preceding cross-heading inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), [ss. 1036, 1300](#); [S.I. 2007/2194](#), [art. 2\(1\)\(k\)](#) (with [art. 12](#), [Sch. 3 para. 48](#))

### 446C Resignation and revocation of appointment

- (1) An inspector may resign by notice in writing to the Secretary of State.
- (2) The Secretary of State may revoke the appointment of an inspector by notice in writing to the inspector.

### Modifications etc. (not altering text)

**C254** S. 446C applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), [regs. 1\(1\), 2](#)

### 446D Appointment of replacement inspectors

- (1) Where—
  - (a) an inspector resigns,
  - (b) an inspector's appointment is revoked, or
  - (c) an inspector dies,
 the Secretary of State may appoint one or more competent inspectors to continue the investigation.
- (2) An appointment under subsection (1) shall be treated for the purposes of this Part (apart from this section) as an appointment under the provision of this Part under which the former inspector was appointed.
- (3) The Secretary of State must exercise his power under subsection (1) so as to secure that at least one inspector continues the investigation.
- (4) Subsection (3) does not apply if—
  - (a) the Secretary of State could give any replacement inspector a direction under section 446B (termination of investigation), and
  - (b) such a direction would (under subsection (4) of that section) result in a final report not being made.
- (5) In this section, references to an investigation include any investigation the former inspector conducted under section 433(1) (power to investigate affairs of holding company or subsidiary).]



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**Modifications etc. (not altering text)**

**C255** S. 446D applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

PROSPECTIVE

*[<sup>F608</sup>Power to obtain information from former inspectors etc*

**Textual Amendments**

**F608** S. 446E and preceding cross-heading inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. [1037\(1\)](#), [1300](#); [S.I. 2007/2194](#), [art. 2\(1\)\(k\)](#) (with [art. 12](#), [Sch. 3 para. 48](#))

**446E Obtaining information from former inspectors etc**

- (1) This section applies to a person who was appointed as an inspector under this Part—
  - (a) who has resigned, or
  - (b) whose appointment has been revoked.
- (2) This section also applies to an inspector to whom the Secretary of State has given a direction under section 446B (termination of investigation).
- (3) The Secretary of State may direct a person to whom this section applies to produce documents obtained or generated by that person during the course of his investigation to—
  - (a) the Secretary of State, or
  - (b) an inspector appointed under this Part.
- (4) The power under subsection (3) to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—
  - (a) in hard copy form, or
  - (b) in a form from which a hard copy can be readily obtained.
- (5) The Secretary of State may take copies of or extracts from a document produced in pursuance of this section.
- (6) The Secretary of State may direct a person to whom this section applies to inform him of any matters that came to that person's knowledge as a result of his investigation.
- (7) A person shall comply with any direction given to him under this section.
- (8) In this section—
  - (a) references to the investigation of a former inspector or inspector include any investigation he conducted under section 433(1) (power to investigate affairs of holding company or subsidiary), and
  - (b) “document” includes information recorded in any form.]

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#### Modifications etc. (not altering text)

**C256** S. 446E applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

### *Requisition and seizure of books and papers*

#### [<sup>F609</sup> 447 Power to require documents and information

- (1) The Secretary of State may act under subsections (2) and (3) in relation to a company.
- (2) The Secretary of State may give directions to the company requiring it—
  - (a) to produce such documents (or documents of such description) as may be specified in the directions;
  - (b) to provide such information (or information of such description) as may be so specified.
- (3) The Secretary of State may authorise a person (an investigator) to require the company or any other person—
  - (a) to produce such documents (or documents of such description) as the investigator may specify;
  - (b) to provide such information (or information of such description) as the investigator may specify.
- (4) A person on whom a requirement under subsection (3) is imposed may require the investigator to produce evidence of his authority.
- (5) A requirement under subsection (2) or (3) must be complied with at such time and place as may be specified in the directions or by the investigator (as the case may be).
- (6) The production of a document in pursuance of this section does not affect any lien which a person has on the document.
- (7) The Secretary of State or the investigator (as the case may be) may take copies of or extracts from a document produced in pursuance of this section.
- (8) A “document” includes information recorded in any form.
- [<sup>F610</sup>(9) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—
  - (a) in hard copy form, or
  - (b) in a form from which a hard copy can be readily obtained.]]

#### Textual Amendments

**F609** S. 447 substituted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 21, 65; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to arts 3-13)

**F610** S. 447(9) substituted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1038(2), 1300; S.I. 2007/2194, art. 2(1)(k) (with art. 12, Sch. 3 para. 48)

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#### Modifications etc. (not altering text)

**C257** S. 447 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 10**

**C258** S. 447 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

#### [<sup>F611</sup>**447** Information provided: evidence

- (1) A statement made by a person in compliance with a requirement under section 447 may be used in evidence against him.
- (2) But in criminal proceedings in which the person is charged with a relevant offence—
  - (a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and
  - (b) no question relating to it may be asked by or on behalf of the prosecution, unless evidence relating to it is adduced or a question relating to it is asked in the proceedings by or on behalf of that person.
- (3) A relevant offence is any offence other than the following—
  - (a) an offence under section 451,
  - (b) an offence under section 5 of the Perjury Act 1911 (false statement made otherwise than on oath), or
  - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statement made otherwise than on oath).]

#### Textual Amendments

**F611** S. 447A inserted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 17**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

#### [<sup>F612</sup>**448** Entry and search of premises.

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.
- (2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part—:
  - (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
  - (b) that the Secretary of State, or the person so appointed or authorised, has power to require the production of the documents under this Part, and
  - (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

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- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—
- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of any such documents; and
  - (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) If in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.
- (5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of an offence
- F613 . . .
- [ A person guilty of an offence under this section is liable—
- F614(7A) (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.]
- (8) For the purposes of sections 449 and 451A (provision for security of information) documents obtained under this section shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.
- (9) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.
- (10) In this section “document” includes information recorded in any form.]

#### Textual Amendments

**F612** S. 448 substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 64(1), 213(2)**

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**F613** Words in s. 448(7) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1295, 1300, Sch. 3 para. 2(1), **Sch. 16** (with s. 1133); S.I. 2007/2194, arts. 2(1)(k), **8**, Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)

**F614** S. 448(7A) inserted (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, **Sch. 3 para. 2(2)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)

**Modifications etc. (not altering text)**

**C259** S. 448 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**

**C260** S. 448 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C261** S. 448 restricted (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008 for specified purposes) by Companies Act 2006 (c. 46), **ss. 1126, 1300** (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

**C262** S. 448(3): powers of seizure extended (8.10.2004) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. I para. 35; S.I. 2004/1376, **art. 3**

**C263** S. 448(6) applied (1.4.2003) by 2001 c. 16, ss. 57(1)(f), 138(2) (with s. 57(4)); S.I. 2003/708, **art. 2**

[<sup>F615</sup>**448A** **Protection in relation to certain disclosures: information provided to Secretary of State**

- (1) A person who makes a relevant disclosure is not liable by reason only of that disclosure in any proceedings relating to a breach of an obligation of confidence.
- (2) A relevant disclosure is a disclosure which satisfies each of the following conditions—
  - (a) it is made to the Secretary of State otherwise than in compliance with a requirement under this Part;
  - (b) it is of a kind that the person making the disclosure could be required to make in pursuance of this Part;
  - (c) the person who makes the disclosure does so in good faith and in the reasonable belief that the disclosure is capable of assisting the Secretary of State for the purposes of the exercise of his functions under this Part;
  - (d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Secretary of State for the purposes of the exercise of those functions;
  - (e) the disclosure is not one falling within subsection (3) or (4).
- (3) A disclosure falls within this subsection if the disclosure is prohibited by virtue of any enactment.
- (4) A disclosure falls within this subsection if—
  - (a) it is made by a person carrying on the business of banking or by a lawyer, and
  - (b) it involves the disclosure of information in respect of which he owes an obligation of confidence in that capacity.
- (5) An enactment includes an enactment—
  - (a) comprised in, or in an instrument made under, an Act of the Scottish Parliament;
  - (b) comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);
  - (c) whenever passed or made.]

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### Textual Amendments

**F615** S. 448A inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), [ss. 22, 65](#); [S.I. 2004/3322](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to [arts. 3-13](#))

### <sup>F616F617F618</sup> **449 Provision for security of information obtained.**

- (1) This section applies to information (in whatever form) obtained—
  - (a) in pursuance of a requirement imposed under section 447;
  - (b) by means of a relevant disclosure within the meaning of section 448A(2);
  - (c) by an investigator in consequence of the exercise of his powers under section 453A.
- (2) Such information must not be disclosed unless the disclosure—
  - (a) is made to a person specified in Schedule 15C, or
  - (b) is of a description specified in Schedule 15D.
- (3) The Secretary of State may by order amend Schedules 15C and 15D.
- (4) An order under subsection (3) must not—
  - (a) amend Schedule 15C by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
  - (b) amend Schedule 15D 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.
- (5) An order under subsection (3) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A person who discloses any information in contravention of this section<sup>F619</sup> is guilty of an offence.]

<sup>F620</sup>(6A) 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).]
- (7) <sup>F621</sup> .....
- (8) Any information which may by virtue of this section be disclosed to a person specified in Schedule 15C may be disclosed to any officer or employee of the person.
- (9) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (10) For the purposes of this section, information obtained by an investigator in consequence of the exercise of his powers under section 453A includes information

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obtained by a person accompanying the investigator in pursuance of subsection (4) of that section in consequence of that person's accompanying the investigator.

- (11) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998.]

#### Textual Amendments

- F616** S. 449 substituted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 18**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)
- F617** S. 449: by Pensions Act 2004 (c. 35), ss. 319, 322, **Sch. 12 para. 5(2)**; S.I. 2006/560, **art. 2(3)**, Sch. Pt. 3 it is provided that for subsection (1)(dg) there is substituted subsection (1)(dg)(dh) (6.4.2006)
- F618** S. 449: by Pensions Act 2004 (c. 35), ss. 102, 322, **Sch. 4 para. 18**; S.I. 2006/560, **art. 2(3)**, Sch. Pt. 3 it is provided that section 489(1)(n) is inserted (6.4.2006)
- F619** Words in s. 449(6) substituted for s. 449(6)(a)(b) (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, **Sch. 3 para. 3(2)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)
- F620** S. 449(6A) inserted (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, **Sch. 3 para. 3(3)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)
- F621** S. 449(7) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1295, 1300, Sch. 3 para. 3(4), **Sch. 16** (with s. 1133); S.I. 2007/2194, arts. 2(1)(k), **8**, Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)

#### Modifications etc. (not altering text)

- C264** S. 449 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**
- C265** S. 449 modified by Companies Act 1989 (c. 40, SIF 27), ss. **88(3)(b)(5)(6)**, 213(2)
- C266** S. 449 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C267** S. 449 restricted (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008 for specified purposes) by Companies Act 2006 (c. 46), ss. **1126**, 1300 (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

### 450 Punishment for destroying, mutilating, etc. company documents.

[<sup>F622</sup>(1) An officer of a company]. . . who—

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting, or relating to the [<sup>F623</sup>company's] property or affairs, or
- (b) makes, or is privy to the making of, a false entry in such a document, is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of [<sup>F624</sup>the company] or to defeat the law.

[<sup>F625</sup>(1A) Subsection (1) applies to an officer of an authorised insurance company which is not a body corporate as it applies to an officer of a company.]

- (2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

[<sup>F626</sup>(3) A person guilty of an offence under this section is liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding seven 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).]

(4) <sup>F627</sup> .....

[<sup>F628</sup>(5) In this section “document” includes information recorded in any form.]

#### Textual Amendments

- F622** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 66(2), 213(2)
- F623** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 66(2), 213(2)
- F624** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 66(2), 213(2)
- F625** S. 450(1A) inserted (1.12.2001) by S.I. 2001/3649, art. 23(1)(3)
- F626** S. 450(3) substituted (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, Sch. 3 para. 4(1) (with s. 1133); S.I. 2007/2194, art. 2(1)(k) (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)
- F627** S. 450(4) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1295, 1300, Sch. 3 para. 4(2), Sch. 16 (with s. 1133); S.I. 2007/2194, arts. 2(1)(k), 8, Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)
- F628** S. 450(5) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 66(4), 213(2)

#### Modifications etc. (not altering text)

- C268** S. 450 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 11
- C269** S. 450 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I (as amended (4.3.2004) by S.I. 2004/355, art. 9(2))
- C270** S. 450 restricted (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008 for specified purposes) by Companies Act 2006 (c. 46), ss. 1126, 1300 (with s. 1133); S.I. 2006/3428, art. 3(2)(b) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(2)(c); S.I. 2007/2194, art. 2(1)(l)(3)(h) (with art. 12); S.I. 2007/3495, art. 3(1)(n) (with arts. 7, 12)
- C271** S. 450(1) amended (1.7.1994) by S.I. 1994/1696, reg. 68, Sch. 8 Pt. I para. 9(1)(c)

#### [<sup>F629</sup> 451 Punishment for furnishing false information.

- (1) A person commits an offence if in purported compliance with a requirement under section 447 to provide information—
- (a) he provides information which he knows to be false in a material particular;
  - (b) he recklessly provides information which is false in a material particular.

[<sup>F630</sup>(2) 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);



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- (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).]

(3) <sup>F631</sup> .....]

#### Textual Amendments

- F629** S. 451 substituted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 19**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)
- F630** S. 451(2) substituted (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, **Sch. 3 para. 5(1)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)
- F631** S. 451(3) repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1295, 1300, Sch. 3 para. 5(2), **Sch. 16** (with s. 1133); S.I. 2007/2194, arts. 2(1)(k), **8**, Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)

#### Modifications etc. (not altering text)

- C272** S. 451 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**
- C273** S. 451 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C274** S. 451 restricted (20.1.2007, 6.4.2007, 1.10.2007 for specified purposes) by Companies Act 2006 (c. 46), ss. **1126**, 1300 (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

#### [<sup>F632</sup> **451A** Disclosure of information by Secretary of State or inspector.

- [<sup>F633</sup> (1) This section applies to information obtained—
- under sections 434 to [<sup>F634</sup> 446E] ;
  - by an inspector in consequence of the exercise of his powers under section 453A.]

- (2) The Secretary of State may, if he thinks fit—
- disclose any information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 449, or
  - authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.

[ Information to which this section applies may also be disclosed by an inspector <sup>F635</sup> (3) appointed under this Part to—

- another inspector appointed under this Part;
- a person appointed under—
  - section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - section 168 of that Act (investigations in particular cases),
  - section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

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- to conduct an investigation; or
- (c) a person authorised to exercise powers under—
- (i) section 447 of this Act; or
- (ii) section 84 of the Companies Act 1989 (exercise of powers to assist overseas regulatory authority).]
- (4) Any information which may by virtue of subsection (3) be disclosed to any person may be disclosed to any officer or servant of that person.
- (5) The Secretary of State may, if he thinks fit, disclose any information obtained under section 444 to—
- (a) the company whose ownership was the subject of the investigation,
- (b) any member of the company,
- (c) any person whose conduct was investigated in the course of the investigation,
- (d) the auditors of the company, or
- (e) any person whose financial interests appear to the Secretary of State to be affected by matters covered by the investigation.]
- [<sup>F636</sup>(6) For the purposes of this section, information obtained by an inspector in consequence of the exercise of his powers under section 453A includes information obtained by a person accompanying the inspector in pursuance of subsection (4) of that section in consequence of that person’s accompanying the inspector.
- (7) The reference to an inspector in subsection (2)(b) above includes a reference to a person accompanying an inspector in pursuance of section 453A(4).]

#### Textual Amendments

- F632** S. 451A inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 182, **Sch. 13 para. 10** and substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 68, 213(2)** Supplementary
- F633** S. 451A(1) substituted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 25, 65**; Sch. 2 para. 20(2); S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)
- F634** Words in s. 451A(1)(a) substituted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1037(2), 1300**; S.I. 2007/2194, **art. 2(1)(k)** (with **art. 12**, Sch. 3 para. 48)
- F635** S. 451A(3) substituted (1.12.2001) by S.I. 2001/3649, **art. 24**
- F636** S. 451A(6)(7) inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 25, 65, Sch. 2 para. 20(3)**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

#### Modifications etc. (not altering text)

- C275** S. 451A extended (with modifications) by S.I. 1989/638, **regs. 18, 21, Sch. 4 para. 11**
- C276** S. 451A applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**

## 452 Privileged information.

- [<sup>F637</sup>(1) Nothing in sections 431 to [<sup>F638</sup>446E] compels the disclosure by any person to the Secretary of State or to an inspector appointed by him of information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.]
- [<sup>F639</sup>(1A) Nothing in section 434, 443 or 446 requires a person (except as mentioned in subsection (1B) below) to disclose information or produce documents in respect of

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which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (c) the making of the requirement is authorised by the Secretary of State.

(1B) Subsection (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under section 431, 432 or 433.]

[<sup>F640</sup>(2) Nothing in sections 447 to 451—

- (a) compels the production by any person of a document or the disclosure by any person of information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained;
- (b) authorises the taking of possession of any such document which is in the person's possession.

(3) The Secretary of State must not under section 447 require, or authorise a person to require—

- (a) the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his, or
- (b) the disclosure by him of information relating to those affairs,

unless one of the conditions in subsection (4) is met.

(4) The conditions are—

- (a) the Secretary of State thinks it is necessary to do so for the purpose of investigating the affairs of the person carrying on the business of banking;
- (b) the customer is a person on whom a requirement has been imposed under section 447;
- (c) the customer is a person on whom a requirement to produce information or documents has been imposed by an investigator appointed by the Secretary of State in pursuance of section 171 or 173 of the Financial Services and Markets Act 2000 (powers of persons appointed under section 167 or as a result of section 168(2) to conduct an investigation).

(5) Despite subsections (1) and (2) a person who is a lawyer may be compelled to disclose the name and address of his client.]

#### Textual Amendments

**F637** S. 452(1) substituted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 21(a)**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

**F638** Words in s. 452(1) substituted (1.10.2007) by Companies Act 2006 (c. 46), **ss. 1037(3)**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48)

**F639** S. 452(1A)(1B) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 69(3)**, 213(2)

**F640** S. 452(2)-(5) substituted for s. 452(2)(3) (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 21(b)**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

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#### Modifications etc. (not altering text)

- C277** S. 452 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**  
**C278** S. 452 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

### 453 Investigation of overseas companies.

[<sup>F641</sup>(1) The provisions of this Part apply to bodies corporate incorporated outside Great Britain which are carrying on business in Great Britain, or have at any time carried on business there, as they apply to companies under this Act; but subject to the following exceptions, adaptations and modifications.

(1A) The following provisions do not apply to such bodies—

- (a) section 431 (investigation on application of company or its members),
- (b) <sup>F642</sup> .....
- (c) sections 442 to 445 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), <sup>F643</sup> . . .
- (d) <sup>F643</sup> .....

(1B) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be specified by regulations made by the Secretary of State.]

(2) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F641** S. 453(1)(1A)(1B) substituted by **Companies Act 1989 (c. 40, SIF 27)**, **ss. 70, 213(2)**  
**F642** S. 453(1A)(b) repealed (6.4.2007) by **Companies Act 2006 (c. 46)**, **ss. 1176(3), 1295, 1300, Sch. 16** (with s. 1176(4)); S.I. 2006/3428, arts. 4(1)(b), 7(c), Sch. 4 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))  
**F643** S. 453(1A)(d) and the preceding word "and" repealed (1.10.2007) by **Companies Act 2006 (c. 46)**, **ss. 1295, 1300, Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### [<sup>F644</sup>453A Power to enter and remain on premises

- (1) An inspector or investigator may act under subsection (2) in relation to a company if—
- (a) he is authorised to do so by the Secretary of State, and
  - (b) he thinks that to do so will materially assist him in the exercise of his functions under this Part in relation to the company.
- (2) An inspector or investigator may at all reasonable times—
- (a) require entry to relevant premises, and
  - (b) remain there for such period as he thinks necessary for the purpose mentioned in subsection (1)(b).
- (3) Relevant premises are premises which the inspector or investigator believes are used (wholly or partly) for the purposes of the company's business.
- (4) In exercising his powers under subsection (2), an inspector or investigator may be accompanied by such other persons as he thinks appropriate.

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(5) A person who intentionally obstructs a person lawfully acting under subsection (2) or (4)<sup>F645</sup> is guilty of an offence.]

[ A person guilty of an offence under this section is liable—

<sup>F646</sup>(5A) (a) on conviction on indictment, to a fine;  
(b) on summary conviction, to a fine not exceeding the statutory maximum.]

(6) <sup>F647</sup> .....

(7) An inspector is a person appointed under section 431, 432 or 442.

(8) An investigator is a person authorised for the purposes of section 447.

#### Textual Amendments

**F644** Ss. 453A, 453B inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 23, 65**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

**F645** Words in s. 453A(5) substituted for s. 453A(5)(a)(b) (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1124, 1300, **Sch. 3 para. 6(2)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)

**F646** S. 453A(5A) inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1124, 1300, **Sch. 3 para. 6(3)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)

**F647** S. 453A(6) repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1124, 1295, 1300, Sch. 3 para. 6(4), **Sch. 16** (with s. 1133); S.I. 2007/2194, arts. 2(1)(k), **8**, Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48 and subject to Sch. 1)

#### Modifications etc. (not altering text)

**C279** S. 453A restricted (20.1.2007, 6.4.2007, 1.10.2007 for specified purposes) by [Companies Act 2006 \(c. 46\)](#), **ss. 1126, 1300** (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

### 453B Power to enter and remain on premises: procedural

- (1) This section applies for the purposes of section 453A.
- (2) The requirements of subsection (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under section 453A(2)(a).
- (3) The requirements are—
  - (a) the inspector or investigator must produce evidence of his identity and evidence of his appointment or authorisation (as the case may be);
  - (b) any person accompanying the inspector or investigator must produce evidence of his identity.
- (4) The inspector or investigator must, as soon as practicable after obtaining entry, give to an appropriate recipient a written statement containing such information as to—
  - (a) the powers of the investigator or inspector (as the case may be) under section 453A;
  - (b) the rights and obligations of the company, occupier and the persons present on the premises,  
as may be prescribed by regulations.

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- (5) If during the time the inspector or investigator is on the premises there is no person present who appears to him to be an appropriate recipient for the purposes of subsection (8), the inspector or investigator must as soon as reasonably practicable send to the company—
  - (a) a notice of the fact and time that the visit took place, and
  - (b) the statement mentioned in subsection (4).
- (6) As soon as reasonably practicable after exercising his powers under section 453A(2), the inspector or investigator must prepare a written record of the visit and—
  - (a) if requested to do so by the company he must give it a copy of the record;
  - (b) in a case where the company is not the sole occupier of the premises, if requested to do so by an occupier he must give the occupier a copy of the record.
- (7) The written record must contain such information as may be prescribed by regulations.
- (8) If the inspector or investigator thinks that the company is the sole occupier of the premises an appropriate recipient is a person who is present on the premises and who appears to the inspector or investigator to be—
  - (a) an officer of the company, or
  - (b) a person otherwise engaged in the business of the company if the inspector or investigator thinks that no officer of the company is present on the premises.
- (9) If the inspector or investigator thinks that the company is not the occupier or sole occupier of the premises an appropriate recipient is—
  - (a) a person who is an appropriate recipient for the purposes of subsection (8), and (if different)
  - (b) a person who is present on the premises and who appears to the inspector or investigator to be an occupier of the premises or otherwise in charge of them.
- (10) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F644** Ss. 453A, 453B inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), [ss. 23, 65](#); [S.I. 2004/3322](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to arts. 3-13)

### [<sup>F648</sup> 453C Failure to comply with certain requirements

- (1) This section applies if a person fails to comply with a requirement imposed by an inspector, the Secretary of State or an investigator in pursuance of either of the following provisions—
  - (a) section 447;
  - (b) section 453A.
- (2) The inspector, Secretary of State or investigator (as the case may be) may certify the fact in writing to the court.
- (3) If, after hearing—
  - (a) any witnesses who may be produced against or on behalf of the alleged offender;

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(b) any statement which may be offered in defence,  
the court is satisfied that the offender failed without reasonable excuse to comply with the requirement, it may deal with him as if he had been guilty of contempt of the court.]

#### Textual Amendments

**F648** S. 453C inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\), ss. 24, 65; S.I. 2004/3322, art. 2\(2\), Sch. 2](#) (subject to arts. 3-13)

#### [<sup>F649</sup>453D] Offences by bodies corporate

Where an offence under any of sections 448, 449 to 451 and 453A is committed by a body corporate, every officer of the body who is in default also commits the offence. For this purpose—

- (a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and
- (b) if the body is a company, any shadow director is treated as an officer of the company.]

#### Textual Amendments

**F649** S. 453D inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\), Sch. 1 para. 82](#) (with arts. 6, 11, 12)

## PART XV

### ORDERS IMPOSING RESTRICTIONS ON SHARES ([<sup>F650</sup>SECTION 445])

#### Textual Amendments

**F650** Words in Pt. 15 heading substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\), art. 10\(1\), Sch. 4 para. 11\(2\)](#) (with art. 12)

#### 454 Consequence of order imposing restrictions.

- (1) So long as any shares are directed to be subject to the restrictions of this Part [<sup>F651</sup>then, subject to any directions made in relation to an order [<sup>F652</sup>pursuant to section 445(1A) or 456(1A)]]—
- (a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of them, is void;
  - (b) no voting rights are exercisable in respect of the shares;
  - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; and
  - (d) except in a liquidation, no payment shall be made of any sums due from the company on the shares, whether in respect of capital or otherwise.

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- (2) Where shares are subject to the restrictions of subsection (1)(a), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them is void (except [F653 such agreement or right as may be made or exercised under the terms of directions made by the Secretary of State or the court under [F654 section 445(1A) or 456(1A)] or] an agreement to [F655 transfer] the shares on the making of an order under section 456(3)(b) below).
- (3) Where shares are subject to the restrictions of subsection (1)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation) is void (except [F656 such agreement or right as may be made or exercised under the terms of directions made by the Secretary of State or the court under [F657 section 445(1A) or 456(1A)] or] an agreement to transfer any such right on the [F655 transfer] of the shares on the making of an order under section 456(3)(b) below).

#### Extent Information

**E1** Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

#### Textual Amendments

- F651** Words in s. 454(1) inserted by S.I. 1991/1646, **reg. 6(a)**
- F652** Words in s. 454(1) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 11(3)** (with art. 12)
- F653** Words in s. 454(2) inserted by S.I. 1991/1646, **reg. 6(b)**
- F654** Words in s. 454(2) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 11(4)** (with art. 12)
- F655** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 10(2)**
- F656** Words in s. 454(3) inserted by S.I. 1991/1646, **reg. 6(c)**
- F657** Words in s. 454(3) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 11(5)** (with art. 12)

### 455 Punishment for attempted evasion of restrictions.

- (1) [F658 Subject to the terms of any directions made under [F659 section 445(1A) or 456]] a person [F660 commits an offence if he]—
- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the restrictions of this Part or of any right to be issued with any such shares, or
  - (b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them, or



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- (c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy, or
  - (d) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 454(2) or (3).
- (2) <sup>F661</sup>Subject to the terms of any directions made under <sup>F662</sup>section 445(1A) or 456]] if shares in a company are issued in contravention of the restrictions, <sup>F663</sup>an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.]
- <sup>F664</sup>(2A) 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.]
- (3) <sup>F665</sup>.....

#### Extent Information

**E2** Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

#### Textual Amendments

- F658** Words in s. 455(1) inserted by S.I. 1991/1646, **reg. 7(a)**
- F659** Words in s. 455(1) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 11(6)** (with art. 12)
- F660** Words in s. 455(1) substituted (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, **Sch. 3 para. 7(1)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12 and subject to Sch. 1)
- F661** Words in s. 455(2) inserted by S.I. 1991/1646, **reg. 7(b)**
- F662** Words in s. 455(2) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 11(7)** (with art. 12)
- F663** Words in s. 455(2) substituted (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, **Sch. 3 para. 7(2)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12 and subject to Sch. 1)
- F664** S. 455(2A) inserted (1.10.2007) by Companies Act 2006 (c. 46), ss. 1124, 1300, **Sch. 3 para. 7(3)** (with s. 1133); S.I. 2007/2194, **art. 2(1)(k)** (with art. 12 and subject to Sch. 1)
- F665** S. 455(3) repealed (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(3), **Sch. 5** (with art. 12)

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#### Modifications etc. (not altering text)

**C280** S. 455 restricted (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008 for specified purposes) by **Companies Act 2006** (c. 46), **ss. 1126, 1300** (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12 and subject to Sch. 1); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

## 456 Relaxation and removal of restrictions.

- (1) Where shares in a company are by order made subject to the restrictions of this Part, application may be made to the court for an order directing that the shares be no longer so subject.
- [<sup>F666</sup>(1A) Where the court is satisfied that an order subjecting the shares to the restrictions of this Part unfairly affects the rights of third parties in respect of shares then the court, for the purpose of protecting such rights and subject to such terms as it thinks fit and in addition to any order it may make under subsection (1), may direct on an application made under that subsection that such acts by such persons or descriptions of persons and for such purposes, as may be set out in the order, shall not constitute a breach of the restrictions of Part XV of this Act. Subsection (3) does not apply to an order made under this subsection.]
- (2) If the order applying the restrictions was made by the Secretary of State, or he has refused to make an order disapplying them, the application may be made by any person aggrieved; <sup>F667</sup> . . . .
- (3) Subject as follows, an order of the court or the Secretary of State directing that shares shall cease to be subject to the restrictions may be made only if—
- (a) the court or (as the case may be) the Secretary of State is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or
  - (b) the shares are to be [<sup>F668</sup>transferred for valuable consideration] and the court (in any case) or the Secretary of State (if the order was made under section <sup>F669</sup> . . . 445) approves the [<sup>F668</sup>transfer].
- (4) [<sup>F670</sup>Without prejudice to the power of the court to give directions under subsection (1A),] where shares in a company are subject to the restrictions, the court may on application order the shares to be sold, subject to the court's approval as to the sale, and may also direct that the shares shall cease to be subject to the restrictions.

An application to the court under this subsection may be made by the Secretary of State <sup>F671</sup> . . . , or by the company.

- (5) Where an order has been made under subsection (4), the court may on application make such further order relating to the sale or transfer of the shares as it thinks fit.

An application to the court under this subsection may be made—

- (a) by the Secretary of State <sup>F672</sup> . . . , or
- (b) by the company, or
- (c) by the person appointed by or in pursuance of the order to effect the sale, or
- (d) by any person interested in the shares.

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- (6) An order (whether of the Secretary of State or the court) directing that shares shall cease to be subject to the restrictions of this Part, if it is—
- (a) expressed to be made with a view to permitting a transfer of the shares, or
  - (b) made under subsection (4) of this section,
- may continue the restrictions mentioned in paragraphs (c) and (d) of section 454(1), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.
- (7) Subsection (3) does not apply to an order directing that shares shall cease to be subject to any restrictions which have been continued in force in relation to those shares under subsection (6).

### Extent Information

**E3** Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

### Textual Amendments

- F666** S. 456(1A) inserted by S.I. 1991/1646, **regs. 8(a)**, 9
- F667** Words in s. 456(2) repealed (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1)(3), Sch. 4 para. 11(8), **Sch. 5** (with art. 12)
- F668** Words in s. 456(3)(b) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 10(1)**
- F669** Words in s. 456(3)(b) repealed (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1)(3), Sch. 4 para. 11(9), **Sch. 5** (with art. 12)
- F670** Words in s. 456(4) inserted by S.I. 1991/1646, **reg. 8(b)**
- F671** Words in s. 456(4) repealed (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1)(3), Sch. 4 para. 11(10), **Sch. 5** (with art. 12)
- F672** Words in s. 456(5)(a) repealed (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1)(3), Sch. 4 para. 11(11), **Sch. 5** (with art. 12)

## 457 Further provisions on sale by court order of restricted shares.

- (1) Where shares are sold in pursuance of an order of the court under section 456(4) the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and any such person may apply to the court for the whole or part of those proceeds to be paid to him.
- (2) On application under subsection (1) the court shall (subject as provided below) order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the shares at the

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time of their sale, such proportion of those proceeds and interest as is equal to the proportion which the value of the applicant's interest in the shares bears to the total value of the shares.

- (3) On granting an application for an order under section 456(4) or (5) the court may order that the applicant's costs be paid out of the proceeds of sale; and if that order is made, the applicant is entitled to payment of his costs out of those proceeds before any person interested in the shares in question receives any part of those proceeds.

#### Extent Information

- E4** Act: The provisions of this Act that remain in force extended (Northern Ireland) (1.1.2007, 20.1.2007, 6.4.2007, 30.9.2007, 1.10.2007, 1.11.2007, 15.12.2007, 6.4.2008 and 1.10.2008 for certain purposes and otherwise 1.10.2009) by Companies Act 2006 (c. 46), ss. 2, **1284(1)**, 1300; S.I. 2006/3428, art. 3(2)(e) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, art. 2(1)(e); S.I. 2007/2194, arts. 2-5 (with art. 12); S.I. 2007/2607, art. 2(2); S.I. 2007/3495, arts. 3, 5 (with arts. 7, 12); S.I. 2008/1886 arts. 1(3), 2(d) (with arts. 6, 7); S.I. 2008/2860, art. 3(z) (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch., S.I. 2009/1802, art. 18, Sch.))

## PART XVI

### FRAUDULENT TRADING BY A COMPANY

#### 458 Punishment for fraudulent trading.

F673 .....

#### Textual Amendments

- F673** S. 458 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

## PART XVII

### PROTECTION OF COMPANY'S MEMBERS AGAINST UNFAIR PREJUDICE

#### 459 Order on application of company member.

F674 .....

#### Textual Amendments

- F674** S. 459 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

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#### 460 Order on application of Secretary of State.

F675 .....

##### Textual Amendments

**F675** S. 460 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

#### 461 Provisions as to petitions and orders under this Part.

F676 .....

##### Textual Amendments

**F676** S. 461 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/2194, **art. 8**, Sch. 2 Pt. 1 (with art. 12)

### PART XVIII

#### FLOATING CHARGES AND RECEIVERS (SCOTLAND)

##### Modifications etc. (not altering text)

**C281** Pt. XVIII (ss. 462–487) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 13**

### CHAPTER I

#### FLOATING CHARGES

##### Modifications etc. (not altering text)

**C282** Chap. I (ss. 462–466) extended by Industrial and Provident Societies Act 1967 (c.48, SIF 55), **s. 3**, as substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), **ss. 21**, 26(2)

#### 462 Power of incorporated company to create floating charge.

(1) It is competent under the law of Scotland for an incorporated company (whether a company within the meaning of this Act or not), for the purpose of securing any debt or other obligation (including a cautionary obligation) incurred or to be incurred by, or binding upon, the company or any other person, to create in favour of the creditor in the debt or obligation a charge, in this Part referred to as a floating charge, over all or any part of the property (including uncalled capital) which may from time to time be comprised in its property and undertaking.

(2) ..... F677

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- (4) References in this Part to the instrument by which a floating charge was created are, in the case of a floating charge created by words in a bond or other written acknowledgment, references to the bond or, as the case may be, the other written acknowledgment.
- (5) Subject to this Act, a floating charge has effect in accordance with this Part [<sup>F678</sup>and Part III of the Insolvency Act 1986] in relation to any heritable property in Scotland to which it relates, notwithstanding that the instrument creating it is not recorded in the Register of Sasines or, as appropriate, registered in accordance with the <sup>M19</sup>Land Registration (Scotland) Act 1979.

#### Textual Amendments

**F677** S. 462(2) substituted for S. 462(2)(3) by Companies Act 1989 (c. 40, SIF 27), s. 130(7), **Sch. 17 para. 8** and repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27), s. 74(1)(2), Sch. 8 para. 33(6), **Sch. 9**

**F678** Words inserted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

#### Modifications etc. (not altering text)

**C283** S. 462 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

#### Marginal Citations

**M19** 1979 c. 33.

### 463 Effect of floating charge on winding up.

- (1) [<sup>F679</sup>Where a company goes into liquidation within the meaning of section 247(2) of the Insolvency Act 1986,] a floating charge created by the company attaches to the property then comprised in the company's property and undertaking or, as the case may be, in part of that property and undertaking, but does so subject to the rights of any person who—
- (a) has effectually executed diligence on the property or any part of it; or
  - (b) holds a fixed security over the property or any part of it ranking in priority to the floating charge; or
  - (c) holds over the property or any part of it another floating charge so ranking.
- (2) The provisions of [<sup>F680</sup>Part IV of the Insolvency Act (except section 185)] have effect in relation to a floating charge, subject to subsection (1), as if the charge were a fixed security over the property to which it has attached in respect of the principal of the debt or obligation to which it relates and any interest due or to become due thereon.
- [<sup>F681</sup>(3) Nothing in this section derogates from the provisions of sections 53(7) and 54(6) of the Insolvency Act (attachment of floating charge on appointment of receiver), or prejudices the operation of sections 175 and 176 of that Act (payment of preferential debts in winding up)].
- (4) <sup>F682</sup> . . . interest accrues, in respect of a floating charge which after 16th November 1972 attaches to the property of the company, until payment of the sum due under the charge is made.

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#### Textual Amendments

- F679** Words substituted (3.7.1995) by **Companies Act 1989 (c. 40, SIF 27), ss. 140(1), 213(2); S.I. 1995/1352, art. 3(a)** (with transitional provisions and savings in art. 4)
- F680** Words substituted by **Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), Sch. 13 Pt. I**
- F681** S. 463(3) substituted by **Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), Sch. 13 Pt. I**
- F682** Words repealed by **Insolvency Act 1986 (c. 45, SIF 66), s. 438, Sch. 12**

#### Modifications etc. (not altering text)

- C284** S. 463 applied (with modifications) (6.4.2001) by **S.S.I. 2001/128, reg. 3, Sch. 1**

### 464 Ranking of floating charges.

- (1) Subject to subsection (2), the instrument creating a floating charge over all or any part of the company's property under section 462 may contain—
- provisions prohibiting or restricting the creation of any fixed security or any other floating charge having priority over, or ranking *pari passu* with, the floating charge; or
  - <sup>F683</sup>with the consent of the holder of any subsisting floating charge or fixed security which would be adversely affected,] provisions regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over that property or any part of it.
- <sup>F684</sup>(1A) Where an instrument creating a floating charge contains any such provision as is mentioned in subsection (1)(a), that provision shall be effective to confer priority on the floating charge over any fixed security or floating charge created after the date of the instrument.]
- (2) Where all or any part of the property of a company is subject both to a floating charge and to a fixed security arising by operation of law, the fixed security has priority over the floating charge.
- <sup>F685</sup>(3) The order of ranking of the floating charge with any other subsisting or future floating charges or fixed securities over all or any part of the company's property is determined in accordance with the provisions of subsections (4) and (5) except where it is determined in accordance with any provision such as is mentioned in paragraph (a) or (b) of subsection (1).]
- (4) Subject to the provisions of this section—
- a fixed security, the right to which has been constituted as a real right before a floating charge has attached to all or any part of the property of the company, has priority of ranking over the floating charge;
  - floating charges rank with one another according to the time of registration in accordance with Chapter II of Part XII;
  - floating charges which have been received by the registrar for registration by the same postal delivery rank with one another equally.
- (5) Where the holder of a floating charge over all or any part of the company's property which has been registered in accordance with Chapter II of Part XII has received intimation in writing of the subsequent registration in accordance with that Chapter of another floating charge over the same property or any part thereof, the preference in ranking of the first-mentioned floating charge is restricted to security for—

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- (a) the holder's present advances;
  - (b) future advances which he may be required to make under the instrument creating the floating charge or under any ancillary document;
  - (c) interest due or to become due on all such advances; <sup>F686</sup> . . .
  - (d) any expenses or outlays which may reasonably be incurred by the holder <sup>F687</sup>; and
  - (e) (in the case of a floating charge to secure a contingent liability other than a liability arising under any further advances made from time to time) the maximum sum to which that contingent liability is capable of amounting whether or not it is contractually limited.]
- (6) This section is subject to <sup>F688</sup>Part XII and to<sup>F689</sup>sections 175 and 176 of the Insolvency Act].

#### Textual Amendments

- F683** Words inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(3)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 5)
- F684** S. 464(1A) inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(4)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 6)
- F685** S. 464(3) substituted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(5)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 7)
- F686** Word repealed (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **ss. 212, 213(2)**, **Sch. 24**; S.I. 1995/1352, **art. 3(a)(c)**
- F687** S. 464(5)(e) and the word "and" immediately preceding it inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), **s. 140(6)**; S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 8)
- F688** Words inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 140(2)(7)**, 213(2)
- F689** Words substituted by virtue of Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 19** and Insolvency Act 1986 (c.45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

#### Modifications etc. (not altering text)

- C285** S. 464 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**
- C286** S. 464(1A) restricted (20.5.1995) by S.I. 1995/1352, **art. 6**
- C287** S. 464(3) restricted (20.5.1995) by S.I. 1995/1352, **art. 7**

### 465 Continued effect of certain charges validated by Act of 1972.

- (1) Any floating charge which—
- (a) purported to subsist as a floating charge on 17th November 1972, and
  - (b) if it had been created on or after that date, would have been validly created by virtue of the <sup>M20</sup>Companies (Floating Charges and Receivers) (Scotland) Act 1972,
- is deemed to have subsisted as a valid floating charge as from the date of its creation.
- (2) Any provision which—
- (a) is contained in an instrument creating a floating charge or in any ancillary document executed prior to, and still subsisting at, the commencement of that Act,
  - (b) relates to the ranking of charges, and



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- (c) if it had been made after the commencement of that Act, would have been a valid provision,  
is deemed to have been a valid provision as from the date of its making.

**Marginal Citations**

M20 1972 c. 67.

**466 Alteration of floating charges.**

- (1) The instrument creating a floating charge under section 462 or any ancillary document may be altered by the execution of an instrument of alteration by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
- (2) [<sup>F690</sup>Without prejudice to any enactment or rule of law regarding the execution of documents,] such an instrument of alteration is validly executed if it is executed—
  - <sup>F691</sup>(a) . . . . .
  - (b) where trustees for debenture-holders are acting under and in accordance with a trust deed, by those trustees [<sup>F692</sup>; or]
  - (c) where, in the case of a series of secured debentures, no such trustees are acting, by or on behalf of—
    - (i) a majority in nominal value of those present or represented by proxy and voting at a meeting of debenture-holders at which the holders of at least one-third in nominal value of the outstanding debentures of the series are present or so represented; or
    - (ii) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series; <sup>F693</sup> . . .
- (3) Section 464 applies to an instrument of alteration under this section as it applies to an instrument creating a floating charge.
- [<sup>F694</sup>(4) Subject to the next subsection, section 410(2) and (3) and section 420 apply to an instrument of alteration under this section which—
  - (a) prohibits or restricts the creation of any fixed security or any other floating charge having priority over, or ranking pari passu with, the floating charge; or
  - (b) varies, or otherwise regulates the order of, the ranking of the floating charge in relation to fixed securities or to other floating charges; or
  - (c) releases property from the floating charge; or
  - (d) increases the amount secured by the floating charge.
- (5) Section 410(2) and (3) and section 420 apply to an instrument of alteration falling under subsection (4) of this section as if references in the said sections to a charge were references to an alteration to a floating charge, and as if in section 410(2) and (3)—
  - (a) references to the creation of a charge were references to the execution of such alteration; and
  - (b) for the words from the beginning of subsection (2) to the word “applies” there were substituted the words “Every alteration to a floating charge created by a company”.]

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- (6) Any reference (however expressed) in any enactment, including this Act, to a floating charge is, for the purposes of this section and unless the context otherwise requires, to be construed as including a reference to the floating charge as altered by an instrument of alteration [<sup>F695</sup>falling under subsection (4) of this section].

#### Textual Amendments

- F690** Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 9(a)**
- F691** S. 466(2)(1.10.1990) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 212, 213(2), Sch. 17 para. 9(b), **Sch. 24**
- F692** Word inserted by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 213(2), **Sch. 17 para. 9(c)**
- F693** S. 466(2)(d) and the word “or” preceding it repealed by Companies Act 1989 (c. 40, SIF 27), ss. 130(7), 212, 213(2), Sch. 17 para. 9(d), **Sch. 24**
- F694** S. 466(4)(5) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 140(8), 212, 213(2), 215(2), **Sch. 24**
- F695** Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 140(8), 212, 213(2), 215(2), **Sch. 24**

#### Modifications etc. (not altering text)

- C288** S. 466 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C289** S. 466(1)-(3)(6) applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

## CHAPTER II

### RECEIVERS

<sup>F696</sup>467—.....  
485

#### Textual Amendments

- F696** Ss. 467–485 repealed by Insolvency Act 1986 (c. 45, SIF 66), s. 438, **Sch. 12**

## CHAPTER III

### GENERAL

#### 486 Interpretation for Part XVIII generally.

- (1) In this Part, unless the context otherwise requires, the following expressions have the following meanings respectively assigned to them, that is to say—
- “ancillary document” means—
- (a) a document which relates to the floating charge and which was executed by the debtor or creditor in the charge before the registration of the charge in accordance with Chapter II or Part XII; or
  - (b) an instrument of alteration such as is mentioned in section 466 in this Part;

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“company”, . . . <sup>F697</sup>, means an incorporated company (whether a company within the meaning of this Act or not);

“fixed security”, in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of section 9(8) of the <sup>M21</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;

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“Register of Sasines” means the appropriate division of the General Register of Sasines.

**Textual Amendments**

**F697** S. 486: words and the definitions of “instrument of appointment”, “prescribed”, “receiver” and “register of charges” repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, [Sch. 12](#)

**Modifications etc. (not altering text)**

**C290** S. 486 applied (with modifications) (6.4.2001) by [S.S.I. 2001/128, reg. 3, Sch. 1](#)  
S. 486 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

**Marginal Citations**

**M21** 1970 c. 35.

**487 Extent of Part XVIII.**

This Part extends to Scotland only.

**Modifications etc. (not altering text)**

**C291** S. 487 applied (with modifications) (6.4.2001) by [S.S.I. 2001/128, reg. 3, Sch. 1](#)  
S. 487 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

**PART XIX**

**RECEIVERS AND MANAGERS (ENGLAND AND WALES)**

<sup>F698</sup>488—.....  
**500**

**Textual Amendments**

**F698** Ss. 488–650 repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, [Sch. 12](#)

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## PART XX

### WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

#### Modifications etc. (not altering text)

**C292** Pt. 20 modified (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. {426(10)(b)}, 458(1)(3); [S.I. 2003/333](#), {art. 2}, Sch. (as amended by [S.I. 2003/531](#))

## <sup>F699</sup>CHAPTERS I–V

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#### Textual Amendments

**F699** Ss. 488–650 repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, [Sch. 12](#)

<sup>F700</sup>**501**–.....  
**650**

#### Textual Amendments

**F700** Ss. 488–650 repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, [Sch. 12](#) (with saving for ss. 615, 615A, 615B (24.3.2003) by virtue of [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. [427\(6\)](#), 458(1)(3)); [S.I. 2003/333](#), [art. 2](#), Sch. (as amended by [S.I. 2003/531](#))

## CHAPTER VI

### MATTERS ARISING SUBSEQUENT TO WINDING UP

#### **651 Power of court to declare dissolution of company void.**

- (1) Where a company has been dissolved, the court may . . . <sup>F701</sup>, on an application made for the purpose by the liquidator of the company or by any other person appearing to the court to be interested, make an order, on such terms as the court thinks fit, declaring the dissolution to have been void.
- (2) Thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.
- (3) It is the duty of the person on whose application the order was made, within 7 days after its making (or such further time as the court may allow), to deliver to the registrar of companies for registration an office copy of the order.

If the person fails to do so, he is liable to a fine and, for continued contravention, to a daily default fine.

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- [<sup>F702</sup>(4) Subject to the following provisions, an application under this section may not be made after the end of the period of two years from the date of the dissolution of the company.
- (5) An application for the purpose of bringing proceedings against the company—
- (a) for damages in respect of personal injuries (including any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (funeral expenses)), or
- (b) for damages under the Fatal Accidents Act 1976 or the Damages (Scotland) Act 1976,
- may be made at any time; but no order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.
- (6) Nothing in subsection (5) affects the power of the court on making an order under this section to direct that the period between the dissolution of the company and the making of the order shall not count for the purposes of any such enactment.
- (7) In subsection (5)(a) “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.]

#### Textual Amendments

**F701** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 141(2)(5), 212, 213(2), **Sch. 24**

**F702** S. 651(4)–(7) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 141(3)–(5), 213(1)

#### Modifications etc. (not altering text)

**C293** S. 651 excluded by Companies Act 1989 (c. 40, SIF 27), ss. 141(4)(5), 213(2)

S. 651 applied (with modifications) (E.W.) (1.11.1992) by Charities Act 1960 (c. 58), s. 30(3) (as inserted (1.11.1992) by Charities Act 1992 (c. 41), s. 10(1); S.I. 1992/1900, art. 3, **Sch.2**).

S. 651 modified (E.W.) (1.8.1993) by 1993 c. 10, ss. 63(3), 99(1)

S. 651 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C294** S. 651(1) extended (31.10.1994) by 1994 c. 21, s. 36(5) (with s. 40(7)); S.I. 1994/2553, **art. 2**

S. 651 extended (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 51(1), 65; S.I. 2004/3322, **art. 2(3)**, **Sch. 3** (subject to arts. 3-13)

## 652 Registrar may strike defunct company off register.

- (1) If the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.
- (2) If the registrar does not within one month of sending the letter receive any answer to it, he shall within 14 days after the expiration of that month send to the company by post a registered letter referring to the first letter, and stating that no answer to it has been received, and that if an answer is not received to the second letter within one month from its date, a notice will be published in the Gazette with a view to striking the company’s name off the register.
- (3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of 3 months from the date of that notice the name

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of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

- (4) If, in a case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator (if any) a like notice as is provided in subsection (3).
- (5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice of this in the Gazette; and on the publication of that notice in the Gazette the company is dissolved.
- (6) However—
  - (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
  - (b) nothing in subsection (5) affects the power of the court to wind up a company the name of which has been struck off the register.
- (7) A notice to be sent to a liquidator under this section may be addressed to him at his last known place of business; and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company.

If there is no officer of the company whose name and address are known to the registrar of companies, the letter or notice may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

**Modifications etc. (not altering text)**

**C295** S. 652 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C296** S. 652 extended (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 51(2), 65; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

**[<sup>F703</sup>652A] Registrar may strike private company off register on application.**

- (1) On application by a private company, the registrar of companies may strike the company's name off the register.
- (2) An application by a company under this section shall—
  - (a) be made on its behalf by its directors or by a majority of them,
  - (b) be in the prescribed form, and
  - (c) contain the prescribed information.
- (3) The registrar shall not strike a company off under this section until after the expiration of 3 months from the publication by him in the Gazette of a notice—
  - (a) stating that he may exercise his power under this section in relation to the company, and
  - (b) inviting any person to show cause why he should not do so.

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- (4) Where the registrar strikes a company off under this section, he shall publish notice of that fact in the Gazette.
- (5) On the publication in the Gazette of a notice under subsection (4), the company to which the notice relates is dissolved.
- (6) However, the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved.
- (7) Nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.]

#### Textual Amendments

**F703** Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2, 3(a)**

#### Modifications etc. (not altering text)

**C297** S. 652A applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**

#### <sup>F704</sup>**652BD** Duties in connection with making application under section 652A.

- (1) A person shall not make an application under section 652A on behalf of a company if, at any time in the previous 3 months, the company has—
  - (a) changed its name,
  - (b) traded or otherwise carried on business,
  - (c) made a disposal for value of property or rights which, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or
  - (d) engaged in any other activity, except one which is—
    - (i) necessary or expedient for the purpose of making an application under section 652A, or deciding whether to do so,
    - (ii) necessary or expedient for the purpose of concluding the affairs of the company,
    - (iii) necessary or expedient for the purpose of complying with any statutory requirement, or
    - (iv) specified by the Secretary of State by order for the purposes of this sub-paragraph.
- (2) For the purposes of subsection (1), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (3) A person shall not make an application under section 652A on behalf of a company at a time when any of the following is the case—
  - (a) an application has been made to the court under section 425 on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;
  - (b) a voluntary arrangement in relation to the company has been proposed under Part I of <sup>M22</sup> the Insolvency Act 1986 and the matter has not been finally concluded;

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- [<sup>F705</sup>(c) the company is in administration under Part II of that Act;
- (ca) an application to the court for an administration order in respect of the company has been made and not finally dealt with or withdrawn;
- (cb) a copy of notice of intention to appoint an administrator of the company under paragraph 14 of Schedule B1 to that Act has been filed with the court and neither of the events mentioned in paragraph 44(2)(a) and (b) of that Schedule has occurred;
- (cc) a copy of notice of intention to appoint an administrator of the company under paragraph 22 of that Schedule has been filed with the court and neither of the events mentioned in paragraph 44(4)(a) and (b) of that Schedule has occurred;]
- (d) the company is being wound up under Part IV of that Act, whether voluntarily or by the court, or a petition under that Part for the winding up of the company by the court has been presented and not finally dealt with or withdrawn;
- (e) there is a receiver or manager of the company's property;
- (f) the company's estate is being administered by a judicial factor.
- (4) For the purposes of subsection (3)(a), the matter is finally concluded if—
- (a) the application has been withdrawn,
- (b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or
- (c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.
- (5) For the purposes of subsection (3)(b), the matter is finally concluded if—
- (a) no meetings are to be summoned under section 3 of the Insolvency <sup>M23</sup>Act 1986,
- (b) meetings summoned under that section fail to approve the arrangement with no, or the same, modifications,
- (c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act, has been fully implemented, or
- (d) the court makes an order under subsection (5) of section 6 of that Act revoking approval given at previous meetings and, if the court gives any directions under subsection (6) of that section, the company has done whatever it is required to do under those directions.
- (6) A person who makes an application under section 652A on behalf of a company shall secure that a copy of the application is given, within 7 days from the day on which the application is made, to every person who, at any time on that day, is—
- (a) a member of the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) a director of the company,
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
- (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State.



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- (7) Subsection (6) shall not require a copy of the application to be given to a director who is a party to the application.
- (8) The duty imposed by subsection (6) shall cease to apply if the application is withdrawn before the end of the period for giving the copy application.
- (9) The Secretary of State may by order amend subsection (1) for the purpose of altering the period in relation to which the doing of the things mentioned in paragraphs (a) to (d) of that subsection is relevant.

#### Textual Amendments

**F704** Ss. 652A-625F inserted (1.7.1995) by 1994 c. 40, s.13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2, 3(a)**

**F705** S. 652B(3)(c)-(cc) substituted (15.9.2003) for s. 652B(3)(c) by Enterprise Act 2002 (c. 40), ss. 248, 279, **Sch. 17 para. 7** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2**, Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, S.I. 2003/3340))

#### Modifications etc. (not altering text)

**C298** S. 652B applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C299** S. 652B(6) modified (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 51(3), 65**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

#### Marginal Citations

**M22** 1986 c. 45.

**M23** 1986 c. 45.

#### <sup>F706</sup>652C Directors' duties following application under section 652A.

- (1) Subsection (2) applies in relation to any time after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn.
- (2) A person who is a director of the company at the end of a day on which a person other than himself becomes—
  - (a) a member of the company,
  - (b) an employee of the company,
  - (c) a creditor of the company,
  - (d) a director of the company,
  - (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
  - (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State,shall secure that a copy of the application is given to that person within 7 days from that day.
- (3) The duty imposed by subsection (2) shall cease to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.
- (4) Subsection (5) applies where, at any time on or after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn—

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- (a) the company—
    - (i) changes its name,
    - (ii) trades or otherwise carries on business,
    - (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under section 652A, or
    - (iv) engages in any other activity, except one to which subsection (6) applies;
  - (b) an application is made to the court under section 425 on behalf of the company for the sanctioning of a compromise or arrangement;
  - (c) a voluntary arrangement in relation to the company is proposed under Part I of the <sup>M24</sup> Insolvency Act 1986;
  - [<sup>F707</sup>(d) an application to the court for an administration order in respect of the company is made under paragraph 12 of Schedule B1 to that Act;
  - (da) an administrator is appointed in respect of the company under paragraph 14 or 22 of that Schedule;
  - (db) a copy of notice of intention to appoint an administrator of the company under paragraph 14 or 22 of that Schedule is filed with the court;]
  - (e) there arise any of the circumstances in which, under section 84(1) of that Act, the company may be voluntarily wound up;
  - (f) a petition is presented for the winding up of the company by the court under Part IV of that Act;
  - (g) a receiver or manager of the company's property is appointed; or
  - (h) a judicial factor is appointed to administer the company's estate.
- (5) A person who, at the end of a day on which an event mentioned in any of paragraphs (a) to (h) of subsection (4) occurs, is a director of the company shall secure that the company's application is withdrawn forthwith.
- (6) This subsection applies to any activity which is—
- (a) necessary or expedient for the purpose of making, or proceeding with, an application under section 652A,
  - (b) necessary or expedient for the purpose of concluding affairs of the company which are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application,
  - (c) necessary or expedient for the purpose of complying with any statutory requirement, or
  - (d) specified by the Secretary of State by order for the purposes of this subsection.
- (7) For the purposes of subsection (4)(a), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

#### Textual Amendments

**F706** Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2, 3(a)**

**F707** S. 652C(4)(d)-(db) substituted (15.9.2003) for s. 652C(4)(d) by Enterprise Act 2002 (c. 40), ss. 248, 279, **Sch. 17 para. 8** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, S.I. 2003/3340))

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**Modifications etc. (not altering text)**

C300 S. 652C applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**Marginal Citations**

M24 1986 c. 45.

<sup>F708</sup>**652D Sections 652B and 652C: supplementary provisions.**

- (1) For the purposes of sections 652B(6) and 652C(2), a document shall be treated as given to a person if it is delivered to him or left at his proper address or sent by post to him at that address.
- (2) For the purposes of subsection (1) and section 7 of the Interpretation <sup>M25</sup>Act 1978 (which relates to the service of documents by post) in its application to that subsection, the proper address of any person shall be his last known address, except that—
  - (a) in the case of a body corporate, other than one to which subsection (3) applies, it shall be the address of its registered or principal office,
  - (b) in the case of a partnership, other than one to which subsection (3) applies, it shall be the address of its principal office, and
  - (c) in the case of a body corporate or partnership to which subsection (3) applies, it shall be the address of its principal office in the United Kingdom.
- (3) This subsection applies to a body corporate or partnership which—
  - (a) is incorporated or formed under the law of a country or territory outside the United Kingdom, and
  - (b) has a place of business in the United Kingdom.
- (4) Where a creditor of the company has more than one place of business, subsection (1) shall have effect, so far as concerns the giving of a document to him, as if for the words from “delivered” to the end there were substituted “left, or sent by post to him, at each place of business of his with which the company has had dealings in relation to a matter by virtue of which he is a creditor of the company.”
- (5) Any power to make an order or regulations under section 652B or 652C shall—
  - (a) include power to make different provision for different cases or classes of case,
  - (b) include power to make such transitional provisions as the Secretary of State considers appropriate, and
  - (c) be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) For the purposes of sections 652B and 652C, an application under section 652A is withdrawn if notice of withdrawal in the prescribed form is given to the registrar of companies.
- (7) In sections 652B and 652C, “disposal” includes part disposal.
- (8) In sections 652B and 652C and this section, “creditor” includes a contingent or prospective creditor.

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#### Textual Amendments

**F708** Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2, 3(a)**

#### Modifications etc. (not altering text)

**C301** S. 652D applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

#### Marginal Citations

**M25** 1978 c. 30.

### <sup>F709</sup> 652E Sections 652B and 652C: enforcement.

- (1) A person who breaches or fails to perform a duty imposed on him by section 652B or 652C is guilty of an offence and liable to a fine.
- (2) A person who fails to perform a duty imposed on him by section 652B(6) or 652C(2) with the intention of concealing the making of the application in question from the person concerned is guilty of an offence and liable to imprisonment or a fine, or both.
- (3) In any proceedings for an offence under subsection (1) consisting of breach of a duty imposed by section 652B(1) or (3), it shall be a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts which led to the breach.
- (4) In any proceedings for an offence under subsection (1) consisting of failure to perform the duty imposed by section 652B(6), it shall be a defence for the accused to prove that he took all reasonable steps to perform the duty.
- (5) In any proceedings for an offence under subsection (1) consisting of failure to perform a duty imposed by section 652C(2) or (5), it shall be a defence for the accused to prove—
  - (a) that at the time of the failure he was not aware of the fact that the company had made an application under section 652A, or
  - (b) that he took all reasonable steps to perform the duty.

#### Textual Amendments

**F709** Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2, 3(a)**

#### Modifications etc. (not altering text)

**C302** S. 652E applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

### <sup>F710</sup> 652F Other offences connected with section 652A.

- (1) Where a company makes an application under section 652A, any person who, in connection with the application, knowingly or recklessly furnishes any information to the registrar of companies which is false or misleading in a material particular is guilty of an offence and liable to a fine.
- (2) Any person who knowingly or recklessly makes an application to the registrar of companies which purports to be an application under section 652A, but which is not, is guilty of an offence and liable to a fine.

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#### Textual Amendments

**F710** Ss. 652A-652F inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 2**; S.I. 1995/1433, **arts. 2, 3(a)**

#### Modifications etc. (not altering text)

**C303** S. 652F applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

### 653 Objection to striking off by person aggrieved.

- (1) [<sup>F711</sup>Subsection (2)] applies if a company or any member or creditor of it feels aggrieved by the company having been struck off the register [<sup>F712</sup>under section 652].
  - (2) The court, on an application by the company or the member or creditor made before the expiration of 20 years from publication in the Gazette of notice under section 652, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the company's name to be restored.
- <sup>F713</sup>(2A) Subsections (2B) and (2D) apply if a company has been struck off the register under section 652A.
- <sup>F713</sup>(2B) The court, on an application by a notifiable person made before the expiration of 20 years from publication in the Gazette of notice under section 652A(4), may, if satisfied—
- (a) that any duty under section 652B or 652C with respect to the giving to that person of a copy of the company's application under section 652A was not performed,
  - (b) that the making of the company's application under section 652A involved a breach of duty under section 652B(1) or (3), or
  - (c) that it is for some other reason just to do so,
- order the company's name to be restored to the register.
- <sup>F713</sup>(2C) In subsection (2B), "notifiable person" means a person to whom a copy of the company's application under section 652A was required to be given under section 652B or 652C.
- <sup>F713</sup>(2D) The court, on an application by the Secretary of State made before the expiration of 20 years from publication in the Gazette of notice under section 652A(4), may, if satisfied that it is in the public interest to do so, order the company's name to be restored.]
- (3) On an office copy of [<sup>F714</sup>an order under subsection (2), (2B) or (2D)] being delivered to the registrar of companies for registration the company [<sup>F715</sup>to which the order relates] is deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position (as nearly as may be) as if the company's name had not been struck off.

#### Textual Amendments

**F711** Words in s. 653(1) substituted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(2)(a)**; S.I. 1995/1433, **arts. 2, 3(2)**

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- F712** Words in s. 653(1) inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(2)(b)**; S.I. 1995/1433, **arts. 2, 3(2)**
- F713** S. 653(2A)-(2D) inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(3)**; S.I. 1995/1433, **arts. 2, 3(2)**
- F714** Words in s. 653(3) substituted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(4)(a)**; S.I. 1995/1433, **arts. 2, 3(2)**
- F715** Words in s. 653(3) inserted (1.7.1995) by 1994 c. 40, s. 13(1), **Sch. 5 para. 3(1)(4)(b)**; S.I. 1995/1433, **arts. 2, 3(2)**

**Modifications etc. (not altering text)**

- C304** S. 653 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C305** S. 653(2) applied (with modifications) (E.W.) (1.11.1992) by Charities Act 1960 (c. 58), **s. 30(4)** (as inserted (1.11.1992) by Charities Act 1992 (c. 41), **s. 10(1)**; S.I. 1992/1900, art. 3, **Sch. 2**).  
 S. 653(2) modified (E.W.) (1.8.1993) by 1993 c. 10, **ss. 63(4), 99(1)**  
 S. 653(2) extended (31.10.1994) by 1994 c. 21, **s. 36(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**  
 S. 653(2) extended (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 51(2), 65**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

**654 Property of dissolved company to be bona vacantia.**

- (1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for any other person) are deemed to be bona vacantia and—
- (a) accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be), and
  - (b) vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.
- (2) Except as provided by the section next following, the above has effect subject and without prejudice to any order made by the court under section 651 or 653.

**Modifications etc. (not altering text)**

- C306** Ss. 654–656 applied with modifications by Building Societies Act 1986 (c. 53, SIF 16), s. 90, **Sch. 15 para. 57**
- C307** S. 654 excluded (19. 12. 1991) by Commercial and Private Bank Act 1991 (c. xxii), **s. 14(2)**  
 S. 654 excluded (5.11.1993) by 1993 c. xvii, **s. 16(2)**  
 S. 654 excluded (5.11.1993) by 1993 c. xviii, **s. 14(2)**  
 S. 654 excluded by 1998 c. v, **s. 10(2)**, in accordance with instructions in s. 3 of that Act  
 S. 654 excluded (coming into force in accordance with s. 3 of the amending Act) by 1999 c. iv, **ss. 3, 14(2)**  
 S. 654 excluded (22.3.2001) by 2001 c. i, **ss. 3, 12(2)** (with s. 13)  
 S. 654 excluded (4.12.2001) by 2001 c. v, **ss. 3, 12(2)**  
 S. 654 excluded (7.11.2002) by HSBC Investment Banking Act 2002 (c. iii), **s. 11(2)**  
 S. 654 excluded (7.11.2002) by Barclays Group Reorganisation Act 2002 (c. iv), **s. 15(2)**  
 S. 654 excluded by HBOS Group Reorganisation Act 2006 (c. i), ss. 9, **18(2)**
- C308** S. 654 applied (with modifications) (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 68(1)(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**  
 S. 654 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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## **655 Effect on s. 654 of company's revival after dissolution.**

- (1) The person in whom any property or right is vested by section 654 may dispose of, or of an interest in, that property or right notwithstanding that an order may be made under section 651 or 653.
- (2) Where such an order is made—
  - (a) it does not affect the disposition (but without prejudice to the order so far as it relates to any other property or right previously vested in or held on trust for the company), and
  - (b) the Crown or, as the case may be, the Duke of Cornwall shall pay to the company an amount equal to—
    - (i) the amount of any consideration received for the property or right, or interest therein, or
    - (ii) the value of any such consideration at the time of the disposition,or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.
- (3) Where a liability accrues under subsection (2) in respect of any property or right which, before the order under section 651 or 653 was made, had accrued as bona vacantia to the Duchy of Lancaster, the Attorney General of the Duchy shall represent Her Majesty in any proceedings arising in connection with that liability.
- (4) Where a liability accrues under subsection (2) in respect of any property or right which, before the order under section 651 or 653 was made, had accrued as bona vacantia to the Duchy of Cornwall, such persons as the Duke of Cornwall (or other possessor for the time being of the Duchy) may appoint shall represent the Duke (or other possessor) in any proceedings arising out of that liability.
- (5) This section applies in relation to the disposition of any property, right or interest on or after 22nd December 1981, whether the company concerned was dissolved before, on or after that day.

### **Modifications etc. (not altering text)**

**C309** Ss. 654–656 applied with modifications by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), s. 90, [Sch. 15 para. 57](#)

S. 655 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4](#), [Sch. 2 Pt. I](#)

**C310** S. 655 applied (with modifications) (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 23, [Sch. 10 para. 68\(1\)\(2\)\(3\)](#) (with ss. 7(5), 93(4)); [S.I. 1993/16, art. 2](#), [Sch.3](#)

## **656 Crown disclaimer of property vesting as bona vacantia.**

- (1) Where property vests in the Crown under section 654, the Crown's title to it under that section may be disclaimed by a notice signed by the Crown representative, that is to say the Treasury Solicitor, or, in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer
- (2) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.
- (3) A notice of disclaimer under this section is of no effect unless it is executed—

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- (a) within 12 months of the date on which the vesting of the property under section 654 came to the notice of the Crown representative, or
  - (b) if an application in writing is made to the Crown representative by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of 3 months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.
- (4) A statement in a notice of disclaimer of any property under this section that the vesting of it came to the notice of the Crown representative on a specified date, or that no such application as above mentioned was received by him with respect to the property before a specified date, is sufficient evidence of the fact stated, until the contrary is proved.
- (5) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him; and copies of it shall be published in the Gazette and sent to any persons who have given the Crown representative notice that they claim to be interested in the property.
- (6) This section applies to property vested in the Duchy of Lancaster or the Duke of Cornwall under section 654 as if for references to the Crown and the Crown representative there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to that Duchy, or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

**Modifications etc. (not altering text)**

**C311** Ss. 654–656 applied with modifications by Building Societies Act 1986 (c. 53, SIF 16), s. 90, **Sch. 15 para. 57**

**C312** S. 656 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 68(1)(2)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

S. 656 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**657 Effect of Crown disclaimer under s. 656.**

- (1) Where notice of disclaimer is executed under section 656 as respects any property, that property is deemed not to have vested in the Crown under section 654.
- <sup>[F716]</sup>(2) As regards property in England and Wales <sup>[F717]</sup>section 178(4) and sections 179 to 182 of the Insolvency Act] shall apply as if the property had been disclaimed by the liquidator under the said section 91 immediately before the dissolution of the company.]
- (3) As regards property in Scotland, the following 4 subsections apply.
- (4) The Crown's disclaimer operates to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed; but it does not (except so far as is necessary for the purpose of releasing the company and its property from liability) affect the rights or liabilities of any other person.
- (5) The court may, on application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Act in respect of disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting



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of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just.

- (6) On such a vesting order being made, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignation for that purpose.
- (7) Part II of Schedule 20 has effect for the protection of third parties where the property disclaimed is held under a lease.

#### Textual Amendments

**F716** S. 657(2) substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), ss. 109, 235, [Sch. 6 para. 46](#), [Sch. 9 para. 9](#)

**F717** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

#### Modifications etc. (not altering text)

**C313** S. 657 applied with modifications by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), s. 90, [Sch. 15 para. 57](#)

S. 657 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, [Sch. 2 Pt. I](#)

**C314** S. 657 applied (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 23, [Sch. 10 para. 68\(1\)\(2\)\(3\)](#) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, [Sch.3](#)

### 658 Liability for rentcharge on company's land after dissolution.

[<sup>F718</sup>(1) [<sup>F719</sup>Section 180 of the Insolvency Act] shall apply to land in England and Wales which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under that section.]

(2) In this section “company” includes any body corporate.

#### Textual Amendments

**F718** S. 658(1) substituted by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 109, [Sch. 6 para. 47](#)

**F719** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), [Sch. 13 Pt. I](#)

#### Modifications etc. (not altering text)

**C315** S. 658 applied with modifications by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), s. 90, [Sch. 15 para. 57](#)

S. 658 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, [Sch. 2 Pt. I](#)

S. 658 applied (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 23, [Sch. 10 para. 68\(1\)\(2\)\(3\)](#) (with ss. 7(5), 9(4)); S.I. 1993/16, art. 2, [Sch.3](#)

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**CHAPTER VII**

MISCELLANEOUS PROVISIONS ABOUT WINDING UP

<sup>F720</sup>659–.....  
662

.....  
**Textual Amendments**  
F720 Ss. 659–662 repealed (E.W.S.) by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, **Sch. 12**

<sup>F721</sup>663 .....

.....  
**Textual Amendments**  
F721 S. 663 repealed by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 253, **Sch. 10 Pt. II**

<sup>F722</sup>664 .....

.....  
**Textual Amendments**  
F722 Ss. 664–674 repealed (E.W.S.) by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, **Sch. 12**

**PART XXI**

.....  
**Modifications etc. (not altering text)**  
C316 Pt. 21 modified (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. {426(10)(b)}, 458(1)(3); [S.I. 2003/333](#), {art. 2}, Sch. (as amended by [S.I. 2003/531](#))

<sup>F723</sup>665–.....  
674

.....  
**Textual Amendments**  
F723 Ss. 664–674 repealed (E.W.S.) by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, **Sch. 12**

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## PART XXII

### BODIES CORPORATE SUBJECT, OR BECOMING SUBJECT, TO THIS ACT (OTHERWISE THAN BY ORIGINAL FORMATION UNDER PART I)

#### CHAPTER I

##### COMPANIES FORMED OR REGISTERED UNDER FORMER COMPANIES ACTS

#### 675 Companies formed and registered under former Companies Acts.

- (1) In its application to existing companies, this Act applies in the same manner—
  - (a) in the case of a limited company (other than a company limited by guarantee), as if the company had been formed and registered under Part I of this Act as a company limited by shares,
  - (b) in the case of a company limited by guarantee, as if the company had been formed and registered under that Part as a company limited by guarantee, and
  - (c) in the case of a company other than a limited company, as if the company had been formed and registered under that Part as an unlimited company.
- (2) But reference, express or implied, to the date of registration is to be read as the date at which the company was registered under the Joint Stock Companies Acts, the <sup>M26</sup>Companies Act 1862, the <sup>M27</sup>Companies (Consolidation) Act 1908 the <sup>M28</sup>Companies Act 1929, or the <sup>M29</sup>Companies Act 1948.

#### Marginal Citations

- M26** 1862 25 & 26 Vict. c. 89  
**M27** 1908 8 Edw. 7 c. 69  
**M28** 1929 c. 23.  
**M29** 1948 c. 38.

#### 676 Companies registered but not formed under former Companies Acts.

- (1) This Act applies to every company registered but not formed under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidated) Act 1908, the Companies Act 1929, or the Companies Act 1948, in the same manner as it is in Chapter II of this Part declared to apply to companies registered but not formed under this Act.
- (2) But reference, express or implied, to the date of registration is to be read as referring to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929, or the Companies Act 1948.

#### 677 Companies re-registered with altered status under former Companies Acts.

- (1) This Act applies to every unlimited company registered or re-registered as limited in pursuance of the <sup>M30</sup>Companies Act 1879, section 57 of the <sup>M31</sup>Companies (Consolidation) Act 1908, section 16 of the <sup>M32</sup>Companies Act 1929, section 16 of the <sup>M33</sup>Companies Act 1948 or section 44 of the <sup>M34</sup>Companies Act 1967 as it (this

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Act) applies to an unlimited company re-registered as limited in pursuance of Part II of this Act.

- (2) But reference, express or implied, to the date of registration or re-registration is to be read as referring to the date at which the company was registered or re-registered as a limited company under the relevant enactment.

#### **Marginal Citations**

**M30** 1879 42 & 43 Vict. c. 76

**M31** 1908 8 Edw. 7 c. 69

**M32** 1929 c. 23.

**M33** 1948 c. 38.

**M34** 1967 c. 81.

### **678 Companies registered under Joint Stock Companies Acts.**

- (1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.
- (2) The power of altering articles under section 9 of this Act extends, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

### **679 Northern Ireland and Irish companies.**

Nothing in sections 675 to 678 applies to companies registered in Northern Ireland or the Republic of Ireland.

## **CHAPTER II**

### **COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION, BUT AUTHORISED TO REGISTER**

#### **Modifications etc. (not altering text)**

**C317** Pt. XXII Ch. II (ss. 680-690) modified (E.W.) (1.12.1991) by [Statutory Water Companies Act 1991](#) (c. 58, SIF 130), **ss. 11(1), 17(2)**

**C318** Pt. XXII Ch. II (ss. 680-690) applied (30.9.2009) by [The Manchester Ship Canal Harbour Revision Order 2009 \(S.I. 2009/2579\)](#), **art. 3** (with art. 4)

**C319** Pt. XXII Ch. II (ss. 680-690) applied (30.9.2009) by [The Mersey Docks and Harbour Revision Order 2009 \(S.I. 2009/2604\)](#), **art. 3** (with art. 4)

### **680 Companies capable of being registered under this Chapter.**

- (1) With the exceptions and subject to the provisions contained in this section and the next—

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- (a) any company consisting of two or more members, which was in existence on 2nd November 1862, including any company registered under the Joint Stock Companies Acts, and
- (b) any company formed after that date (whether before or after the commencement of this Act), in pursuance of any Act of Parliament (other than this Act), or of letters patent, or being otherwise duly constituted according to law, and consisting of two or more members,

may at any time, on making application in the prescribed form, register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration is not invalid by reason that it has taken place with a view to the company's being wound up.

[<sup>F724</sup>(1A) A company shall not be prevented from registering under this Act as a private company limited by shares or by guarantee solely because it has only one member.]

- (2) A company registered in any part of the United Kingdom under the <sup>M35</sup>Companies Act 1862 the <sup>M36</sup>Companies (Consolidation) Act 1908 the <sup>M37</sup>Companies Act 1929 or the <sup>M38</sup>Companies Act 1948 shall not register under this section.
- (3) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company, shall not register under this section.
- (4) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee.
- (5) A company that is not a joint stock company shall not register under this section as a company limited by shares.

#### Textual Amendments

**F724** S. 680(1A) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, Sch. para.7.

#### Marginal Citations

**M35** 1862 25 & 26 Vict. c. 89

**M36** 1908 8 Edw. 7 c. 69

**M37** 1929 c. 23.

**M38** 1948 c. 38.

### 681 Procedural requirements for registration.

- (1) A company shall not register under section 680 without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed) at a general meeting summoned for the purpose.
- (2) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as required by subsection (1) shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.
- (3) In computing any majority under this section when a poll is demanded, regard is to be had to the number of votes to which each member is entitled according to the company's regulations.

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- (4) Where a company is about to register (under section 680) as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the company's assets, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the company's debts and liabilities contracted before he ceased to be a member, and of the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (5) Before a company is registered under section 680, it shall deliver to the registrar of companies—
- (a) a statement that the registered office of the company is to be situated in England and Wales, or in Wales, or in Scotland (as the case may be).
  - (b) a statement specifying the intended situation of the company's registered office after registration, and
  - (c) in an appropriate case, if the company wishes to be registered with the Welsh equivalent of "public limited company" or, as the case may be, "limited" as the last words or word of its name, a statement to that effect.
- (6) Any statement delivered to the registrar under subsection (5) shall be made in the prescribed form.

**Modifications etc. (not altering text)**

C320 S. 681 restricted (E.W.)(1.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), **ss. 13(3), 17(2)**

**682 Change of name on registration.**

- (1) Where the name of a company seeking registration under section 680 is a name by which it is precluded from registration by section 26 of this Act, either because it falls within subsection (1) of that section or, if it falls within subsection (2), because the Secretary of State would not approve the company's being registered with that name, the company may change its name with effect from the date on which it is registered under this Chapter.
- (2) A change of name under this section requires the like assent of the company's members as is required by section 681 for registration.

**683 Definition of "joint stock company".**

- (1) For purposes of this Chapter, as far as relates to registration of companies as companies limited by shares, "joint stock company" means a company—
- (a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and
  - (b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons.
- (2) Such a company when registered with limited liability under this Act is deemed a company limited by shares.

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#### **684 Requirements for registration by joint stock companies.**

- (1) Before the registration under section 680 of a joint stock company, there shall be delivered to the registrar of companies the following documents—
  - (a) a statement in the prescribed form specifying the name with which the company is proposed to be registered,
  - (b) a list in the prescribed form showing the names and addresses of all persons who on a day named in the list [<sup>F725</sup>(not more than 28 clear days before the day of registration)] were members of the company, with the addition of the shares or stock held by them respectively (distinguishing, in cases where the shares are numbered, each share by its number), and
  - (c) a copy of any Act of Parliament, royal charter, letters patent, deed or settlement, contract of copartnery or other instrument constituting or regulating the company.
- (2) If the company is intended to be registered as a limited company, there shall also be delivered to the registrar of companies a statement in the prescribed form specifying the following particulars—
  - (a) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists, and
  - (b) the number of shares taken and the amount paid on each share.

#### **Textual Amendments**

**F725** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), Sch. 19 para. 12

#### **685 Registration of joint stock company as public company.**

- (1) A joint stock company applying to be registered under section 680 as a company limited by shares may, subject to—
  - (a) satisfying the conditions set out in section 44(2)(a) and (b) (where applicable) and section 45(2) to (4) as applied by this section, and
  - (b) complying with subsection (4) below,apply to be so registered as a public company.
- (2) Sections 44 and 45 apply for this purpose as in the case of a private company applying to be re-registered under section 43, but as if a reference to the special resolution required by section 43 were to the joint stock company's resolution that it be a public company.
- (3) The resolution may change the company's name by deleting the word "company" or the words "and company", or its or their equivalent in Welsh ("cwmni", "a'r cwmni"), including any abbreviation of them.
- (4) The joint stock company's application shall be made in the form prescribed for the purpose, and shall be delivered to the registrar of companies together with the following documents (as well as those required by section 684), namely—
  - (a) a copy of the resolution that the company be a public company,
  - (b) a copy of a written statement by an accountant with the appropriate qualifications that in his opinion a relevant balance sheet shows that 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,

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- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (by an accountant with such qualifications) in relation to that balance sheet,
- (d) a copy of any valuation report prepared under section 44(2)(b) as applied by this section, and
- (e) <sup>F726</sup>subject to subsection (4A),]a statutory declaration in the prescribed form by a director or secretary of the company—
  - (i) that the conditions set out in section 44(2)(a) and (b) (where applicable) and section 45(2) to (4) have been satisfied, and
  - (ii) that, between the balance sheet date referred to in paragraph (b) of this subsection and the joint stock company’s application, there has been no change in the company’s financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called up share capital and undistributable reserves.

<sup>F727</sup>(4A) In place of the statutory declaration referred to in paragraph (e) of subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.]

(5) The registrar may accept a declaration under subsection (4)(e) <sup>F728</sup>or statement under subsection (4A)] as sufficient evidence that the conditions referred to in that paragraph have been satisfied.

(6) In this section—

“accountant with the appropriate qualifications” means <sup>F729</sup>a person who would be eligible] for appointment as the company’s auditor, if it were a company registered under this Act,

“relevant balance sheet” means a balance sheet prepared as at a date not more than 7 months before the joint stock company’s application to be registered as a public company limited by shares, and

“undistributable reserves” has the meaning given by <sup>F730</sup>section 831(4) of the Companies Act 2006];

and section 46 applies (with necessary modifications) for the interpretation of the reference in subsection (4)(c) above to an unqualified report by the accountant.

<sup>F731</sup>(6A) Any person who makes a false statement under subsection (4A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

#### Textual Amendments

**F726** Words in s. 685(4)(e) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(2)**

**F727** S. 685(4A) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(3)**

**F728** Words in s. 685(5) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(4)**

**F729** Words in s. 685(6) substituted by S.I. 1991/1997, reg. 2, **Sch. para. 53(2)**.

**F730** Words in s. 685(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 83** (with arts. 6, 11, 12)

**F731** S. 685(6A) inserted (22.12.2000) by S.I. 2000/3373, **art. 24(1)(5)**



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## 686 Other requirements for registration.

- (1) Before the registration in pursuance of this Chapter of any company (not being a joint stock company), there shall be delivered to the registrar of companies—
  - (a) a statement in the prescribed form specifying the name with which the company is proposed to be registered,
  - [<sup>F732</sup>(b) a list showing with respect to each director or manager of the company—
    - (i) in the case of an individual, his name, address, occupation and date of birth,
    - (ii) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office,]
  - (c) a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the company, and
  - (d) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.
- [<sup>F733</sup>(1A) For the purposes of subsection (1)(b)(i) a person’s “name” means his Christian name (or other forename) and surname, except that in the case of a peer, or 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.]
- (2) [<sup>F734</sup>Subject to subsection (2A), the lists] of members and directors and any other particulars relating to the company which are required by this Chapter to be delivered to the registrar shall be verified by a statutory declaration in the prescribed form made by any two or more directors or other principal officers of the company.
- [<sup>F735</sup>(2A) In place of the statutory declaration referred to in subsection (2), there may be delivered to the registrar of companies using electronic communications a statement made by any two or more directors or other principal officers of the company verifying the matters set out in that subsection.]
- (3) The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether a company proposing to be registered is or is not a joint stock company as defined by section 683.
- [<sup>F736</sup>(3A) Any person who makes a false statement under subsection (2A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

### Textual Amendments

- F732** S. 686(1)(b) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), Sch. 19 para. 5(2)  
**F733** S. 686(1A) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), Sch. 19 para. 5(3)  
**F734** Words in s. 686(2) substituted (22.12.2000) by S.I. 2000/3373, art. 25(1)(2)  
**F735** S. 686(2A) inserted (22.12.2000) by S.I. 2000/3373, art. 25(1)(3)  
**F736** S. 686(3A) inserted (22.12.2000) by S.I. 2000/3373, art. 25(1)(4)

## 687 Name of company registering.

- (1) The following applies with respect to the name of a company registering under this Chapter (whether a joint stock company or not).
- (2) If the company is to be registered as a public company, its name must end with the words “public limited company” or, if it is stated that the company’s registered office

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is to be situated in Wales, with those words or their equivalent in Welsh (“cwmni cyfyngedig cyhoeddus”); and those words or that equivalent may not be preceded by the word “limited” or its equivalent in Welsh (“cyfyngedig”).

- (3) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word (or, if the company’s registered office is to be situated in Wales, “cyfyngedig”); but this is subject to section 30 (exempting a company, in certain circumstances, from having “limited” as part of the name).
- (4) If the company is registered with limited liability, then any additions to the company’s name set out in the statements delivered under section 684(1)(a) or 686(1)(a) shall form and be registered as the last part of the company’s name.

### **688 Certificate of registration under this Chapter.**

- (1) On compliance with the requirements of this Chapter with respect to registration, the registrar of companies shall give a certificate (which may be signed by him, or authenticated by his official seal) that the company applying for registration is incorporated as a company under this Act and, in the case of a limited company, that it is limited.
- (2) On the issue of the certificate, the company shall be so incorporated; and a banking company in Scotland so incorporated is deemed a bank incorporated, constituted or established by or under Act of Parliament.
- (3) The certificate is conclusive evidence that the requirements of this Chapter in respect of registration, and of matters precedent and incidental to it, have been complied with.
- (4) Where on an application by a joint stock company to register as a public company limited by shares the registrar of companies is satisfied that the company may be registered as a public company so limited, the certificate of incorporation given under this section shall state that the company is a public company; and that statement is conclusive evidence that the requirements of section 685 have been complied with and that the company is a public company so limited.

### **689 Effect of registration.**

Schedule 21 to this Act has effect with respect to the consequences of registration under this Chapter, the vesting of property, savings for existing liabilities, continuation of existing actions, status of the company following registration, and other connected matters.

### **690 Power to substitute memorandum and articles for deed of settlement.**

- (1) Subject as follows, a company registered in pursuance of this Chapter may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
- (2) The provisions of sections 4 to 6 of this Act with respect to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations (so far as applicable) apply, but with the following modifications—

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- (a) there is substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles, and
  - (b) on the delivery to the registrar of the substituted memorandum and articles or the date when the alteration is no longer liable to be cancelled by order of the court (whichever is the later)—
    - (i) the substituted memorandum and articles apply to the company in the same manner as if it were a company registered under Part I with that memorandum and those articles, and
    - (ii) the company’s deed of settlement ceases to apply to the company.
- (3) An alteration under this section may be made either with or without alteration of the company’s objects.
- (4) In this section “deed of settlement” includes any contract of copartnership or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter or letters patent.

## PART XXIII

### OVERSEA COMPANIES

#### CHAPTER I

##### REGISTRATION, ETC.

#### [<sup>F737</sup> 690A Branch registration under the Eleventh Company Law Directive (89/666/EEC).

- (1) This section applies to any limited company which—
  - (a) is incorporated outside the United Kingdom and Gibraltar, and
  - (b) has a branch in Great Britain.
- (2) Schedule 21A to this Act (Branch registration under the Eleventh Company Law Directive (89/666/EEC)) shall have effect in relation to any company to which this section applies.]

#### Textual Amendments

**F737** Ss. 690A, 690B inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.2.

#### <sup>F738</sup> 690B Scope of sections 691 and 692.

- Sections 691 and 692 shall not apply to any limited company which—
- (a) is incorporated outside the United Kingdom and Gibraltar, and
  - (b) has a branch in the United Kingdom.

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### Textual Amendments

**F738** Ss. 690A, 690B inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.2.

## 691 Documents to be delivered to registrar.

(1) When a company incorporated outside Great Britain establishes a place of business in Great Britain, it shall within one month of doing so deliver to the registrar of companies for registration—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the company's constitution, and, if the instrument is not written in the English language, a certified translation of it; and
- (b) a return in the prescribed form containing—
  - (i) a list of the company's directors and secretary, containing [<sup>F739</sup>(subject to subsection (5)).] the particulars specified in the next subsection,
  - (ii) a list of the names and addresses of some one or more persons resident in Great Britain authorised to accept on the company's behalf service of process and any notices required to be served on it,
  - (iii) a list of the documents delivered in compliance with paragraph (a) of this subsection, and
  - (iv) [<sup>F740</sup>subject to subsection (3A),] a statutory declaration (made by a director or secretary of the company or by any person whose name and address are given in the list required by sub-paragraph (ii)), stating the date on which the company's place of business in Great Britain was established.

[<sup>F741</sup>(2) The list referred to in subsection (1)(b)(i) shall contain the following particulars with respect to each director—

- (a) in the case of an individual—
  - (i) his name,
  - (ii) any former name,
  - (iii) his usual residential address,
  - (iv) his nationality,
  - (v) his business occupation (if any),
  - (vi) if he has no business occupation but holds other directorships, particulars of them, and
  - (vii) his date of birth;
- (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

(3) The list referred to in subsection (1)(b)(i) shall contain the following particulars with respect to the secretary (or, where there are joint secretaries, with respect to each of them)—

- (a) in the case of an individual, his name, any former name and his usual residential address;
- (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

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Where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars required by paragraph (a).

<sup>F742</sup> [ In place of the statutory declaration referred to in sub-paragraph (iv) of paragraph (b) (3A) of subsection (1), there may be delivered to the registrar of companies using electronic communications a statement made by any person by whom the declaration could have been made stating the date on which the company's place of business in Great Britain was established.]

(4) In subsections (2)(a) and (3)(a) above—

- (a) “name” means a person's Christian name (or other forename) and surname, except that in the case of a peer, or 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; and
- (b) the reference to a former name does not include—
  - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
  - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
  - (iii) in the case of a married woman, the name by which she was known previous to the marriage.]

<sup>F743</sup> (4A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

<sup>F744</sup> (5) Where a confidentiality order made under section 723B is in force in respect of a director or secretary required to be specified in the list under subsection (1)(b)(i)—

- (a) if the order is in respect of a director, subsection (2) has effect in respect of that director as if the reference in subsection (2)(a)(iii) to his usual residential address were a reference to the address for the time being notified by him to the company under regulations made under sections 723B to 723F;
- (b) if the order is in respect of a secretary, subsection (3) has effect in respect of that secretary as if the reference in subsection (3)(a) to his usual residential address were a reference to the address for the time being notified by him to the company under such regulations; and
- (c) in either case the company shall deliver to the registrar, in addition to the return required by subsection (1), a return in the prescribed form containing the usual residential address of the director or secretary to whom the confidentiality order relates, and any such return shall be delivered to the registrar within one month of the company establishing a place of business in Great Britain.]

#### Textual Amendments

**F739** Words in s. 691(1)(b)(i) inserted (2.4.2002) by [The Companies \(Particulars of Usual Residential Address\) \(Confidentiality Orders\) Regulations 2002 \(S.I. 2002/912\)](#), reg. 16, **Sch. 2 para. 5(2)**

**F740** Words in s. 691(1)(b)(iv) inserted (22.12.2000) by [S.I. 2000/3373](#), **art. 26(1)(2)**

**F741** S. 691(2) substituted (subject to the transitional and saving provisions in [S.I. 1990/1707](#), **art. 6**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 145, 213(2), **Sch. 19 para. 6**

**F742** S. 691(3A) inserted (22.12.2000) by [S.I. 2000/3373](#), **art. 26(1)(3)**

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**F743** S. 691(4A) inserted (22.12.2000) by S.I. 2000/3373, art. 26(1)(4)

**F744** S. 691(5) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, Sch. 2 para. 5(3)

**Modifications etc. (not altering text)**

**C321** S. 691 modified (1.1.1993) by S.I. 1992/3179, reg. 5, Sch. 4 para. 1(5)(7).

## 692 Registration of altered particulars.

(1) If any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of an overseas company or any such instrument as is mentioned above, or
- (b) the directors or secretary of an overseas company or the particulars contained in the list of the directors and secretary, or
- (c) the names or addresses of the persons authorised to accept service on behalf of an overseas company,

the company shall, within the time specified below, deliver to the registrar of companies for registration a return containing the prescribed particulars of the alteration.

[<sup>F745</sup>(1A) If an individual in respect of whom a confidentiality order under section 723B is in force becomes a director or secretary of an overseas company—

- (a) the return required to be delivered to the registrar under subsection (1) shall contain the address for the time being notified by the director or secretary to the company under regulations made under sections 723B to 723F, but shall not contain his usual residential address; and
- (b) with that return the company shall deliver to the registrar a return in the prescribed form containing the usual residential address of that director or secretary.

(1B) If a confidentiality order under section 723B is made in respect of an existing director or secretary of an overseas company, the company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the address for the time being notified to it by the director or secretary under regulations made under sections 723B to 723F.

(1C) If while a confidentiality order made under section 723B is in force in respect of a director or secretary of an overseas company there is an alteration in his usual residential address, the company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the new address.]

(2) If any change is made in the corporate name of an overseas company, the company shall, within the time specified below, deliver to the registrar of companies for registration a return containing the prescribed particulars of the change.

(3) The time for delivery of the returns required by subsections (1) [<sup>F746</sup>, (1B), (1C)] and (2) is—

- (a) in the case of an alteration to which subsection (1)(c) applies, 21 days after the making of the alteration, and

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- (b) otherwise, 21 days after the date on which notice of the alteration or change in question could have been received in Great Britain in due course of post (if despatched with due diligence).

#### Textual Amendments

**F745** S. 692(1A)-(1C) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 6(2)**

**F746** Words in s. 692(3) inserted (2.4.2002) by The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912), reg. 16, **Sch. 2 para. 6(3)**

#### Modifications etc. (not altering text)

**C322** S. 692 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 1(5)(7)**.

### [<sup>F747</sup> 692A Change in registration regime.

- (1) Where a company ceases to be a company to which section 690A applies and, immediately after ceasing to be such a company—
- (a) continues to have in Great Britain a place of business which it had immediately before ceasing to be such a company, and
  - (b) does not have a branch in Northern Ireland,
- it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to be a company to which section 690A applies.
- (2) Where a limited company incorporated outside the United Kingdom and Gibraltar—
- (a) ceases to have a branch in Northern Ireland, and
  - (b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Great Britain,
- it shall be treated for the purposes of section 691 as having established the place of business on the date when it ceased to have a branch in Northern Ireland.
- (3) Where a company—
- (a) becomes a company to which section 690A applies,
  - (b) immediately after becoming such a company, has in a part of Great Britain an established place of business but no branch, and
  - (c) immediately before becoming such a company, had an established place of business in that part,
- sections 691 and 692 shall, in relation to that part, continue to apply to the company (notwithstanding section 690B) until such time as it gives notice to the registrar for that part that it is a company to which that section applies.
- (4) Schedule 21B to this Act (transitional provisions in relation to change in registration regime) shall have effect.]

#### Textual Amendments

**F747** S. 692A inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.4**.

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<sup>F748</sup>**693 Obligation to state name and other particulars.**

(1) Every overseas company shall—

- [<sup>F749</sup>(a) in every prospectus inviting subscriptions for its shares or debentures in Great Britain, state the country in which the company is incorporated,]
- (b) conspicuously exhibit on every place where it carries on business in Great Britain the company's name and the country in which it is incorporated,
- (c) cause the company's name and the country in which it is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company, and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters [<sup>F750</sup>in every such prospectus as above mentioned and] in all bill-heads, letter paper, notices and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

[<sup>F751</sup>(2) Every company to which section 690A applies shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the place of registration of the branch, and
- (b) the registered number of the branch.

(3) Every company to which section 690A applies, which is not incorporated in a Member State and which is required by the law of the country in which it is incorporated to be registered shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the identity of the registry in which the company is registered in its country of incorporation, and
- (b) the number with which it is registered.

(4) Every company to which section 690A applies and which is not incorporated in a Member State shall, in the case of each branch of the company registered under paragraph 1 of Schedule 21A, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the legal form of the company,
- (b) the location of its head office, and
- (c) if applicable, the fact that it is being wound up.]

**Textual Amendments**

**F748** S. 693 became s. 693(1) (1.1.1993) by virtue of S.I. 1992/3179, reg. 3, Sch. 2 para.6.

**F749** S. 693(a) repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 212(3), [Sch. 17 Pt. I](#) (the repeal being or coming into force as mentioned in S.I. 1986/2246, art. 5, [Sch. 4](#), S.I. 1988/740, art. 2, Sch., S.I. 1988/1960, art. 4 (as amended) and S.I. 1988/2285, art. 5 and being otherwise (*prosp.*))

**F750** Words repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 212(3), [Sch. 17 Pt. I](#) (the repeal being or coming into force as mentioned in S.I. 1986/2246, art. 5, [Sch. 4](#), S.I. 1988/740, art. 2, Sch., S.I. 1988/1960, art. 4 (as amended) and S.I. 1988/2285, art. 5 and being otherwise (*prosp.*))

**F751** S. 693(2)-(4) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, [Sch. 2 para.6](#).



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**Modifications etc. (not altering text)**

**C323** S. 693 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C324** S. 693(1)(a) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

**C325** S. 693(1)(a)(d) applied (19.6.1995) by S.I. 1995/1537, reg. 20, **Sch. 4 Pt. III para. 12**

**C326** S. 693(1)(d) modified by S.I. 1991/823, reg. 2(1), **Sch. 1**

**694 Regulation of overseas companies in respect of their names.**

- (1) If it appears to the Secretary of State that the corporate name of an overseas company is a name by which the company, had it been formed under this Act, would on the relevant date [<sup>F752</sup>(determined in accordance with subsections (3A) and (3B))] have been precluded from being registered by section 26 either—
  - (a) because it falls within subsection (1) of that section, or
  - (b) if it falls within subsection (2) of that section, because the Secretary of State would not approve the company's being registered with that name,the Secretary of State may serve a notice on the company, stating why the name would not have been registered.
- (2) If the corporate name of an overseas company is in the Secretary of State's opinion too like a name appearing on the relevant date in the index of names kept by the registrar of companies under section 714 or which should have appeared in that index on that date, or is the same as a name which should have so appeared, the Secretary of State may serve a notice on the company specifying the name in the index which the company's name is too like or which is the same as the company's name.
- (3) No notice shall be served on a company under subsection (1) or (2) later than 12 months after the relevant date <sup>F753</sup> . . .
- [<sup>F754</sup>(3A) For the purposes of subsections (1) to (3), the relevant date, in relation to a company, is the date on which it has complied with paragraph 1 of Schedule 21A or section 691(1) or, if there is more than one such date, the first date on which it has complied with that paragraph or that subsection since becoming an overseas company.
- (3B) But where the company's corporate name has changed since the date ascertained in accordance with subsection (3A), the relevant date is the date on which the company has, in respect of the change or, if more than one, the latest change, complied with paragraph 7(1) of Schedule 21A or section 692(2), as the case may be.]
- (4) An overseas company on which a notice is served under subsection (1) or (2)—
  - (a) may deliver to the registrar of companies for registration a statement in the prescribed form specifying a name approved by the Secretary of State other than its corporate name under which it proposes to carry on business in Great Britain, and
  - (b) may, after that name has been registered, at any time deliver to the registrar for registration a statement in the prescribed form specifying a name approved by the Secretary of State (other than its corporate name) in substitution for the name previously registered.
- (5) The name by which an overseas company is for the time being registered under subsection (4) is, for all purposes of the law applying in Great Britain (including this Act and the <sup>M39</sup>Business Names Act 1985), deemed to be the company's corporate name; but—

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- (a) this does not affect references to the corporate name in this section, or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and
  - (b) any legal proceedings that might have been continued or commenced against the company by its corporate name or its name previously registered under this section may be continued or commenced against it by its name for the time being so registered.
- (6) An overseas company on which a notice is served under subsection (1) or (2) shall not at any time after the expiration of 2 months from the service of that notice (or such longer period as may be specified in that notice) carry on business in Great Britain under its corporate name.

Nothing in this subsection or in section 697(2) (which imposes penalties for its contravention) invalidates any transaction entered into by the company.

- (7) The Secretary of State may withdraw a notice served under subsection (1) or (2) at any time before the end of the period mentioned in subsection (6); and that subsection does not apply to a company served with a notice which has been withdrawn.

#### Textual Amendments

**F752** Words in s. 694(1) substituted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 7(2)**.

**F753** S. 694(3)(a)(b) and words repealed (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 7(3)**.

**F754** S. 694(3A)(3B) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para. 7(4)**.

#### Modifications etc. (not altering text)

**C327** S. 694 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 14**

**C328** S. 694(4) extended with modifications by Banking Act 1987 (c. 22, SIF 10), **ss. 72(1)(2), 78(1)(2)**

#### Marginal Citations

**M39** 1985 c. 7.

### [<sup>F755</sup> 694A] **Service of documents: companies to which section 690A applies.**

- (1) This section applies to any company to which section 690A applies.
- (2) Any process or notice required to be served on a company to which this section applies in respect of the carrying on of the business of a branch registered by it under paragraph 1 of Schedule 21A is sufficiently served if—
- (a) addressed to any person whose name has, in respect of the branch, been delivered to the registrar as a person falling within paragraph 3(e) of that Schedule, and
  - (b) left at or sent by post to the address for that person which has been so delivered.
- (3) Where—
- (a) a company to which this section applies makes default, in respect of a branch, in delivering to the registrar the particulars mentioned in paragraph 3(e) of Schedule 21A, or
  - (b) all the persons whose names have, in respect of a branch, been delivered to the registrar as persons falling within paragraph 3(e) of that Schedule are dead

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or have ceased to reside in Great Britain, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Great Britain.

- (4) Where a company to which this section applies has more than one branch in Great Britain, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this section as required to be served in respect of the carrying on of the business of each of its branches.]

#### Textual Amendments

**F755** S. 694A inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.8.

### 695 Service of documents on overseas company.

- (1) Any process or notice required to be served on an overseas company [<sup>F756</sup>to which section 691 applies] is sufficiently served if addressed to any person whose name has been delivered to the registrar under preceding sections in this Part and left at or sent by post to the address which has been so delivered.

- (2) However—

- (a) where such a company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices, or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Great Britain.

#### Textual Amendments

**F756** Words in s. 695(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.9.

### [<sup>F757</sup>695A Registrar to whom documents to be delivered: companies to which section 690A applies.

- (1) References to the registrar, in relation to a company to which section 690A applies, (except references in Schedule 21C) shall be construed in accordance with the following provisions.

- (2) The documents which a company is required to deliver to the registrar shall be delivered—

- (a) to the registrar for England and Wales, if required to be delivered in respect of a branch in England and Wales, and
- (b) to the registrar for Scotland, if required to be delivered in respect of a branch in Scotland.

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- (3) If a company closes a branch in a part of Great Britain, it shall forthwith give notice of that fact to the registrar for that part; and from the date on which notice is so given it is no longer obliged to deliver documents to that registrar in respect of that branch.
- (4) In subsection (3) above, the reference to closing a branch in either part of Great Britain includes a reference to a branch ceasing to be situated in that part on becoming situated elsewhere.]

#### Textual Amendments

**F757** S. 695A inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.10.

### 696 <sup>F758</sup>Office where documents to be filed.

- (1) Any document which an overseas company [<sup>F759</sup>to which section 691 applies;] is required to deliver to the registrar of companies shall be delivered to the registrar at the registration office in England and Wales or Scotland, according to where the company has established a place of business.
- (2) If the company has established a place of business both in England and Wales and in Scotland, the document shall be delivered at the registration office both in England and Wales and in Scotland.
- (3) References in this Part [<sup>F760</sup>(except references in Schedule 21C)] to the registrar of companies [<sup>F761</sup>, in relation to a company to which section 691 applies,] are to be construed in accordance with the above subsections.
- (4) If an overseas company [<sup>F762</sup>to which section 691 applies] ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of that fact to the registrar of companies for that part; and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar ceases.

#### Textual Amendments

**F758** A new s. 696 commencing “References to” substituted (*prosp.*) for s. 696 commencing “Any document” by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), 215(2), Sch. 19 para. 13

**F759** Words in s. 696(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para. 11(a).

**F760** Words in s. 696(3) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para.4.

**F761** Words in s. 696(3) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para. 11(b).

**F762** Words in s. 696(4) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para. 11(c).

### 697 Penalties for non-compliance.

- (1) If an overseas company fails to comply with any of sections 691 to 693 and 696, the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention.
- (2) If an overseas company contravenes section 694(6), the company and every officer or agent of it who knowingly and wilfully authorises or permits the contravention is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

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[<sup>F763</sup>(3) if an overseas company fails to comply with section 695A or Schedule 21A, the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention]

#### Textual Amendments

**F763** S. 697(3) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.12.

#### Modifications etc. (not altering text)

**C329** S. 697(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 15, 16, 17

### <sup>F765</sup>698 Definitions <sup>F764</sup> . . .

(1) For purposes of this Chapter—

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director”, in relation to an overseas company, includes shadow director; and

“secretary” includes any person occupying the position of secretary by whatever name called.

[<sup>F766</sup>(2) For the purposes of this Part (except section 699A and Schedule 21C):

(a) where a branch comprises places of business in more than one part of the United Kingdom, the branch shall be treated as being situated in that part of the United Kingdom where its principal place of business is situated; and

(b) “branch” means a branch within the meaning of the Council Directive concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (the Eleventh Company Law Directive, [89/666/EEC](#))]

#### Textual Amendments

**F764** S. 698: words in the sidenote omitted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para. 13(2).

**F765** S. 698 became s. 698(1) (1.1.1993) by virtue of S.I. 1992/3179, reg. 3, Sch. 2 para. 13(2).

**F766** S. 698(2) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para. 13(3).

### 699 Channel Islands and Isle of Man companies.

(1) With the exceptions specified in subsection (3) below, the provisions of this Act [<sup>F767</sup>and the Companies Act 2006] requiring documents to be forwarded or delivered to or filed with the registrar of companies and applying to companies formed and registered under Part I apply also (if they would not otherwise) to an overseas company [<sup>F768</sup>to which section 691 applies] incorporated in the Channel Islands or the Isle of Man.

(2) Those provisions apply to such a company—

(a) if it has established a place of business in England and Wales, as if it were registered in England and Wales,

(b) if it has established a place of business in Scotland, as if it were registered in Scotland, and

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(c) if it has established a place of business both in England and Wales and in Scotland, as if it were registered in both England and Wales and Scotland, with such modifications as may be necessary and, in particular, apply in a similar way to documents relating to things done outside Great Britain as if they had been done in Great Britain.

(3) The exceptions are—

section 6(1) (resolution altering company's objects),  
section 18 (alteration of memorandum or articles by statute or statutory instrument),  
[<sup>F769</sup>section 441 of the Companies Act 2006] (directors' duty to file accounts),  
section 288(2) (notice to registrar of change of directors or secretary), and  
[<sup>F770</sup>Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company's constitution)], so far as applicable to a resolution altering a company's memorandum or articles.

#### Textual Amendments

- F767** Words in s. 699(1) inserted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 1(10)(a)** (with art. 12)
- F768** Words in s. 699(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 3, **Sch. 2 para.14**.
- F769** Words in s. 699(3) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 84** (with arts. 6, 11, 12)
- F770** Words in s. 699(3) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 1(10)(b)** (with art. 12)

## [<sup>F771</sup>CHAPTER II

### DELIVERY OF ACCOUNTS AND REPORTS]

#### Textual Amendments

- F771** Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

[<sup>F772</sup>**699AC** Credit and financial institutions to which the Bank Branches Directive (89/117/EEC) applies.

- (1) This section applies to any credit or financial institution—
- (a) which is incorporated or otherwise formed outside the United Kingdom and Gibraltar,
  - (b) whose head office is outside the United Kingdom and Gibraltar, and
  - (c) which has a branch in Great Britain.
- (2) Schedule 21C (delivery of accounts and reports) shall have effect in relation to any institution to which this section applies.

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(3) In this section—

“branch”, in relation to a credit or financial institution, means a place of business which forms a legally dependent part of the institution and which conducts directly all or some of the operations inherent in its business;

[<sup>F773</sup>“credit institution” means a credit institution as defined in [<sup>F774</sup>Article 4(1)(a) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006] relating to the taking up and pursuit of the business of credit institutions, that is to say an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;]

“financial institution” means a financial institution within the meaning of Article 1 of the Council Directive on the obligations of branches established in a Member State of credit and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (the Bank Branches Directive, 89/117/EEC); and

“undertaking” has the same meaning as in Part VII.]

#### Textual Amendments

**F772** S. 699A inserted (1.1.1993) by S.I. 1992/3179, reg. 2(1).

**F773** Definition of “credit institution” in s. 699A(3) substituted (22.11.2000) by S.I. 2000/2952, reg. 2(3)

**F774** Words in definition of “credit institution” in s. 699A(3) substituted (1.1.2007) by The Capital Requirements Regulations 2006 (S.I. 2006/3221), reg. 1(1), Sch. 4 para. 2(3)

[<sup>F775</sup>**699AA** Companies to which the Eleventh Company Law Directive applies.

(1) This section applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar,
- (b) has a branch in Great Britain, and
- (c) is not an institution to which section 699A applies.

(2) Schedule 21D to this Act (delivery of accounts and reports) shall have effect in relation to any company to which this section applies.]

#### Textual Amendments

**F775** S. 699AA inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.16.

[<sup>F776</sup>**699B** Scope of sections 700 to 703.

Sections 700 to 703 shall not apply to any institution to which section 699A applies [<sup>F777</sup>or to any limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in the United Kingdom]].

#### Textual Amendments

**F776** S. 699B inserted (1.1.1993) by S.I. 1992/3179, reg. 2(1).

**F777** Words in s. 699B inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.17.

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## 700 Preparation of accounts and reports by overseas companies.

- (1) Every overseas company shall in respect of each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditors' report, as would be required if the company were formed and registered under this Act.
- (2) The Secretary of State may by order—
  - (a) modify the requirements referred to in subsection (1) for the purpose of their application to overseas companies;
  - (b) exempt an overseas company from those requirements or from such of them as may be specified in the order.
- (3) An order may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (4) An order 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.

### Modifications etc. (not altering text)

**C330** S. 700 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.

**C331** S. 700(1) modified by S.I. 1990/440, art. 2, **Sch.**

## [<sup>F778</sup>701 Oversea company's financial year and accounting reference periods.

- (1) [<sup>F779</sup>Sections 390 to 392 of the Companies Act 2006] (financial year and accounting reference periods) apply to an overseas company, subject to the following modifications.
- (2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Great Britain.
- (3) Omit [<sup>F780</sup>section 392(3)] (restriction on frequency with which current accounting reference period may be extended).]

### Textual Amendments

**F778** Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

**F779** Words in s. 701(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2009/948), arts. 2(2), 3(1), **Sch. 1 para. 85(a)** (with arts. 6, 11, 12)

**F780** Words in s. 701(3) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2009/948), arts. 2(2), 3(1), **Sch. 1 para. 85(b)** (with arts. 6, 11, 12)

### Modifications etc. (not altering text)

**C332** S. 701 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.



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## [<sup>F781</sup>702 Delivery to registrar of accounts and reports of overseas company.

- (1) An overseas company shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with section 700.

If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

- (2) In relation to an overseas company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference 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 12 months, the period allowed is 13 months from the first anniversary of the company's establishing a place of business in Great Britain.
- (4) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the company under [<sup>F782</sup>section 392 of the Companies Act 2006] (alteration of accounting reference date), the period allowed is that applicable in accordance with the above provisions or 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 an overseas company extend that period by such further period as may be specified in the notice.
- (6) 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.]

### Textual Amendments

**F781** Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

**F782** Words in s. 702(4) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2009/948), arts. 2(2), 3(1), **Sch. 1 para. 86** (with arts. 6, 11, 12)

### Modifications etc. (not altering text)

**C333** S. 702 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.

## [<sup>F783</sup>703 Penalty for non-compliance.

- (1) If the requirements of section 702(1) are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Act, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

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- (3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Act.]

#### Textual Amendments

**F783** Pt. XXIII Chap. II (ss. 700–703) substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 3**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 13**

#### Modifications etc. (not altering text)

**C334** S. 703 modified (1.1.1993) by S.I. 1992/3179, reg. 5, **Sch. 4 para. 4(2)**.

VALID FROM 01/10/2009

### F784F784 CHAPTER III

#### REGISTRATION OF CHARGES

#### Textual Amendments

**F784** Ss. 651–706 repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2008/2860, **art. 4, Sch. 1** (with arts. 5, 7, 8, **Sch. 2** (as amended by S.I. 2009/1802, **art. 18, Sch.**))

#### 703A <sup>[F785]</sup> Introductory provisions.]

- (1) The provisions of this Chapter have effect for securing the registration in Great Britain of charges on the property of a registered overseas company.
- (2) Section 395(2) and (3) (meaning of “charge” and “property”) have effect for the purposes of this Chapter.
- (3) A “registered overseas company”, in relation to England and Wales or Scotland, means an overseas company which has duly delivered documents to the registrar for that part of Great Britain under section 691 and has not subsequently given notice to him under section 696(4) that it has ceased to have an established place of business in that part.
- (4) References in this Chapter to the registrar shall be construed in accordance with section 703E below and references to registration, in relation to a charge, are to registration in the register kept by him under this Chapter.

#### Textual Amendments

**F785** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 105, 213(2), 215(2), **Sch. 15** (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

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### **[<sup>F785</sup>703B] Charges requiring registration.**

- (1) The charges requiring registration under this Chapter are those which if created by a company registered in Great Britain would require registration under Part XII of this Act.
- (2) Whether a charge is one requiring registration under this Chapter shall be determined—
  - (a) in the case of a charge over property of a company at the date it delivers documents for registration under section 691, as at that date,
  - (b) in the case of a charge created by a registered overseas company, as at the date the charge is created, and
  - (c) in the case of a charge over property acquired by a registered overseas company, as at the date of the acquisition.
- (3) In the following provisions of this Chapter references to a charge are, unless the context otherwise requires, to a charge requiring registration under this Chapter.

Where a charge not otherwise requiring registration relates to property by virtue of which it requires to be registered and to other property, the references are to the charge so far as it relates to property of the former description.]

#### **Textual Amendments**

**F785** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

### **[<sup>F786</sup>703C] The register.**

- (1) The registrar shall keep for each registered overseas company a register, in such form as he thinks fit, of charges on property of the company.
- (2) The register shall consist of a file containing with respect to each such charge the particulars and other information delivered to the registrar under or by virtue of the following provisions of this Chapter.
- (3) Section 397(3) to (5) (registrar’s certificate as to date of delivery of particulars) applies in relation to the delivery of any particulars or other information under this Chapter.]

#### **Textual Amendments**

**F786** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

### **[<sup>F787</sup>703D] Company’s duty to deliver particulars of charges for registration.**

- (1) If when an overseas company delivers documents for registration under section 691 any of its property is situated in Great Britain and subject to a charge, it is the

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company's duty at the same time to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.

- (2) Where a registered overseas company—
- (a) creates a charge on property situated in Great Britain, or
  - (b) acquires property which is situated in Great Britain and subject to a charge,
- it is the company's duty to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration within 21 days after the date of the charge's creation or, as the case may be, the date of the acquisition.

This subsection does not apply if the property subject to the charge is at the end of that period no longer situated in Great Britain.

- (3) Where the preceding subsections do not apply and property of a registered overseas company is for a continuous period of four months situated in Great Britain and subject to a charge, it is the company's duty before the end of that period to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.
- (4) Particulars of a charge required to be delivered under subsections (1), (2) or (3) may be delivered for registration by any person interested in the charge.
- (5) If a company fails to comply with subsection (1), (2) or (3), then, unless particulars of the charge have been delivered for registration by another person, the company and every officer of it who is in default is liable to a fine.
- (6) Section 398(2), (4) and (5) (recovery of fees paid in connection with registration, filing of particulars in register and sending of copy of particulars filed and note as to date) apply in relation to particulars delivered under this Chapter.]

#### Textual Amendments

**F787** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

#### <sup>F788</sup>703E Registrar to whom particulars, &c. to be delivered.

- (1) The particulars required to be delivered by section 703D(1) (charges over property of overseas company becoming registered in a part of Great Britain) shall be delivered to the registrar to whom the documents are delivered under section 691.
- (2) The particulars required to be delivered by section 703D(2) or (3) (charges over property of registered overseas company) shall be delivered—
  - (a) if the company is registered in one part of Great Britain and not in the other, to the registrar for the part in which it is registered, and
  - (b) if the company is registered in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part;

and in any other case the particulars shall be delivered to the registrars for both parts of Great Britain.

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(3) Other documents required or authorised by virtue of this Chapter to be delivered to the registrar shall be delivered to the registrar or registrars to whom particulars of the charge to which they relate have been, or ought to have been, delivered.

(4) If a company gives notice under section 696(4) that it has ceased to have an established place of business in either part of Great Britain, charges over property of the company shall cease to be subject to the provisions of this Chapter, as regards registration in that part of Great Britain, as from the date on which notice is so given.

This is without prejudice to rights arising by reason of events occurring before that date.]

#### Textual Amendments

**F788** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

#### [<sup>F789</sup>703E] **Effect of failure to deliver particulars, late delivery and effect of errors and omissions.**

(1) The following provisions of Part XII—

- (a) section 399 (effect of failure to deliver particulars),
- (b) section 400 (late delivery of particulars), and
- (c) section 402 (effect of errors and omissions in particulars delivered),

apply, with the following modifications, in relation to a charge created by a registered overseas company of which particulars are required to be delivered under this Chapter.

(2) Those provisions do not apply to a charge of which particulars are required to be delivered under section 703D(1) (charges existing when company delivers documents under section 691).

(3) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the references to the period of 21 days after the charge's creation shall be construed as references to the period of four months referred to in that subsection.]

#### Textual Amendments

**F789** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

#### [<sup>F790</sup>703D] **Delivery of further particulars or memorandum.**

Sections 401 and 403 (delivery of further particulars and memorandum of charge ceasing to affect company's property) apply in relation to a charge of which particulars have been delivered under this Chapter.]

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#### Textual Amendments

**F790** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

#### [<sup>F791</sup>703H Further provisions with respect to voidness of charges.

- (1) The following provisions of Part XII apply in relation to the voidness of a charge by virtue of this Chapter—
- (a) section 404 (exclusion of voidness as against unregistered charges),
  - (b) section 405 (restrictions on cases in which charge is void),
  - (c) section 406 (effect of exercise of power of sale), and
  - (d) section 407 (effect of voidness on obligation secured).
- (2) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the reference in section 404 to the period of 21 days after the charge's creation shall be construed as a reference to the period of four months referred to in that subsection.]

#### Textual Amendments

**F791** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

#### [<sup>F792</sup>703I Additional information to be registered.

- (1) Section 408 (particulars of taking up of issue of debentures) applies in relation to a charge of which particulars have been delivered under this Chapter.
- (2) Section 409 (notice of appointment of receiver or manager) applies in relation to the appointment of a receiver or manager of property of a registered overseas company.
- (3) Regulations under section 410 (notice of crystallisation of floating charge, &c.) may apply in relation to a charge of which particulars have been delivered under this Chapter; but subject to such exceptions, adaptations and modifications as may be specified in the regulations.]

#### Textual Amendments

**F792** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

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**[<sup>F793</sup>703J Copies of instruments and register to be kept by company.**

- (1) Sections 411 and 412 (copies of instruments and register to be kept by company) apply in relation to a registered overseas company and any charge over property of the company situated in Great Britain.
- (2) They apply to any charge, whether or not particulars are required to be delivered to the registrar.
- (3) In relation to such a company the references to the company's registered office shall be construed as references to its principal place of business in Great Britain.]

**Textual Amendments**

**F793** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. [105](#), [213\(2\)](#), [215\(2\)](#), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

**[<sup>F794</sup>703K Power to make further provision by regulations.**

- (1) The Secretary of State may by regulations make further provision as to the application of the provisions of this Chapter, or the provisions of Part XII applied by this Chapter, in relation to charges of any description specified in the regulations.
- (2) The regulations may apply any provisions of regulations made under section 413 (power to make further provision with respect to application of Part XII) or make any provision which may be made under that section with respect to the application of provisions of Part XII.]

**Textual Amendments**

**F794** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. [105](#), [213\(2\)](#), [215\(2\)](#), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

**[<sup>F795</sup>703L Provisions as to situation of property.**

- (1) The following provisions apply for determining for the purposes of this Chapter whether a vehicle which is the property of an overseas company is situated in Great Britain—
  - (a) a ship, aircraft or hovercraft shall be regarded as situated in Great Britain if, and only if, it is registered in Great Britain;
  - (b) any other description of vehicle shall be regarded as situated in Great Britain on a day if, and only if, at any time on that day the management of the vehicle is directed from a place of business of the company in Great Britain;and for the purposes of this Chapter a vehicle shall not be regarded as situated in one part of Great Britain only.
- (2) For the purposes of this Chapter as it applies to a charge on future property, the subject-matter of the charge shall be treated as situated in Great Britain unless it relates exclusively to property of a kind which cannot, after being acquired or coming

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into existence, be situated in Great Britain; and references to property situated in a part of Great Britain shall be similarly construed.]

#### Textual Amendments

**F795** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

#### [<sup>F796</sup>703M] Other supplementary provisions.

- (1) The following provisions of Part XII apply for the purposes of this Chapter—
- (a) section 414 (construction of references to date of creation of charge),
  - (b) section 415 (prescribed particulars and related expressions),
  - (c) section 416 (notice of matters disclosed on the register),
  - (d) section 417 (power of court to dispense with signature),
  - (e) section 418 (regulations) and
  - (f) section 419 (minor definitions).]

#### Textual Amendments

**F796** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

#### [<sup>F797</sup>703N] Index of defined expressions.

The following Table shows the provisions of this Chapter and Part XII defining or otherwise explaining expressions used in this Chapter (other than expressions used only in the same section)—

charge	sections 703A(2), 703B(3) and 395(2)
charge requiring registration	sections 703B(1) and 396
creation of charge	sections 703M(f) and 419(2)
date of acquisition (of property by a company)	sections 703M(f) and 419(3)
date of creation of charge	sections 703M(a) and 414
property	sections 703A(2) and 395(2)
registered overseas company	section 703A(3)
registrar and registration in relation to a charge	sections 703A(4) and 703E
situated in Great Britain in relation to vehicles	section 703L(1)
in relation to future property	section 703L(2)]



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#### Textual Amendments

**F797** Part XXIII Chap. III (ss. 703A–703N) inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 105, 213(2), 215(2), [Sch. 15](#) (in place of sections 409 and 424 as mentioned in s. 92 of the 1989 Act)

## [<sup>F798</sup>CHAPTER IV WINDING UP ETC.]

#### Textual Amendments

**F798** Chapter IV (ss. 703O-703R) inserted (1.1.1993) by [S.I. 1992/3179, reg. 3, Sch. 2 para.19](#).

#### <sup>F799</sup>703C Scope of Chapter.

This Chapter applies to any company to which section 690A applies.

#### Textual Amendments

**F799** [S. 703O](#) inserted (1.1.1993) by [S.I. 1992/3179, reg. 3, Sch. 2 para.19](#).

#### <sup>F800</sup>703PP Particulars to be delivered to the registrar: winding up.

- (1) Subject to subsection (8), where a company to which this Chapter applies is being wound up, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—
  - (a) the name of the company;
  - (b) whether the company is being wound up by an order of a court and, if so, the name and address of the court and the date of the order;
  - (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
  - (d) whether the winding up has been instigated by:
    - (i) the company's members;
    - (ii) the company's creditors; or
    - (iii) some other person or persons,and, in the case of (iii) the identity of that person or those persons shall be given; and
  - (e) the date on which the winding up became or will become effective.
- (2) The period allowed for delivery of a return under subsection (1) above is 14 days from the date on which the winding up begins.
- (3) Subject to subsection (8), a person appointed to be the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—
  - (a) his name and address,

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- (b) the date of his appointment, and
  - (c) a description of such of his powers, if any, as are derived otherwise than from the general law or the company's constitution.
- (4) The period allowed for delivery of a return under subsection (3) above is 14 days from the date of the liquidator's appointment.
- (5) Subject to subsection (8), the liquidator of a company to which this Chapter applies shall deliver to the registrar for registration a return in the prescribed form upon the occurrence of the following events—
- (a) the termination of the winding up of the company, and
  - (b) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance.
- The following particulars shall be given:
- (i) in the case of (a), the name of the company and the date on which the winding up terminated; and
  - (ii) in the case of (b), the name of the company and the date on which the company ceased to be registered.
- (6) The period allowed for delivery of a return under subsection (5) is 14 days from the date of the event concerned.
- (7) The obligation to deliver a return under subsection (1), (3) or (5) above shall apply in respect of each branch which the company has in Great Britain (though where the company has more than one branch in a part of Great Britain a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).
- (8) No return is required under subsection (1), (3), or (5) above in respect of a winding up under Part V of the Insolvency Act 1986.<sup>M40</sup>

#### Textual Amendments

**F800** S. 703P inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.19.

#### Marginal Citations

**M40** 1986 c. 45.

### <sup>F801</sup>**703P Particulars to be delivered to the registrar: insolvency proceedings etc.**

- (1) Where a company to which this Chapter applies becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars—
- (a) the name of the company;
  - (b) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;
  - (c) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;
  - (d) whether the proceedings have been instigated by:

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- (i) the company's members;
  - (ii) the company's creditors; or
  - (iii) some other person or persons,
- and, in the case of (iii) the identity of that person or those persons shall be given; and
- (e) the date on which the proceedings became or will become effective.
- (2) Where a company to which this Chapter applies ceases to be subject to any of the proceedings mentioned in subsection (1) it shall deliver to the registrar for registration a return in the prescribed form containing the following particulars:
- (a) the name of the company; and
  - (b) the date on which it ceased to be subject to the proceedings.
- (3) The period allowed for delivery of a return under subsection (1) or (2) is 14 days from the date on which the company becomes subject, or (as the case may be) ceases to be subject to the proceedings concerned.
- (4) The obligation to deliver a return under subsection (1) or (2) shall apply in respect of each branch which the company has in Great Britain (though where the company has more than one branch in a part of Great Britain a return which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

#### Textual Amendments

**F801** S. 703Q inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.19.

#### ~~F802~~ **703R** Penalty for non-compliance

- (1) If a company fails to comply with section 703P(1) or 703Q(1) or (2) within the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (2) If a liquidator fails to comply with section 703P(3) or (5) within the period allowed for compliance, he is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (3) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing compliance with the requirements concerned.

#### Textual Amendments

**F802** S. 703R inserted (1.1.1993) by S.I. 1992/3179, reg. 3, Sch. 2 para.19.

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## PART XXIV

### THE REGISTRAR OF COMPANIES, HIS FUNCTIONS AND OFFICES

#### Modifications etc. (not altering text)

- C335** Pt. XXIV (ss. 704-715) applied (with modifications) (6.1.1997) by S.I. 1996/2827, reg. 4, **Sch. 1**
- C336** Power to amend and modify Pt. 24 conferred (1.7.2005) by **Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 58(a), 65; S.I. 2004/3322, art. 2(3), Sch. 3** (subject to arts. 3-13)
- C337** Pt. 24 (ss. 704-715A) modified (1.7.2005) by **The Community Interest Company Regulations 2005 (S.I. 2005/1788), reg. 34(4)**

#### 704 Registration offices.

- (1) For the purposes of the registration of companies under the Companies Acts, there shall continue to be offices in England and Wales and in Scotland, at such places as the Secretary of State thinks fit.
  - (2) The Secretary of State may appoint such registrars, assistant registrars, clerks and servants as he thinks necessary for that purpose, and may make regulations with respect to their duties, and may remove any persons so appointed.
  - (3) The salaries of the persons so appointed continue to be fixed by the Secretary of State, with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.
  - (4) The Secretary of State may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of companies; and any seal so prepared is referred to in this Act as the registrar's official seal.
  - (5) Wherever any act is by the Companies Acts directed to be done to or by the registrar of companies, it shall (until the Secretary of State otherwise directs) be done to or by the existing registrar of companies in England and Wales or in Scotland (as the case may be), or to or by such person as the Secretary of State may for the time being authorise.
  - (6) In the event of the Secretary of State altering the constitution of the existing registration offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Secretary of State may appoint.
- [<sup>F803</sup>(7) Subsection (8) below applies where by virtue of an order made under section 69 of the Deregulation and Contracting Out Act 1994 a person is authorised by the registrar of companies to accept delivery of any class of documents which are under any provision of the Companies Acts to be delivered to the registrar.
- <sup>F803</sup>(8) If—
- (a) the registrar directs that documents of that class shall be delivered to a specified address of the authorised person; and
  - (b) the direction is printed and made available to the public (with or without payment),

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any document of that class which is delivered to an address other than the specified address shall be treated for the purposes of those Acts as not having been delivered.]

#### Textual Amendments

**F803** S. 704(7)(8) inserted (3.1.1995) by 1994 c. 40, ss. 76, 82(2)(f), **Sch. 16 para. 8**

#### Modifications etc. (not altering text)

**C338** S. 704 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C339** S. 704(2) amended (3.12.1998) by 1998 c. 48, ss. 23, 25(3), **Sch. 3 para. 2**

**C340** S. 704(5) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 paras. 15, 16, 17**  
S. 704(5) amended (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para. 10.**

**C341** S. 704(5)(7)(8) applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, **Sch. 2 para. 1**

#### [<sup>F804</sup>705 Companies' registered numbers.

- (1) The registrar shall allocate to every company a number, which shall be known as the company's registered number.
- (2) Companies' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.
- (3) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.
- (4) A change of a company's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of section 351(1)(a) as to the use of the company's registered number on [<sup>F805</sup>business letters, order forms and websites] is satisfied by the use of either the old number or the new.
- (5) In this section "company" includes—
  - [ any oversea company which has complied with paragraph 1 of Schedule 21A
  - <sup>F806</sup>(za) other than a company which appears to the registrar not to have a branch in Great Britain;]
  - (a) any oversea company which has complied with section 691 (delivery of statutes to registrar, &c.), other than a company which appears to the registrar not to have a place of business in Great Britain; and
  - (b) any body to which any provision of this Act applies by virtue of section 718 (unregistered companies).]

#### Textual Amendments

**F804** S. 705 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 14**

**F805** Words in s. 705(4) substituted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 6, **Sch. 1 para. 3**

**F806** S. 705(za) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para.5.**

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**Modifications etc. (not altering text)**

**C342** S. 705 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C343** S. 705 applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, Sch. 2 para. 2

**C344** S. 705(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 15, 16, 17

**[<sup>F807</sup>705] Registration of branches of oversea companies.**

- (1) For each company to which section 690A applies the registrar, shall keep, in such form as he thinks fit, a register of the branches registered by the company under paragraph 1 of Schedule 21A.
- (2) The registrar shall allocate to every branch registered by him under this section a number, which shall be known as the branch's registered number.
- (3) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.
- (4) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.
- (5) A change of a branch's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of section 693(2) as to the use of the branch's registered number on business letters and order forms is satisfied by the use of either the old number or the new.
- (6) Where an oversea company to which section 690A applies files particulars, in any circumstances permitted by this Act, by:
  - (i) adopting particulars already filed in respect of another branch; or
  - (ii) including in one document particulars which are to relate to two or more branches,
 the registrar shall ensure that the particulars concerned become part of the registered particulars of each branch concerned.]

**Textual Amendments**

**F807** S. 705A inserted (1.1.1993) by S.I. 1992/3179, reg. 3(2).

**[<sup>F808</sup>706] Delivery to the registrar of documents in legible form.**

- (1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents in legible form.
- (2) The document must—
  - (a) state in a prominent position the registered number of the company to which it relates, [<sup>F809</sup>and, if the document is delivered under sections 695A(3), 703P or 703Q or Schedules 21A or 21D the registered number of the branch to which it relates,]
  - (b) satisfy any requirements prescribed by regulations for the purposes of this section, and

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- (c) conform to such requirements as the registrar may specify for the purpose of enabling him to copy the document.
  - (3) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
  - (4) Where the registrar serves such a notice, then, unless a replacement document—
    - (a) is delivered to him within 14 days after the service of the notice, and
    - (b) complies with the requirements of this section (or section [F810707B]) or is not rejected by him for failure to comply with those requirements,the original document shall be deemed not to have been delivered to him.
- But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’ notice.
- (5) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document.]

**Textual Amendments**

- F808** S. 706 substituted by Companies Act 1989 (c. 40, SIF 27), ss. 125(1), 213(2)
- F809** Words in s. 706(2)(a) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para. 6.
- F810** Words in s. 706(4)(b) substituted (22.12.2000) by S.I. 2000/3373, art. 31(4)(a)

**Modifications etc. (not altering text)**

- C345** S. 706 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 18
- C346** S. 706 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I
- C347** Ss. 706, 707A, 707B applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, Sch. 2 para. 3
- C348** S. 706(1) amended (12.2.1992) by S.I. 1992/225, reg. 121, Sch. 8 para. 10.

F811707 .....

**Textual Amendments**

- F811** S. 707 repealed (22.12.2000) by S.I. 2000/3373, art. 31(4)

[F812707A]The keeping of company records by the registrar.

- (1) F813 .....
- (2) The originals of documents delivered to the registrar in legible form shall be kept by him for ten years, after which they may be destroyed.
- (3) Where a company has been dissolved, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any records in his custody relating to the company may be removed to the Public Record Office; and records in

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respect of which such a direction is given shall be disposed of in accordance with the enactments relating to that Office and the rules made under them.

This subsection does not extend to Scotland.

- (4) In subsection (3) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.]

#### Textual Amendments

**F812** S. 707A inserted (1.7.1991 subject to transitional provisions in art. 3 of the commencing S.I.) by Companies Act 1989 (c. 40, SIF 27), ss. 126(1), 213(2), 215(2); S.I. 1991/488, arts. 2, 3

**F813** S. 707A(1) repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2006/3428, art. 7(a), Sch. 2 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

#### Modifications etc. (not altering text)

**C349** S. 707A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C350** Ss. 706, 707A, 707B applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, Sch. 2 para. 3

#### [<sup>F814</sup>707B] Delivery to the registrar using electronic communications

- (1) Electronic communications may be used for the delivery of any document to the registrar under any provision of the Companies Acts (including delivery of a document in the prescribed form), provided that such delivery is in such form and manner as is directed by the registrar.
- (2) Where the document is required under any provision of the Companies Acts to be signed or sealed, it shall instead be authenticated in such manner as is directed by the registrar.
- (3) The document must contain in a prominent position—
  - (a) the name and registered number of the company to which it relates, or
  - (b) if the document is delivered under Part XXIII, the registered number of the branch or place of business of the company to which it relates.
- (4) If a document is delivered to the registrar which does not comply with the requirements imposed by or under this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (5) Where the registrar serves such a notice, then unless a replacement document—
  - (a) is delivered to him within 14 days after the service of the notice, and
  - (b) complies with the requirements of this section (or section 706) or is not rejected by him for failure to comply with those requirements,
 the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’s notice.



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- (6) In this section references to the delivery of a document include references to the forwarding, lodging, registering, sending or submission of a document and to the giving of a notice, and cognate expressions are to be construed accordingly.]

#### Textual Amendments

**F814** S. 707B inserted (22.12.2000) by S.I. 2000/3373, art. 27

#### Modifications etc. (not altering text)

**C351** S. 707B applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C352** Ss. 706, 707A, 707B applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, Sch. 2 para. 3

### 708 Fees payable to registrar.

- (1) The Secretary of State may by regulations made by statutory instrument require the payment to the registrar of companies of such fees as may be specified in the regulations in respect of—

- (a) the performance by the registrar of such functions under the Companies Acts as may be so specified, including the receipt by him of [<sup>F815</sup>any document which under those Acts is required to be delivered to him].
- (b) the inspection of documents . . . <sup>F816</sup> kept by him under those Acts.

- (2) A statutory instrument containing regulations under this section requiring the payment of a fee in respect of a matter for which no fee was previously payable, or increasing a fee, shall be laid before Parliament after being made and shall cease to have effect at the end of the period of 28 days beginning with the day on which the regulations were made (but without prejudice to anything previously done under the regulations or to the making of further regulations) unless in that period the regulations are approved by resolution of each House of Parliament.

In reckoning that period of 28 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

- (3) A statutory instrument containing regulations under this section, where subsection (2) does not apply, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Fees paid to the registrar under the Companies Acts shall be paid into the Consolidated Fund.
- (5) <sup>F817</sup> . . . . .

#### Textual Amendments

**F815** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 127(2)(a), 213(2)

**F816** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 127(2)(b), 212, 213(2), Sch. 24

**F817** S. 708(5) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(3), 1295, 1300, Sch. 16; S.I. 2006/3428, art. 7(c), Sch. 4 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

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**Modifications etc. (not altering text)**

**C353** S. 708 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C354** S. 708(1)(a)(4) amended (12.2.1992) by S.I. 1992/225, reg. 121, **Sch. 8 para.10.**

**709 Inspection, &c. of records kept by the registrar.**

F818

**Textual Amendments**

**F818** S. 709 repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(a)**, Sch. 2 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

[<sup>F819</sup>**710 Certificate of incorporation.**

Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.]

**Textual Amendments**

**F819** Ss. 709-710A substituted (1.7.1991) for ss. 709 and 710 by Companies Act 1989 (c. 40, SIF 27), **ss. 126(2), 213(2)**; S.I. 1991/488, **arts. 2(1), 3**

**Modifications etc. (not altering text)**

**C355** S. 710 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[<sup>F820</sup>**710A Provision and authentication by registrar of documents in non-legible form.**

- (1) Any requirement of the Companies Acts as to the supply by the registrar of a document may, if the registrar thinks fit, be satisfied by the communication by the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by him.
- (2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.]

**Textual Amendments**

**F820** Ss. 709 - 710A substituted (1. 7. 1991) for ss. 709 and 710 by Companies Act 1989 (c. 40, SIF 27), **ss. 126(2), 213(2)**; S.I. 1991/488, **arts. 2(1), 3**

**Modifications etc. (not altering text)**

**C356** S. 710A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**710B Documents relating to Welsh companies.**

F821

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**Textual Amendments**

**F821** S. 710B repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(a)**, Sch. 2 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**711 Public notice by registrar of receipt and issue of certain documents.**

**F822** .....

**Textual Amendments**

**F822** S. 711 repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2006/3428, **art. 7(a)**, Sch. 2 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

[<sup>F823</sup>**711A** **Exclusion of deemed notice.**

- (1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document kept by the registrar of companies (and thus available for inspection) or made available by the company for inspection.
- (2) This does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such inquiries as ought reasonably to be made.
- (3) In this section “document” includes any material which contains information.
- (4) Nothing in this section affects the operation of—
  - (a) section 416 of this Act (under which a person taking a charge over a company’s property is deemed to have notice of matters disclosed on the companies charges register), or
  - (b) section 198 of the Law of Property Act <sup>M41</sup>1925 as it applies by virtue of section 3(7) of the Land Charges Act <sup>M42</sup>1972 (under which the registration of certain land charges under Part XII, or Chapter III of Part XXIII, of this Act is deemed to constitute actual notice for all purposes connected with the land affected).]

**Textual Amendments**

**F823** S. 711A inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 142(1), 213(2), 215(2)**

**Marginal Citations**

**M41** 1925 c.20 (98:1).

**M42** 1972 c.61 (98:2).

<sup>F824</sup>**712** .....

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#### Textual Amendments

**F824** S. 712 repealed (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 127(3), 212, 213(2), Sch. 24; S.I. 1991/488, art. 2(4)

### 713 Enforcement of company's duty to make returns.

- (1) If a company, having made default in complying with any provision of the Companies Acts which requires it to [<sup>F825</sup>deliver a document to the registrar of companies], or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the court may, on an application made to it by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer of it 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 of and incidental to the application shall be borne by the company or by any officers of it responsible for the default.
- (3) Nothing in this section prejudices the operation of any enactment imposing penalties on a company or its officers in respect of any such default as is mentioned above.

#### Textual Amendments

**F825** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 127(4), 213(2)

#### Modifications etc. (not altering text)

**C357** S. 713 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C358** S. 713 applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 14, Sch. 2 para. 4

**C359** S. 713 applied (temp.) (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 4, Sch. 1 para. 2

### 714 Registrar's index of company and corporate names.

- (1) The registrar of companies shall keep an index of the names of the following bodies—
  - (a) companies as defined by this Act,
    - [<sup>F826</sup>(aa) companies incorporated outside the United Kingdom and Gibraltar which have complied with paragraph 1 of Schedule 21A and which do not appear to the registrar of companies not to have a branch in Great Britain,]
  - (b) companies incorporated outside Great Britain which have complied with section 691 and which do not appear to the registrar of companies not to have a place of business in Great Britain,
  - (c) incorporated and unincorporated bodies to which any provision of this Act applies by virtue of section 718 (unregistered companies),
  - (d) limited partnerships registered under the <sup>M43</sup>Limited Partnerships Act 1907
  - [<sup>F827</sup>(da) limited liability partnerships incorporated under the Limited Liability Partnerships Act 2000,]
  - (e) companies within the meaning of the <sup>M44</sup>Companies Act (Northern Ireland) 1960,

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- (f) companies incorporated outside Northern Ireland which have complied with section 356 of that Act (which corresponds with section 691 of this Act), and which do not appear to the registrar not to have a place of business in Northern Ireland, and
  - (g) societies registered under the <sup>M45</sup>Industrial and Provident Societies Act 1965 or the <sup>M46</sup>Industrial and Provident Societies Act (Northern Ireland) 1969.
- (2) The Secretary of State may by order in a statutory instrument vary subsection (1) by the addition or deletion of any class of body, except any within paragraph (a) or (b) of the subsection, whether incorporated or unincorporated; and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F826** S. 714(1)(aa) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 8**.

**F827** S. 714(1)(da) inserted (6.4.2001) by 2000 c. 12, s. 1(6), **Sch. 1 Pt. I para. 1**; S.I. 2000/3316, **art. 2**

**Modifications etc. (not altering text)**

**C360** S. 714 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C361** S. 714 amended (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(3)**, 20(2); S.I. 2001/3538, **art. 2(1)**

**C362** S. 714(1) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 19**

**Marginal Citations**

**M43** 1907 7 Edw. 7 c. 24

**M44** 1960 c. 22 (N.I.).

**M45** 1965 c. 12.

**M46** 1969 c. 24 (N.I.).

<sup>F828</sup>**715** .....

**Textual Amendments**

**F828** S. 715 repealed (1.7.1991) by *Companies Act 1989* (c. 40, SIF 27), ss. 127(3), 212, 213(2), **Sch. 24**; S.I. 1990/488, **art. 2(4)**

[<sup>F829</sup>**715** **Interpretation.**

- (1) In this Part— “document” includes information recorded in any form; and “legible”, in the context of documents in legible or non-legible form, means capable of being read with the naked eye.
- (2) References in this Part to delivering a document include sending, forwarding, producing or (in the case of a notice) giving it.]
- [<sup>F830</sup>(3) References in this Part to the Companies Acts include Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.]

**Textual Amendments**

**F829** S. 715A inserted by *Companies Act 1989* (c. 40, SIF 27), **ss. 127(1)**, 213(2)

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**F830** S. 715A(3) inserted (1.7.2005) by The Community Interest Company Regulations 2005 (S.I. 2005/1788), reg. 34(2)

**Modifications etc. (not altering text)**

**C363** S. 715A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

<sup>F831</sup>**PART XXV**

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

**Textual Amendments**

**F831** Ss. 716-734 repealed (prosp.) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16 and the repeal being partly in force, as to which see individual sections.

**Modifications etc. (not altering text)**

**C364** Power to amend and modify Pt. 25 conferred (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 58(b), 65; S.I. 2004/3322, art. 2(3), Sch. 3 (subject to arts. 3-13)

**716 Prohibition of partnerships with more than 20 members.**

<sup>F832</sup> .....

**Textual Amendments**

**F832** Ss. 716, 717 repealed (21.12.2002) by The Regulatory Reform (Removal of 20 Member Limit in Partnerships etc.) Order 2002 (S.I. 2002/3203), art. 2

**717 Limited partnerships: limit on number of members.**

<sup>F833</sup> .....

**Textual Amendments**

**F833** Ss. 716, 717 repealed (21.12.2002) by The Regulatory Reform (Removal of 20 Member Limit in Partnerships etc.) Order 2002 (S.I. 2002/3203), art. 2

**718 Unregistered companies.**

- (1) The provisions of this Act specified in the first column of Schedule 22 (relating respectively to the matters specified in the second column of the Schedule) apply to all bodies corporate incorporated in and having a principal place of business in Great Britain, other than those mentioned in subsection (2) below, as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column and to such adaptations and modifications (if any) as may be specified by regulations made by the Secretary of State.

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- (2) Those provisions of this Act do not apply by virtue of this section to any of the following—
- (a) any body incorporated by or registered under any public general Act of Parliament,
  - (b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or its individual members,
  - (c) any body for the time being exempted by direction of the Secretary of State (or before him by the Board of Trade).
  - [<sup>F834</sup>(d) any open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.]
- (3) Where against any provision of this Act specified in the first column of Schedule 22 there appears in the third column the entry “Subject to section 718(3)”, it means that the provision is to apply by virtue of this section so far only as may be specified by regulations made by the Secretary of State and to such bodies corporate as may be so specified.
- (4) <sup>F835</sup> .....
- (5) This section does not repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which those provisions are applied by virtue of this section, or restrict the power of Her Majesty to grant a charter in lieu of or supplementary to any such charter as above mentioned; but, in relation to any such body, the operation of any such enactment, charter or instrument is suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body.
- (6) The power to make regulations conferred by this section (whether regulations under subsection (1) or subsection (3)) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F834** S. 718(2)(d) substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2), 84, **Sch. 7 para. 8** (with reg. 1(2) (3)); S.I. 2001/3538, **art. 2(1)**

**F835** S. 718(4) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **s. 1(1)**, {Sch. 1 Pt. 17 Group 5}

**Modifications etc. (not altering text)**

**C365** S. 718(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 20**

**719 Power of company to provide for employees on cessation or transfer of business.**

- (1) The powers of a company include (if they would not otherwise do so apart from this section) power to make the following provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision 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) The power conferred by subsection (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.

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- (3) The power which a company may exercise by virtue only of subsection (1) shall only be exercised by the company if sanctioned—
- (a) in a case not falling within paragraph (b) or (c) below, by an ordinary resolution of the company, or
  - (b) if so authorised by the memorandum or articles, a resolution of the directors, or
  - (c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description;
- and in any case after compliance with any other requirements of the memorandum or articles applicable to its exercise.
- (4) Any payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

**Modifications etc. (not altering text)**

**C366** S. 719 modified (subject to the transitional and savings provisions mentioned in S.I. 1990/1392, art. 6) by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), Sch. 18 para. 36

**720 Certain companies to publish periodical statement.**

F836 .....

**Textual Amendments**

**F836** S. 720 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1178, 1295, 1300, Sch. 16; S.I. 2006/3428, arts. 4(1)(d), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**721 Production and inspection of books where offence suspected.**

- (1) The following applies if on an application made—
- (a) in England and Wales, to a judge of the High Court by the Director of Public Prosecutions, the Secretary of State or a chief officer of police, or
  - (b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate,
- there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company.
- (2) An order may be made—
- (a) authorising any person named in it to inspect the books or papers in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or



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- (b) requiring the secretary of the company or such other officer of it as may be named in the order to produce the books or papers (or any of them) to a person named in the order at a place so named.
- (3) The above applies also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in subsection (2)(b) shall be made by virtue of this subsection.
- (4) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section is not appealable.

**Modifications etc. (not altering text)**

C367 S. 721 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**722 Form of company registers, etc.**

- (1) Any register, index, minute book or accounting records required by the Companies Acts to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.
- (2) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
- (3) If default is made in complying with subsection (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

C368 S. 722 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I  
S. 722 applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 paras. 18, 20, 21 (with regs. 39, 45)

**723 Use of computers for company records.**

- (1) The power conferred on a company by section 722(1) to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form.
- (2) Any provision of an instrument made by a company before 12th February 1979 which requires a register of holders of the company's debentures to be kept in a legible form is to be read as requiring the register to be kept in a legible or non-legible form.
- (3) If any such register or other record of a company as is mentioned in section 722(1), or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by this Act to allow inspection of, or to furnish a copy of, the register or

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other record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

- (4) The Secretary of State may by regulations in a statutory instrument make such provision in addition to subsection (3) as he considers appropriate in connection with such registers or other records as are mentioned in that subsection, and are kept as so mentioned; and the regulations may make modifications of provisions of this Act relating to such registers or other records.
- (5) A statutory instrument under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

**C369** S. 723 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C370** S. 723(1)(2) applied (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 para. 18 (with regs. 39, 45)

**[<sup>F837</sup>723A Obligations of company as to inspection of registers, &c.]**

- (1) The Secretary of State may make provision by regulations as to the obligations of a company which is required by any provision of this Act—
  - (a) to make available for inspection any register, index or document, or
  - (b) to provide copies of any such register, index or document, or part of it;
 and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.
- (2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.
- (3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.
- (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
- (5) Regulations under this section may make different provision for different classes of case.
- (6) Nothing in any provision of this Act or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.
- (7) Regulations 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.]

**Textual Amendments**

**F837** S. 723A inserted (1. 11. 1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(1), 213(2); S.I. 1991/1996, art. 2(2)(b)

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#### **Modifications etc. (not altering text)**

**C371** S. 723A applied (with modifications) (12.2.1992) by S.I. 1992/225, reg. 26(2).

S. 723A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

#### **[<sup>F838</sup>723B Confidentiality orders**

- (1) Subject to the provisions of this section, an individual may make an application under this section to the Secretary of State where the condition in subsection (2) is satisfied.
- (2) That condition is that the individual—
  - (a) is or proposes to become a director, secretary or permanent representative of a relevant company; and
  - (b) considers that the availability for inspection by members of the public of particulars of his usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that he or a person who lives with him will be subjected to violence or intimidation.
- (3) Where, on an application made by an individual under this section, the Secretary of State is satisfied that the availability for inspection by members of the public of particulars of the individual's usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation, he shall make an order under this section ("a confidentiality order") in relation to him.
- (4) Otherwise, he shall dismiss the application.
- (5) An application under this section shall specify, in relation to each company of which the individual is a director, secretary or permanent representative, an address satisfying such conditions as may be prescribed.
- (6) The Secretary of State shall give the applicant notice of his decision under subsection (3) or (4); and a notice under this subsection shall be given within the prescribed period after the making of the decision and contain such information as may be prescribed.
- (7) Regulations may make provision about applications for confidentiality orders; and the regulations may in particular—
  - (a) require the payment, on the making of an application, of such fees as may be specified in the regulations;
  - (b) make provision about the form and manner in which applications are to be made;
  - (c) provide that applications shall contain such information, and be accompanied by such evidence, as the Secretary of State may from time to time direct.
- (8) Regulations may make provision—
  - (a) about the manner in which determinations are to be made under subsection (3) or (4);
  - (b) for questions to be referred to such persons as the Secretary of State thinks fit for the purposes of such determinations;
  - (c) about the review of such determinations;
  - (d) about the period for which confidentiality orders shall remain in force and the renewal of confidentiality orders.

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- (9) The Secretary of State may at any time revoke a confidentiality order if he is satisfied that such conditions as may be prescribed are satisfied.
- (10) Regulations may make provision about the manner in which a determination under subsection (9) is to be made and notified to the individual concerned.]

#### Textual Amendments

**F838** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

#### Modifications etc. (not altering text)

**C372** Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

### <sup>F839</sup>723CEffect of confidentiality orders

- (1) At any time when a confidentiality order is in force in relation to an individual—
- (a) <sup>F840</sup> .....
  - (b) section 364 shall have effect in relation to each affected company of which the individual is a director or secretary as if the reference in subsection (4)(a) of that section to the individual’s usual residential address were a reference to the address for the time being specified by the individual in relation to that company under section 723B(5) or subsection (7) below.
- (2) Regulations may make provision about the inspection and copying of confidential records, and such provision may include—
- (a) provision as to the persons by whom, and the circumstances in which, confidential records may be inspected or copies taken of such records;
  - (b) provision under which the registrar may be required to provide certified copies of, or of extracts from, such records.
- (3) Provision under subsection (2) may include provision—
- (a) for persons of a prescribed description to be entitled to apply to the court for authority to inspect or take copies of confidential records;
  - (b) as to the criteria to be used by the court in determining whether an authorisation should be given.
- (4) Regulations may make provision for restricting the persons to whom, and the purposes for which, relevant information may be disclosed.
- (5) In subsection (4) “relevant information” means information, relating to the usual residential address of an individual in relation to whom a confidentiality order is in force, which has been obtained in prescribed circumstances.
- (6) Regulations may—
- (a) provide that, where a confidentiality order is in force in relation to an individual who is a director or secretary of a company, subsections (3) and (5) of section 288 shall not apply in relation to so much of the register kept by the company under that section as contains particulars of the usual residential address of that individual (“the protected part of the register”); and

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- (b) make provision as to the persons by whom the protected part of the register may be inspected and the conditions (which may include conditions as to the payment of a fee) on which they may inspect it.
- (7) Regulations may make provision—
- (a) requiring any individual in relation to whom a confidentiality order is in force to specify in the prescribed manner, in relation to each company of which he becomes a director, secretary or permanent representative at a time when the order is in force, an address satisfying such conditions as may be prescribed;
  - (b) as to the manner in which the address specified in relation to a company under section 723B(5) or this subsection may be changed.
- (8) A company is an affected company for the purposes of subsection (1) if—
- (a) it is required to deliver annual returns in accordance with section 363; and
  - (b) the individual has specified an address in relation to it under section 723B(5) or subsection (7) above.

#### Textual Amendments

**F839** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

**F840** S. 723C(1)(a) repealed (1.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16 (with saving by S.I. 2007/1093, art. 11(2)); S.I. 2006/3428, art. 7(a), Sch. 2 Pt. 1 (with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

#### Modifications etc. (not altering text)

**C373** Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

#### <sup>F841</sup>723D Construction of sections 723B and 723C

- (1) In section 723B “relevant company” means—
- (a) a company formed and registered under this Act or an existing company; or
  - (b) an overseas company.
- (2) For the purposes of sections 723B and 723C, an individual is a permanent representative of a company if—
- (a) the company is a company to which section 690A applies; and
  - (b) he is authorised to represent the company as a permanent representative of the company for the business of one or more of its branches in Great Britain.
- (3) In section 723C “confidential records” means so much of any records kept by the registrar for the purposes of the Companies Acts as contains information—
- (a) which relates to an individual in relation to whom a confidentiality order is in force; and
  - (b) is recorded as particulars of the individual’s usual residential address that were contained in a document delivered to the registrar after the order came into force.
- (4) In sections 723B and 723C—  
“confidentiality order” means an order under section 723B;

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“the court” means such court as may be specified in regulations;  
“director” and “secretary”, in relation to an oversea company, have the same meanings as in Chapter 1 of Part 23 of this Act;  
“document” has the same meaning as in Part 24 of this Act;  
“prescribed” means prescribed by regulations.

- (5) Section 715A(2) applies in relation to sections 723B and 723C as it applies in relation to Part 24 of this Act.
- (6) Regulations may provide that in determining for the purposes of sections 723B and 723C whether a document has been delivered after the coming into force of a confidentiality order, any document delivered to the registrar after the latest time permitted for the delivery of that document shall be deemed to have been delivered at that time.
- (7) For the purposes of section 723B(2)(a) and subsection (2) above it is immaterial whether or not the company in question has already been incorporated or become a relevant company or a company to which section 690A applies at the time of the application under section 723B.
- (8) For the purposes of section 723C(1) and subsection (3) above, it is immaterial whether the record in question consists in the original document concerned.

#### Textual Amendments

**F841** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

#### Modifications etc. (not altering text)

**C374** Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

#### <sup>F842</sup>723E Sections 723B and 723C: offences

- (1) Regulations may provide—
  - (a) that any person who in an application under section 723B makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence;
  - (b) that any person who discloses information in contravention of regulations under section 723C(4) shall be guilty of an offence.
- (2) Regulations may provide that a person guilty of an offence under subsection (1) shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both.

#### Textual Amendments

**F842** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

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**Modifications etc. (not altering text)**

**C375** Ss. 723B-723F applied (with modifications) (2.4.2002) by [The Limited Liability Partnerships \(No. 2\) Regulations 2002 \(S.I. 2002/913\)](#) {art. 3}, Sch.

<sup>F843</sup>**723F** Regulations under sections 723B to 723E

- (1) In sections 723B to 723E “regulations” means regulations made by the Secretary of State.
- (2) Any power of the Secretary of State to make regulations under any of those sections shall be exercisable by statutory instrument.
- (3) Regulations under sections 723B to 723E—
  - (a) may make different provision for different cases;
  - (b) may contain such incidental, supplemental, consequential and transitional provision, as the Secretary of State thinks fit.
- (4) The provision that may be made by virtue of subsection (3)(b) includes provision repealing or modifying any enactment.
- (5) No regulations shall be made under any of sections 723B to 723E unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.

**Textual Amendments**

**F843** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by [2001 c. 16, ss. 45\(2\), 138\(2\); S.I. 2001/2223, art. 2\(2\)\(c\); S.I. 2002/533, art. 3](#)

**Modifications etc. (not altering text)**

**C376** Ss. 723B-723F applied (with modifications) (2.4.2002) by [The Limited Liability Partnerships \(No. 2\) Regulations 2002 \(S.I. 2002/913\)](#) {art. 3}, Sch.

<sup>F844</sup>**724** .....

**Textual Amendments**

**F844** S. 724 repealed (E.W.S.) by [Insolvency Act 1986 \(c. 45, SIF 66\), s. 438, Sch. 12](#)

**725 Service of documents.**

- (1) A document may be served on a company by leaving it at, or sending it by post to, the company’s registered office.
- (2) Where a company registered in Scotland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company’s principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company.

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- (3) Where process is served on a company under subsection (2), the person issuing out the process shall send a copy of it by post to the company's registered office.

**Modifications etc. (not altering text)**

**C377** S. 725 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 21**

**C378** S. 725 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**726 Costs and expenses in actions by certain limited companies.**

- (1) Where in England and Wales a limited company is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.
- (2) Where in Scotland a limited company is pursuer in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defender's expenses if successful in his defence, order the company to find caution and sist the proceedings until caution is found.

**Modifications etc. (not altering text)**

**C379** S. 726 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**727 Power of court to grant relief in certain cases.**

- (1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.
- (2) If any such officer or person as above-mentioned has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.



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**Modifications etc. (not altering text)**

- C380** S. 727 applied by [Building Societies Act 1986 \(c. 53, SIF 1\), s. 110\(4\)](#)  
S. 727 applied (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\), s. 106\(4\)](#), (with ss. 7(5), 93(4)); [S.I. 1993/16, art. 2, Sch.3](#)  
S. 727 applied (E.W.) (*prosp.*) by [Charities Act 1992 \(c. 41\), ss. 22\(3\), 24\(1\)\(2\), 79\(2\)](#) (which ss. 22(3), 24(1)(2) were repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), [Sch.7](#))  
S. 727 extended (E.W.) (1.3.1996) by 1993 c. 10, [s. 44\(3\)](#); [S.I. 1995/2695, art. 2](#) (subject to [arts. 3, 4](#))  
S. 727 modified (27.7.1993) by 1993 c. 37, [s.57](#)  
S. 727 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)  
**C381** S. 727 applied by [Charities Act 1993 \(c. 10\), s. 73E](#) (as inserted (27.2.2007 and 1.4.2008 for certain purposes and otherwise *prosp.*) by [Charities Act 2006 \(c. 50\), ss. 38, 79](#) (with [Sch. 10 para. 13](#)); [S.I. 2007/309, art. 2, Sch.](#) (subject to [arts. 4-13](#)); [S.I. 2008/945, art. 2, Sch. 1](#) (subject to [arts. 4-9](#)))

**728 Enforcement of High Court orders.**

Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending in that court.

**Modifications etc. (not altering text)**

- C382** S. 728 applied (with modifications) (19.3.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

**729 Annual report by Secretary of State.**

<sup>F845</sup> .....

**Textual Amendments**

- F845** S. 729 repealed (6.4.2007) by [Companies Act 2006 \(c. 46\), ss. 1179, 1295, 1300, Sch. 16](#); [S.I. 2006/3428, arts. 4\(1\)\(e\), 7\(c\), Sch. 4 Pt. 1](#) (subject to [art. 5, Sch. 1](#) and with [arts. 6, 8, Sch. 5](#) (as amended by [S.I. 2007/3495, art. 11, Sch. 5](#)))

**730 Punishment of offences.**

- <sup>F846</sup>(1) Schedule 24 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.
- (2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.
- (3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

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- (4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent summary conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).
- (5) <sup>F847</sup> .....

#### Textual Amendments

**F846** By [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 12** (with art. 12), it is provided (1.10.2007) that in s. 730(1) (punishment of offences) after "offences under this Act" there is substituted "(other than an offence under Part 14 or 15)"

**F847** [S. 730\(5\)](#) repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, **Sch. 16**; [S.I. 2007/2194](#), **arts. 8, 10(1)**, **Sch. 2 Pt. 1**, **Sch. 4 para. 13** (with art. 12)

#### Modifications etc. (not altering text)

**C383** [S. 730](#) extended (with modifications) by [S.I. 1989/638](#), regs. 18, 21, **Sch. 4 paras. 22, 23**

**C384** [S. 730](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

**C385** [S. 730\(4\)](#) applied (temp.) (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), reg. 4, **Sch. 1 para. 2**

### 730A Meaning of “officer in default”

- (1) This section applies to—
- (a) offences under this Act (other than an offence under Part 14 or 15),
  - (b) offences under the insider dealing legislation, and
  - (c) offences under the Companies Consolidation (Consequential Provisions) Act 1985.
- (2) For the purposes of an offence to which this section applies “officer who is in default” means any officer who knowingly and wilfully authorises or permits the default, refusal or contravention in question.

#### Modifications etc. (not altering text)

**C386** [S. 730A](#) applied (temp.) (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), reg. 4, **Sch. 1 para. 2**

### 731 Summary proceedings.

- [<sup>F848</sup>(A1) This section applies to—
- (a) offences under this Act (other than an offence under Part 14 or 15),
  - (b) offences under the insider dealing legislation, and
  - (c) offences under the Companies Consolidation (Consequential Provisions) Act 1985. ]

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- (1) Summary proceedings for [<sup>F849</sup>an offence to which this section applies] may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.
- (2) Notwithstanding anything in section 127(1) of the <sup>M47</sup>Magistrates' Courts Act 1980, an information relating to [<sup>F850</sup>an offence to which this section applies] which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.
- (3) Summary proceedings in Scotland for [<sup>F850</sup>an offence to which this section applies] shall not be commenced after the expiration of 3 years from the commission of the offence. Subject to this (and notwithstanding anything in [<sup>F851</sup>section 136 of the Criminal Procedure (Scotland) Act 1995]), such proceedings may (in Scotland) be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within 12 months after the date on which it came to the knowledge of the latter; and subsection (3) of that section applies for the purpose of this subsection as it applies for the purpose of that section.
- (4) For purposes of this section, a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

#### Textual Amendments

- F848** S. 731(A1) inserted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 14(2)** (with art. 12)
- F849** Words in s. 731(1) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 14(3)** (with art. 12)
- F850** Words in s. 731(2)(3) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 14(4)** (with art. 12)
- F851** Words in s. 731(3) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\)](#), **Sch. 4 para. 56(3)**

#### Modifications etc. (not altering text)

- C387** S. 731 amended by [Business Names Act 1985 \(c. 7, SIF 90\)](#), s. 7(6)(a)
- C388** S. 731 extended (with modifications) by [S.I. 1989/638, regs. 18, 21](#), **Sch. 4 paras. 22, 23**
- C389** S. 731 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4](#), **Sch. 2 Pt. I**
- C390** S. 731 applied (31.12.2004) by [The Insurance Accounts Directive \(Lloyd's Syndicate and Aggregate Accounts\) Regulations 2004 \(S.I. 2004/3219\)](#), **reg. 7(7)**
- C391** S. 731 applied (temp.) (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), **reg. 4, Sch. 1 para. 2**

#### Marginal Citations

- M47** 1980 c. 43.

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### 732 Prosecution by public authorities.

F852 .....

#### Textual Amendments

**F852** S. 732 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 44)

### 733 Offences by bodies corporate.

F853 .....

#### Textual Amendments

**F853** S. 733 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 44); s. 733 expressed to be modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), arts. 1(2), 26, **Sch. 2 para. 1(b)**

### 734 Criminal proceedings against unincorporated bodies.

F854 .....

#### Textual Amendments

**F854** S. 734 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 44)

## PART XXVI

### INTERPRETATION

### 735 “Company”, etc.

(1) In this Act—

- (a) “company” means a company formed and registered under this Act, or an existing company;
- (b) “existing company” means a company formed and registered under the former Companies Acts, but does not include a company registered under the Joint Stock Companies Acts, the Companies Act 1862 or the Companies (Consolidation) Act 1908 in what was then Ireland;
- (c) “the former Companies Acts” means the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the <sup>M48</sup>Companies Act 1929 and the Companies Acts 1948 to 1983.

(2) “Public company” and “private company” have the meanings given by section 1(3).

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- (3) “The Joint Stock Companies Acts” means the <sup>M49</sup>Joint Stock Companies Act 1856 the <sup>M50</sup>Joint Stock Companies Acts 1856, <sup>M51</sup>1857, the <sup>M52</sup>Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts (as the case may require), but does not include the Joint Stock Companies Act 1844
- (4) The definitions in this section apply unless the contrary intention appears.

#### Modifications etc. (not altering text)

**C392** S. 735 modified (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 5** (with Sch. 4 para. 11)

#### Marginal Citations

**M48** 1929 c. 23.  
**M49** 1856 20 & 21 Vict. c. 14  
**M50** 1856 20 & 21 Vict. c. 49  
**M51** 1857 21 & 22 Vict. c. 91  
**M52** 1844 7 & 8 Vict. c. 110

#### [<sup>F855</sup>735A Relationship of this Act to Insolvency Act.

- (1) In this Act “the Insolvency Act” means the Insolvency Act 1986; and in the following provisions of this Act, namely, sections 375(1)(b), 425(6)(a), . . . <sup>F856</sup>, 460(2), 675, 676, 677, 699(1), 728 and Schedule 21, paragraph 6(1), the words “this Act” are to be read as including Parts I to VII of that Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.
- (2) In sections [<sup>F857</sup>Sections 704(5),(7) and (8)] 706(1), [<sup>F858</sup>707B(1)], [<sup>F859</sup>707A(1),] 708(1)(a) and (4) [<sup>F859</sup>709(1) and (3)], [<sup>F860</sup>710A], 713(1), 729 and 732(3) references to the Companies Acts include Parts I to VII of the Insolvency Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.
- (3) Subsections (1) and (2) apply unless the contrary intention appears.]

#### Textual Amendments

**F855** Part XXVI s. 735A inserted by Insolvency Act 1986 (c. 45, SIF 66), s. 493(1), **Sch. 13 Pt. II**  
**F856** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**  
**F857** Words in s. 735A(2) substituted (3.1.1995) by 1994 c. 40, ss. 76, 81(2)(f), **Sch. 16 para. 9**  
**F858** Words in s. 735A(2) substituted (22.12.2000) by S.I. 2000/3373, **art. 31(4)(b)**  
**F859** Words in 735A inserted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(5), 213(2), 215(2); S.I. 1991/488, art. 2(1)**  
**F860** Word in S.735A substituted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 127(5)(c), 213(2); S.I. 1991/488, art. 2(1)**

#### Modifications etc. (not altering text)

**C393** S. 735A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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[<sup>F861</sup>**735B Relationship of this Act to Parts IV and V of the Financial Services Act 1986.**

In [<sup>F862</sup>sections 704(5), (7) and (8)]706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3), 710A and 713(1) references to the Companies Acts include [<sup>F863</sup>Part 6 of the Financial Services and Markets Act 2000].]

**Textual Amendments**

**F861** S. 735B inserted (1.7.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 127(6), 213(2), 215(2); S.I. 1991/488, art. 2(1)

**F862** Words in s. 735B substituted (3.1.1995) by 1994 c. 40, ss. 76, 81(2)(f), Sch. 16 para. 10

**F863** Words in s. 735B substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 28

[<sup>F864</sup>**736 “Subsidiary”, “holding company” and “wholly-owned subsidiary”.**

- (1) A company is a “subsidiary” of another company, its “holding company”, if that other company—
  - (a) holds a majority of the voting rights in it, or
  - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
  - (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,
 or if it is a subsidiary of a company which is itself a subsidiary of that other company.
- (2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
- (3) In this section “company” includes any body corporate.]

**Textual Amendments**

**F864** S. 736, 736A substituted (subject to the transitional provisions in S.I. 1990/1392, art. 6, and see also next two following entries) by Companies Act 1989 (c. 40, SIF 27), ss. 144(1), 213(2)

**Modifications etc. (not altering text)**

**C394** S. 736 applied by Financial Services Act 1986 (c. 60, SIF 69) s. 207(8) and Banking Act 1987 (c. 22, SIF 10), s. 106(2)

**C395** S. 736 excluded by S.I. 1990/1392, art. 6

**C396** S. 736: definition of “subsidiary” applied by Heathrow Express Railway (No. 2) Act 1991 (c. ix), s. 2

**C397** S. 736: definition of “subsidiary” applied by Heathrow Express Railway Act 1991 (c. vii), ss. 2(1), 40(1)

**C398** S. 736: definitions of “subsidiary” and “wholly owned subsidiary” applied by Ports Act 1991 (c. 52, SIF 58), s. 40(1)

**C399** S. 736 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C400** S. 736 applied (20.6.2003) by Enterprise Act 2002 (c. 40), ss. {79(9)}, 279; S.I. 2003/1397, art. 2, Sch.

**C401** S. 736 power to apply (with modifications ) conferred (10.2.2005 for certain purposes and 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 57(2)(d), 322 (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3

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**C402 S. 736(2):** definition applied by [Standard Life Assurance Company Act 1991 \(c. iii\), s. 14, Sch. reg. 93\(4\)](#) (with s. 21(2)).

**[<sup>F865</sup>736A] Provisions supplementing s. 736.**

- (1) The provisions of this section explain expressions used in section 736 and otherwise supplement that section.
- (2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.
- (3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—
  - (a) a company shall be treated as having the right to appoint to a directorship if—
    - (i) a person’s appointment to it follows necessarily from his appointment as director of the company, or
    - (ii) the directorship is held by the company itself; and
  - (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (4) Rights which are exercisable only in certain circumstances shall be taken into account only—
  - (a) when the circumstances have arisen, and for so long as they continue to obtain, or
  - (b) when the circumstances are within the control of the person having the rights; and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.
- (5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- (6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
- (7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—
  - (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
  - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.
- (8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in subsection (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.

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- (9) For the purposes of subsection (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—
- (a) any subsidiary or holding company of that company, or
  - (b) any subsidiary of a holding company of that company.
- (10) The voting rights in a company shall be reduced by any rights held by the company itself.
- (11) References in any provision of subsections (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those subsections but not rights which by virtue of any such provision are to be treated as not held by him.
- (12) In this section “company” includes any body corporate.]

#### Textual Amendments

**F865** S. 736, 736A substituted (subject to the transitional provisions in S.I. 1990/1392, **art. 6**, and see also next two following entries) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 144(1), 213(2)**

#### Modifications etc. (not altering text)

**C403** S. 736A applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**

**C404** S. 736A applied (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. {79(9)}, 279; S.I. 2003/1397, art. 2, Sch.**

S. 736A applied (24.8.2004 for certain purposes and 5.10.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 37(5), 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1**

**C405** S. 736A(2)–(4) applied by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), **ss. 104, 105, 112(3), Sch. 14 para. 4, Sch. 15 para. 4(2), Sch. 17 para. 35(1)**

**C406** S. 736A(3)–(12) modified (E.W.) (16.1.1990 to the extent mentioned in S.I. 1990/2445, **art. 4** otherwise 7.10.1993) by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), **s. 68(4); S.I. 1993/2410, art.3**

#### [<sup>F866</sup>~~736B~~ Power to amend ss. 736 and 736A.

- (1) The Secretary of State may by regulations amend sections 736 and 736A so as to alter the meaning of the expressions “holding company”, “subsidiary” or “wholly-owned subsidiary”.
- (2) The regulations may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) Regulations 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.
- (4) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.
- (5) So much of section 23(3) of the Interpretation Act <sup>M53</sup>1978 as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents



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other than enactments shall not apply in relation to any repeal and re-enactment effected by regulations made under this section.]

#### Textual Amendments

**F866** S. 736B inserted (subject to the transitional provisions in S.I. 1990/1392, art. 6) by Companies Act 1989 (c. 40, SIF 27), ss. 144(3), 213(2)

#### Marginal Citations

**M53** 1978 c.30 (115:1).

### 737 “Called-up share capital”.

- (1) In this Act, “called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with any share capital paid up without being called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares.
- (2) “Uncalled share capital” is to be construed accordingly.
- (3) The definitions in this section apply unless the contrary intention appears.

#### Modifications etc. (not altering text)

- C407** S. 737 extended (21.8.2002) by S.I. 2001/1060, art. 5A(2) (as inserted by S.I. 2002/2157, art. 8(2))  
S. 737 extended (21.8.2002) by S.I. 2001/1335, art. 8A(2) (as inserted by S.I. 2002/2157, art. 3(2))
- C408** S. 737 modified (1.7.2005) by The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), art. 8A(2) (with art. 10)

### 738 “Allotment” and “paid up”.

- (1) In relation to an allotment of shares in a company, the shares are to be taken for the purposes of this Act to be allotted when a person acquires the unconditional right to be included in the company’s register of members in respect of those shares.
- (2) For purposes of this Act, a share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration for the allotment or payment up is cash received by the company, or is a cheque received by it in good faith which the directors have no reason for suspecting will not be paid, or is a release of a liability of the company for a liquidated sum, or is an undertaking to pay cash to the company at a future date.
- (3) In relation to the allotment or payment up of any shares in a company, references in this Act (except sections 89 to 94) to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include the payment of, or any undertaking to pay, cash to any person other than the company.
- (4) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, “cash” includes foreign currency.

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### 739 “Non-cash asset”.

- (1) In this Act “non-cash asset” means any property or interest in property other than cash; and for this purpose “cash” includes foreign currency.
- (2) A reference to the transfer or acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person’s liability, other than a liability for a liquidated sum.

#### Modifications etc. (not altering text)

C409 S. 739 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 740 “Body corporate” and “corporation”.

References in this Act to a body corporate or to a corporation do not include a corporation sole, but include a company incorporated elsewhere than in Great Britain.

Such references to a body corporate do not include a Scottish firm.

#### Modifications etc. (not altering text)

C410 S. 740 applied by Company Directors Disqualification Act 1986 (c. 46, SIF 27), s. 22(6)

C411 S. 740 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 741 “Director” and “shadow director”.

F867 .....

#### Textual Amendments

F867 S. 741 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12)

### [<sup>F868</sup>742 Expressions used in connection with accounts.

- (1) In this Act, unless a contrary intention appears, the following expressions have the same meaning as in [<sup>F869</sup>Part 15 of the Companies Act 2006 (accounts and reports)]—
  - “annual accounts,”
  - “accounting reference date” and “accounting reference period”,
  - “balance sheet” and “balance sheet date”,
  - [<sup>F870</sup>“Companies Act accounts”]
  - [<sup>F871</sup>“Companies Act individual accounts”]
  - “current assets”,
  - “financial year”, in relation to a company,
  - “fixed assets”,
  - [<sup>F872</sup>“IAS accounts”]
  - [<sup>F873</sup>“IAS individual accounts”]
  - “parent company” and “parent undertaking”,

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“profit and loss account”, and  
“subsidiary undertaking”.

(2) References in this Act to “realised profits” and “realised losses”, in relation to a company’s accounts, shall be construed in accordance with [ <sup>F874</sup>section 853(4) and (5) of the Companies Act 2006] .]

(2A) <sup>F875</sup> .....

#### Textual Amendments

- F868** S. 742 substituted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 6–9, **Sch. 3 para. 1**) by **Companies Act 1989** (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 15**
- F869** Words in s. 742(1) substituted (6.4.2008) by **The Companies Act 2006** (Consequential Amendments etc) Order 2008 (S.I. 2009/948), arts. 2(2), 3(1), **Sch. 1 para. 87(a)** (with arts. 6, 11, 12)
- F870** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by **The Companies Act 1985** (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F871** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by **The Companies Act 1985** (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F872** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by **The Companies Act 1985** (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F873** S. 742(1): accounts expression inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by **The Companies Act 1985** (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 29**
- F874** Words in s. 742(2) substituted (6.4.2008) by **The Companies Act 2006** (Consequential Amendments etc) Order 2008 (S.I. 2009/948), arts. 2(2), 3(1), **Sch. 1 para. 87(b)** (with arts. 6, 11, 12)
- F875** S. 742(2A) repealed (6.4.2008) by **The Companies Act 2006** (Consequential Amendments etc) Order 2008 (S.I. 2009/948), arts. 2(2), 3(2), **Sch. 1 para. 87(c)**, **Sch. 2** (with arts. 6, 11, 12)

#### Modifications etc. (not altering text)

- C412** S. 742 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

### 742A Meaning of “offer to the public”

<sup>F876</sup> .....

#### Textual Amendments

- F876** S. 742A repealed (6.4.2008) by **Companies Act 2006** (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, **Sch. 2 Pt. 1** (with arts. 7, 12)

### 742B Meaning of “banking company”

<sup>F877</sup> .....

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#### Textual Amendments

**F877** S. 742B repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

### 742C Meaning of “insurance company” and “authorised insurance company”

**F878**  
.....

#### Textual Amendments

**F878** S. 742C repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

### 743 “Employees’ share scheme”.

For purposes of this Act, an employees’ share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—

- (a) the bona fide employees or former employees of the company, the company’s subsidiary or holding company or a subsidiary of the company’s holding company, or
- (b) the [<sup>F879</sup>spouses, civil partners, surviving spouses, surviving civil partners] or children or step-children under the age of 18 of such employees or former employees.

#### Textual Amendments

**F879** Words in s. 743(b) substituted (23.12.2005) by The Civil Partnership Act 2004 (International Immunities and Privileges, Companies and Adoption) Order 2005 (S.I. 2005/3542), **art. 3(2)**

#### Modifications etc. (not altering text)

**C413** S. 743 modified (subject to the transitional provisions in S.I. 1990/1392, **art. 6**) by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), **Sch. 18 para. 37**

### [<sup>F880</sup>743A Meaning of “office copy” in Scotland.

References in this Act to an office copy of a court order shall be construed, as respects Scotland, as references to a certified copy interlocutor.]

#### Textual Amendments

**F880** S. 743A inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 19**

#### Modifications etc. (not altering text)

**C414** S. 743A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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## 744 Expressions used generally in this Act.

In this Act, unless the contrary intention appears, the following definitions apply—

“agent” does not include a person’s counsel acting as such;

F881  
.....

“articles” means, in relation to a company, its articles of association, as originally framed or as altered by resolution, including (so far as applicable to the company) regulations contained in or annexed to any enactment relating to companies passed before this Act, as altered by or under any such enactment;

F882  
.....  
F883  
.....

“bank holiday” means a holiday under the <sup>M54</sup>Banking and Financial Dealings Act 1971;

F884  
.....

“books and papers” and “books or papers” include accounts, deeds, writings and documents;

[<sup>F885</sup>“communication” means the same as in the Electronic Communications Act 2000;

“the Companies Acts” means this Act, the [<sup>F886</sup>insider dealing legislation] and the Consequential Provisions Act;

“the Consequential Provisions Act” means the <sup>M55</sup>Companies Consolidation (Consequential Provisions) Act 1985;

“the court”, in relation to a company, means the court having jurisdiction to wind up the company;

F887  
.....

“document” includes summons, notice, order, and other legal process, and registers;

F888  
.....

[<sup>F889</sup>“electronic communication” means the same as in the Electronic Communications Act 2000;

“equity share capital” means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

[<sup>F890</sup>“expert” has the meaning given by section 62;]

[<sup>F891</sup>“floating charge” includes a floating charge within the meaning given by section 462;]

“the Gazette” means, as respects companies registered in England and Wales, the London Gazette and, as respects companies registered in Scotland, the Edinburgh Gazette;

F892.  
.....

“hire-purchase agreement” has the same meaning as in the <sup>M56</sup>Consumer Credit Act 1974;

[<sup>F893</sup>“the insider dealing legislation” means Part V of the Criminal Justice Act 1993 (insider dealing).

F894  
.....

F884  
.....

[<sup>F895</sup>“joint stock company” has the meaning given by section 683;]

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“memorandum”, in relation to a company, means its memorandum of association, as originally framed or as altered in pursuance of any enactment;

“number”, in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

“officer”, in relation to a body corporate, includes a director, manager or secretary;

“official seal”, in relation to the registrar of companies, means a seal prepared under section 704(4) for the authentication of documents required for or in connection with the registration of companies;

“oversea company” means—

(a) a company incorporated elsewhere than in Great Britain which, after the commencement of this Act, establishes a place of business in Great Britain, and

(b) a company so incorporated which has, before than commencement, established a place of business and continues to have an established place of business in Great Britain at that commencement;

“place of business” includes a share transfer or share registration office;

F896

“prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares in or debentures of a company;

F897.

F898.

F899.

[<sup>F900</sup>“regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000;

“the registrar of companies” and “the registrar” means the registrar or other officer performing under this Act the duty of registration of companies in England and Wales or in Scotland, as the case may require;

“share” means share in the share capital of a company, and includes stock (except where a distinction between shares and stock is express or implied); and

F901

.....]|||

### Textual Amendments

**F881** Definition in s. 744 repealed (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**; S.I. 1995/1352, **art. 3(1)**

**F882** Definition of “authorised institution” inserted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 18(8)** and is repealed (subject to the transitional and saving provisions in S.I. 1990/355, arts. 5–9, **Sch. 3 para. 1**) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 212, 213(2), Sch. 10 para. 16, **Sch. 24**

**F883** S. 744: definition of “authorised minimum” repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

**F884** Definitions of “banking company” and “insurance company” in s. 744 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 30(a)**

**F885** S. 744: definition of “communication” inserted (22.12.2000) by S.I. 2000/3373, **art. 29**

**F886** Words in s. 744 substituted (1.3.1994) by 1993 c. 36, s. 79(13), **Sch. 5 para. 4(2)**; S.I. 1994/242, **arts. 2, 3**

**F887** S. 744: definition of “debenture” repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

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- F888** In s. 744 definition of "EEA State" repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/1093, **art. 5**, Sch. 2 Pt. 1
- F889** S. 744: definition of "electrical communication" inserted (22.12.2000) by S.I. 2000/3373, **art. 29**
- F890** Definition repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**
- F891** Definition repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**
- F892** Definition of "general rules" repealed by Insolvency Act 1985 (c. 65, SIF 66), s. 235, **Sch. 10 Pt. II**
- F893** Definition in s. 744 substituted (1.3.1994) by 1993 c. 36, ss. 79(13), **Sch. 5 para. 4(1)**; S.I. 1994/242, **arts. 2, 3**
- F894** S. 744: definition of "insurance market activity" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)
- F895** Definition repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**
- F896** S. 744: definition of "prescribed" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)
- F897** Definition of "prospectus issued generally" repealed (29.4.1988 except as mentioned in S.I. 1988/740, art. 2, **Sch.**) by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I**
- F898** Definition of "recognised bank" repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(1)(2), Sch. 6, para. 18(8), **Sch. 7 Pt. I**
- F899** Definition of "recognised stock exchange" repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), **Sch. 17 Pt. I**
- F900** Definition of "regulated activity" in s. 744 inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 30(c)**
- F901** S. 744: definition of "undistributable reserves" repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300, **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 1 (with arts. 7, 12)

#### Modifications etc. (not altering text)

- C415** S. 744 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C416** S. 744: definition of "equity share capital" applied by Ports Act 1991 (c. 52, SIF 58), **s. 40(1)**
- C417** S. 744 amended (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 2**.

#### Marginal Citations

- M54** 1971 c. 80.
- M55** 1985 c. 9.
- M56** 1974 c. 39.

#### [<sup>F902</sup>744] Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions for the purposes of this Act generally—

accounting reference date, accounting reference period	sections 224 and 742(1)
acquisition (in relation to a non-cash asset)	section 739(2)
agent	section 744
allotment (and related expressions)	section 738
annual accounts	sections 261(2), 262(1) and 742(1)
annual general meeting	section 366
annual return	section 363
articles	section 744

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[ <sup>F903</sup> authorised insurance company	section 742C]
authorised minimum	section 118
balance sheet and balance sheet date	sections 261(2), 262(1) and 742(1)
bank holiday	section 744
banking company	[ <sup>F904</sup> section 7 42B]
body corporate	section 740
books and papers, books or papers	section 744
called-up share capital	section 737(1)
capital redemption reserve	section 170(1)
[ <sup>F905</sup> “communication”	<sup>F905</sup> section 744]
[ <sup>F906</sup> Companies Act accounts	Sections 262(1) and 742(1)]
[ <sup>F907</sup> Companies Act individual accounts	Sections 226(2), 255(4A) and 742(1)]
Company Acts	section 744
companies charges register	section 397
company	section 735(1)
the Consequential Provisions Act	section 744
corporation	section 740
the court (in relation to a company)	section 744
current assets	sections 262(1) and 742(1)
debenture	section 744
director	section 741(1)
document	section 744
[ <sup>F908</sup> EEA State]	[ <sup>F908</sup> section 744]
elective resolution	section 379A
[ <sup>F909</sup> “electronic communication”	<sup>F909</sup> section 744]
employees’ share scheme	section 743
equity share capital	section 744
existing company	section 735(1)
extraordinary general meeting	section 368
extraordinary resolution	section 378(1)
financial year (of a company)	sections 223 and 742(1)
fixed assets	sections 262(1) and 742(1)
floating charge (in Scotland)	section 462
the former Companies Acts	section 735(1)
the Gazette	section 744



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hire-purchase agreement	section 744
holding company	section 736
[ <sup>F910</sup> IAS accounts	Sections 262(1) and 742(1)]
[ <sup>F911</sup> IAS individual accounts	Sections 226(2) and 742(1)]
the Insider Dealing Act	section 744
the Insolvency Act	section 735A(1)
insurance company	[ <sup>F912</sup> section n 742C]
[ <sup>F913</sup> insurance mar ket activity	<sup>F913</sup> section 7 44]
the Joint Stock Companies Acts	section 735(3)
limited company	section 1(2)
member (of a company)	section 22
memorandum (in relation to a company)	section 744
non-cash asset	section 739(1)
number (in relation to shares)	section 744
office copy (in relation to a court order in Scotland)	section 743A
officer (in relation to a body corporate)	section 744
official seal (in relation to the registrar of companies)	section 744
oversea company	section 744
overseas branch register	section 362
paid up (and related expressions)	section 738
parent company and parent undertaking	sections 258 and 742(1)
place of business	section 744
prescribed	section 744
private company	section 1(3)
profit and loss account	section [ <sup>F914</sup> 262(1) and (2)] and 742(1)
prospectus	section 744
public company	section 1(3)
realised profits or losses	sections 262(3) and 742(2)
registered number (of a company)	section 705(1)
registered office (of a company)	section 287
registrar and registrar of companies	section 744
[ <sup>F915</sup> regulated activity	<sup>F915</sup> section 744]
resolution for reducing share capital	section 135(3)
shadow director	section 741(2) and (3)

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share	section 744
share premium account	section 130(1)
share warrant	section 188
special notice (in relation to a resolution)	section 379
special resolution	section 378(2)
subsidiary	section 736
subsidiary undertaking	sections 258 and 742(1)
transfer (in relation to a non-cash asset)	section 739(2)
[ <sup>F916</sup> treasury shares	section 162A(3)]
uncalled share capital	section 737(2)
undistributable reserves	section 264(3)
unlimited company	section 1(2)
unregistered company	section 718
wholly-owned subsidiary	section 736(2)]

#### Textual Amendments

- F902** S. 744A inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), 215(2), **Sch. 19 para. 20**; S.I. 1995/1352, **art. 3(b)**
- F903** S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(a)**
- F904** S. 744A: words in entry relating to “banking company” substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(b)**
- F905** S. 744A: entry inserted (22.12.2000) by S.I. 2000/3373, **art. 30**
- F906** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F907** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F908** Entry in s. 744A inserted (20.10.1997) by S.I. 1997/2306, **reg. 4(3)**
- F909** S. 744A: entry inserted (22.12.2000) by S.I. 2000/3373, **art. 30**
- F910** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F911** S. 744A: entry inserted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(2)**
- F912** S. 744A: words in entry relating to “insurance company” substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(c)**
- F913** S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(d)**
- F914** S. 744A: words in entry relating to “profit and loss account” substituted (12.11.2004 with effect as mentioned in reg. 1(2) of the amending S.I.) by The Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947), reg. 3, **Sch. 1 para. 30(3)**
- F915** S. 744A: entry inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 31(e)**

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**F916 S. 744A:** entry inserted (1.12.2003) by The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003 (S.I. 2003/1116), reg. 4, {Sch. para. 29}

**Modifications etc. (not altering text)**

**C418 S. 744A** applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

## PART XXVII

### FINAL PROVISIONS

#### 745 Northern Ireland.

- (1) Except where otherwise expressly provided, nothing in this Act (except provisions relating expressly to companies registered or incorporated in Northern Ireland or outside Great Britain) applies to or in relation to companies so registered or incorporated.
- (2) Subject to any such provision, and to any express provision as to extent, this Act does not extend to Northern Ireland.

#### <sup>F917</sup>746 Commencement.

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**Textual Amendments**

**F917** Words repealed (subject to the transitional and saving provisions as mentioned in S.I. 1990/355, **art. 5**) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

#### 747 Citation.

This Act may be cited as the Companies Act 1985.

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