



# Companies Act 1985

## 1985 CHAPTER 6

### PART X

#### ENFORCEMENT OF FAIR DEALING BY DIRECTORS

*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.**

- (1) The prohibitions listed below in this section are subject to the exceptions in sections 332 to 338.
- (2) A company shall not—
  - (a) make a loan to a director of the company or of its holding company;
  - (b) enter into any guarantee or provide any security in connection with a loan made by any person to such a director.
- (3) A relevant company shall not—
  - (a) make a quasi-loan to a director of the company or of its holding company;
  - (b) make a loan or a quasi-loan to a person connected with such a director;
  - (c) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any other person for such a director or a person so connected.
- (4) A relevant company shall not—
  - (a) enter into a credit transaction as creditor for such a director or a person so connected;
  - (b) enter into any guarantee or provide any security in connection with a credit transaction made by any other person for such a director or a person so connected.
- (5) For purposes of sections 330 to 346, a shadow director is treated as a director.

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- (6) A company shall not arrange for the assignment to it, or the assumption by it, of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have contravened subsection (2), (3) or (4); but for the purposes of sections 330 to 347 the transaction is to be treated as having been entered into on the date of the arrangement.
- (7) A company shall not take part in any arrangement whereby—
- (a) another person enters into a transaction which, if it had been entered into by the company, would have contravened any of subsections (2), (3), (4) or (6); and
  - (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

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

**C1** S. 330 modified (1.2.2001) by 2000 c. 38, s. 56(4)(5)(h)(8); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provisions and saving in Sch. 2 Pt. II)

**331 Definitions for ss. 330 ff.**

- (1) The following subsections apply for the interpretation of sections 330 to 346.
- (2) “Guarantee” includes indemnity, and cognate expressions are to be construed accordingly.
- (3) A quasi-loan is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”)—
- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
  - (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.
- (4) Any reference to the person to whom a quasi-loan is made is a reference to the borrower; and the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.
- (5) ..... <sup>F1</sup>
- (6) “Relevant company” means a company which—
- (a) is a public company, or
  - (b) is a subsidiary of a public company, or
  - (c) is a subsidiary of a company which has as another subsidiary a public company, or
  - (d) has a subsidiary which is a public company.
- (7) A credit transaction is a transaction under which one party (“the creditor”)—
- (a) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement;
  - (b) leases or hires any land or goods in return for periodical payments;

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- (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.
- (8) “Services” means anything other than goods or land.
- (9) A transaction or arrangement is made “for” a person if—
- (a) in the case of a loan or quasi-loan, it is made to him;
  - (b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
  - (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or a credit transaction made for him;
  - (d) in the case of an arrangement within subsection (6) or (7) of section 330, the transaction to which the arrangement relates was made for him; and
  - (e) in the case of any other transaction or arrangement for the supply or transfer of, or of any interest in, goods, land or services, he is the person to whom the goods, land or services (or the interest) are supplied or transferred.
- (10) “Conditional sale agreement” means the same as in the <sup>M1</sup>Consumer Credit Act 1974.

#### Textual Amendments

**F1** S. 331(5) repealed by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(2), [Sch. 7 Pt. I](#)

#### Marginal Citations

**M1** 1974 c. 39.

### 332 Short-term quasi-loans.

- (1) Subsection (3) of section 330 does not prohibit a company (“the creditor”) from making a quasi-loan to one of its directors or to a director of its holding company if—
- (a) the quasi-loan contains a term requiring the director or a person on his behalf to reimburse the creditor his expenditure within 2 months of its being incurred; and
  - (b) the aggregate of the amount of that quasi-loan and of the amount outstanding under each relevant quasi-loan does not exceed [<sup>F2</sup>£5,000].
- (2) A quasi-loan is relevant for this purpose if it was made to the director by virtue of this section by the creditor or its subsidiary or, where the director is a director of the creditor’s holding company, any other subsidiary of that company; and “the amount outstanding” is the amount of the outstanding liabilities of the person to whom the quasi-loan was made.

#### Textual Amendments

**F2** “£5,000” substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 138\(a\), 213\(2\)](#) (subject to the saving provision in [S.I. 1990/1392, art. 5](#))

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### 333 Inter-company loans in same group.

In the case of a relevant company which is a member of a group of companies (meaning a holding company and its subsidiaries), paragraphs (b) and (c) of section 330(3) do not prohibit the company from—

- (a) making a loan or quasi-loan to another member of that group; or
- (b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to another member of the group,

by reason only that a director of one member of the group is associated with another.

### 334 Loans of small amounts.

Without prejudice to any other provision of sections 332 to 338, paragraph (a) of section 330(2) does not prohibit a company from making a loan to a director of the company or of its holding company if the aggregate of the relevant amounts does not exceed [<sup>F3</sup>£5,000].

#### Textual Amendments

- F3** “£5,000” substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 138(b), 213(2)** (subject to the saving provision in [S.I. 1990/1392, art. 5](#))

### 335 Minor and business transactions.

- (1) Section 330(4) does not prohibit a company from entering into a transaction for a person if the aggregate of the relevant amounts does not exceed [<sup>F4</sup>£10,000].
- (2) Section 330(4) does not prohibit a company from entering into a transaction for a person if—
  - (a) the transaction is entered into by the company in the ordinary course of its business; and
  - (b) the value of the transaction is not greater, and the terms on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which it is reasonable to expect the company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

#### Textual Amendments

- F4** “£10,000” substituted by [S.I. 1990/1393, art. 2\(b\)](#)

### 336 Transactions at behest of holding company.

The following transactions are excepted from the prohibitions of section 330—

- (a) a loan or quasi-loan by a company to its holding company, or a company entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to its holding company;
- (b) a company entering into a credit transaction as creditor for its holding company, or entering into a guarantee or providing any security in connection with a credit transaction made by any other person for its holding company.

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### 337 Funding of director's expenditure on duty to company.

- (1) A company is not prohibited by section 330 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company.
- (2) Nor does the section prohibit a company from doing anything to enable a director to avoid incurring such expenditure.
- (3) Subsections (1) and (2) apply only if one of the following conditions is satisfied—
  - (a) the thing in question is done with prior approval of the company given at a general meeting at which there are disclosed all the matters mentioned in the next subsection;
  - (b) that thing is done on condition that, if the approval of the company is not so given at or before the next annual general meeting, the loan is to be repaid, or any other liability arising under any such transaction discharged, within 6 months from the conclusion of that meeting;but those subsections do not authorise a relevant company to enter into any transaction if the aggregate of the relevant amounts exceeds [<sup>F5</sup>£20,000].
- (4) The matters to be disclosed under subsection (3)(a) are—
  - (a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director,
  - (b) the amount of the funds to be provided by the company, and
  - (c) the extent of the company's liability under any transaction which is or is connected with the thing in question.

#### Textual Amendments

**F5** "£20,000" substituted by S.I. 1990/1393, art. 2(c)

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

**C2** S. 337(3)(a) restricted (E.W.) (1.1.1993) by Charities Act 1960 (c. 58), s. 30BA(2)(e) (as inserted (1.1.1993) by Charities Act 1992 (c. 41), s.41; S.I. 1992/1900, art. 4, Sch.3).  
S. 337(3)(a) restricted (E.W.) (1.8.1993) by 1993 c. 10, ss. 66(1)(2)(e), 99(1)

VALID FROM 06/04/2004

### 337A Funding of director's expenditure on defending proceedings

- (1) A company is not prohibited by section 330 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him—
  - (a) in defending any criminal or civil proceedings, or
  - (b) in connection with any application under any of the provisions mentioned in subsection (2).
- (2) The provisions are—
  - section 144(3) and (4) (acquisition of shares by innocent nominee), and
  - section 727 (general power to grant relief in case of honest and reasonable conduct).

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- (3) Nor does section 330 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.
- (4) Subsections (1) and (3) only apply to a loan or other thing done as mentioned in those subsections if the terms on which it is made or done will result in the loan falling to be repaid, or any liability of the company under any transaction connected with the thing in question falling to be discharged, not later than—
  - (a) in the event of the director being convicted in the proceedings, the date when the conviction becomes final,
  - (b) in the event of judgment being given against him in the proceedings, the date when the judgment becomes final, or
  - (c) in the event of the court refusing to grant him relief on the application, the date when the refusal of relief becomes final.
- (5) For the purposes of subsection (4) a conviction, judgment or refusal of relief becomes final—
  - (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (6) An appeal is disposed of—
  - (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.

### **338 Loan or quasi-loan by money-lending company.**

- (1) There is excepted from the prohibitions in section 330—
  - (a) a loan or quasi-loan made by a money-lending company to any person; or
  - (b) a money-lending company entering into a guarantee in connection with any other loan or quasi-loan.
- (2) “Money-lending company” means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees in connection with loans or quasi-loans.
- (3) Subsection (1) applies only if both the following conditions are satisfied—
  - (a) the loan or quasi-loan in question is made by the company, or it enters into the guarantee, in the ordinary course of the company’s business; and
  - (b) the amount of the loan or quasi-loan, or the amount guaranteed, is not greater, and the terms of the loan, quasi-loan or guarantee are not more favourable, in the case of the person to whom the loan or quasi-loan is made or in respect of whom the guarantee is entered into, than that or those which it is reasonable to expect that company to have offered to or in respect of a person of the same financial standing but unconnected with the company.
- (4) But subsection (1) does not authorise a relevant company (unless it is [<sup>F6</sup>a banking company]) to enter into any transaction if the aggregate of the relevant amounts exceeds £50,000.
- (5) In determining that aggregate, a company which a director does not control is deemed not to be connected with him.

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- (6) The condition specified in subsection (3)(b) does not of itself prevent a company from making a loan to one of its directors or a director of its holding company—
- (a) for the purposes of facilitating the purchase, for use as that director's only or main residence, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it;
  - (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it;
  - (c) in substitution for any loan made by any person and falling within paragraph (a) or (b) of this subsection, if loans of that description are ordinarily made by the company to its employees and on terms no less favourable than those on which the transaction in question is made, and the aggregate of the relevant amounts does not exceed [<sup>F7</sup>£100,000].

#### Textual Amendments

- F6** Words substituted by virtue of [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 18\(6\)](#) and [Companies Act 1989 \(c.40, SIF 27\)](#), ss. 23, 213(2), [Sch. 10 para. 10](#) (subject to the transitional and saving provisions mentioned in [S.I. 1990/355](#), [arts. 6–9](#))
- F7** “£100,000” substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 138\(c\), 213\(2\)](#) (subject to the saving provision in [S.I. 1990/1392](#), [art. 5](#))

### 339 “Relevant amounts” for purposes of ss. 334 ff.

- (1) This section has effect for defining the “relevant amounts” to be aggregated under sections 334, 335(1), 337(3) and 338(4); and in relation to any proposed transaction or arrangement and the question whether it falls within one or other of the exceptions provided by those sections, “the relevant exception” is that exception; but where the relevant exception is the one provided by section 334 (loan of small amount), references in this section to a person connected with a director are to be disregarded.
- (2) Subject as follows, the relevant amounts in relation to a proposed transaction or arrangement are—
- (a) the value of the proposed transaction or arrangement,
  - (b) the value of any existing arrangement which—
    - (i) falls within subsection (6) or (7) of section 330, and
    - (ii) also falls within subsection (3) of this section, and
    - (iii) was entered into by virtue of the relevant exception by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries;
  - (c) the amount outstanding under any other transaction—
    - (i) falling within subsection (3) below, and
    - (ii) made by virtue of the relevant exception, and
    - (iii) made by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries.
- (3) A transaction falls within this subsection if it was made—



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- (a) for the director for whom the proposed transaction or arrangement is to be made, or for any person connected with that director; or
- (b) where the proposed transaction or arrangement is to be made for a person connected with a director of a company, for that director or any person connected with him;

and an arrangement also falls within this subsection if it relates to a transaction which does so.

- (4) But where the proposed transaction falls within section 338 and is one which [<sup>F8</sup>a banking company] proposes to enter into under subsection (6) of that section (housing loans, etc.), any other transaction or arrangement which apart from this subsection would fall within subsection (3) of this section does not do so unless it was entered into in pursuance of section 338(6).
- (5) A transaction entered into by a company which is (at the time of that transaction being entered into) a subsidiary of the company which is to make the proposed transaction, or is a subsidiary of that company's holding company, does not fall within subsection (3) if at the time when the question arises (that is to say, the question whether the proposed transaction or arrangement falls within any relevant exception), it no longer is such a subsidiary.
- (6) Values for purposes of subsection (2) of this section are to be determined in accordance with the section next following; and "the amount outstanding" for purposes of subsection (2)(c) above is the value of the transaction less any amount by which that value has been reduced.

#### Textual Amendments

**F8** Words substituted by virtue of [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 18\(6\)](#) and [Companies Act 1989 \(c.40, SIF 27\)](#), ss. 23, 213(2), [Sch. 10 para. 10](#) (subject to the transitional and saving provisions mentioned in [S.I. 1990/355](#), [arts. 6–9](#))

### 340 "Value" of transactions and arrangements.

- (1) This section has effect for determining the value of a transaction or arrangement for purposes of sections 330 to 339.
- (2) The value of a loan is the amount of its principal.
- (3) The value of a quasi-loan is the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor.
- (4) The value of a guarantee or security is the amount guaranteed or secured.
- (5) The value of an arrangement to which section 330(6) or (7) applies is the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.
- (6) The value of a transaction or arrangement not falling within subsections (2) to (5) above is the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied (at the time the transaction or arrangement is entered into) in the ordinary course of



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

- (7) For purposes of this section, the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason), whether or not any liability under the transaction or arrangement has been reduced, is deemed to exceed [<sup>F9</sup>£100,000].

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**Textual Amendments**

**F9** “£100,000” substituted by S.I. 1990/1393, art. 2(d)

**341 Civil remedies for breach of s. 330.**

- (1) If a company enters into a transaction or arrangement in contravention of section 330, the transaction or arrangement is voidable at the instance of the company unless—
- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of subsection (2)(b) below for the loss or damage suffered by it, or
  - (b) any rights acquired bona fide for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.
- (2) Where an arrangement or transaction is made by a company for a director of the company or its holding company or a person connected with such a director in contravention of section 330, that director and the person so connected and any other director of the company who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of subsection (1)) is liable—
- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and
  - (b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (3) Subsection (2) is without prejudice to any liability imposed otherwise than by that subsection, but is subject to the next two subsections.
- (4) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 330, that director is not liable under subsection (2) of this section if he shows that he took all reasonable steps to secure the company's compliance with that section.
- (5) In any case, a person so connected and any such other director as is mentioned in subsection (2) is not so liable if he shows that, at the time the arrangement or transaction was entered into, he did not know the relevant circumstances constituting the contravention.

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### **342 Criminal penalties for breach of s. 330.**

- (1) A director of a relevant company who authorises or permits the company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 330 is guilty of an offence.
- (2) A relevant company which enters into a transaction or arrangement for one of its directors or for a director of its holding company in contravention of section 330 is guilty of an offence.
- (3) A person who procures a relevant company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 330 is guilty of an offence.
- (4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.
- (5) A relevant company is not guilty of an offence under subsection (2) if it shows that, at the time the transaction or arrangement was entered into, it did not know the relevant circumstances.

### **343 Record of transactions not disclosed in company accounts.**

- (1) The following provisions of this section—
  - (a) apply in the case of a company which is <sup>[F10]</sup>a banking company, or is the holding company of a credit institution,]and
  - (b) are subject to the exceptions provided by section 344.
- <sup>[F11]</sup>(2) Where such a company takes advantage of the provisions of paragraph 2 of Part IV of Schedule 9 in relation to a financial year, that company shall keep a register containing a copy of every transaction, arrangement or agreement of which particulars would, but for that paragraph, be required to be disclosed in the company's accounts or group accounts for that financial year and for each financial year in the preceding 10 in relation to which the company has taken advantage of the provisions of that paragraph.]
- (3) In the case of a transaction, arrangement or agreement which is not in writing, there shall be contained in the register a written memorandum setting out its terms.
- <sup>[F12]</sup>(4) Where such a company takes advantage of the provisions of paragraph 2 of Part IV of Schedule 9 in relation to the last complete financial year preceding its annual general meeting, that company shall before that meeting make available at its registered office for not less than 15 days ending with the date of the meeting a statement containing the particulars of transactions, arrangements and agreements which the company would, but for that paragraph, be required to disclose in its accounts or group accounts for that financial year.]
- (5) The statement shall be so made available for inspection by members of the company; and such a statement shall also be made available for their inspection at the annual general meeting.
- (6) It is the duty of the company's auditors to examine the statement before it is made available to members of the company and to make a report to the members on it; and the report shall be annexed to the statement before it is made so available.

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- (7) The auditors' report shall state whether in their opinion the statement contains the particulars required by subsection (4); and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.
- (8) If a company fails to comply with any provision of subsections (2) to (5), every person who at the time of the failure is a director of it is guilty of an offence and liable to a fine; but—
- (a) it is a defence in proceedings against a person for this offence to prove that he took all reasonable steps for securing compliance with the subsection concerned, and
  - (b) a person is not guilty of the offence by virtue only of being a shadow director of the company.
- (9) For purposes of the application of this section to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

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**Textual Amendments**

**F10** Words in s. 343(1)(a) substituted (28.2.1994) by S.I. 1994/233, reg. 6(2)

**F11** S. 343(2) substituted (28.2.1994) by S.I. 1994/233, reg. 6(3)

**F12** S. 343(4) substituted (28.2.1994) by S.I. 1994/233, reg. 6(4)

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

**C3** S. 343 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.

**C4** S. 343(2) modified (28.2.1994) by S.I. 1994/233, reg. 8

**344 Exceptions from s. 343.**

- (1) Section 343 does not apply in relation to—
- (a) transactions or arrangements made or subsisting during a financial year by a company or by a subsidiary of a company for a person who was at any time during that year a director of the company or of its holding company or was connected with such a director, or
  - (b) an agreement made or subsisting during that year to enter into such a transaction or arrangement,

if the aggregate of the values of each transaction or arrangement made for that person, and of each agreement for such a transaction or arrangement, less the amount (if any) by which the value of those transactions, arrangements and agreements has been reduced, did not exceed [<sup>F13</sup>£2,000] at any time during the financial year.

For purposes of this subsection, values are to be determined as under section 340.

- (2) Section 343(4) and (5) do not apply to [<sup>F14</sup>a banking company] which is the wholly-owned subsidiary of a company incorporated in the United Kingdom.

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**Textual Amendments**

**F13** “£2,000” substituted by S.I. 1990/1393, art. 2(e)

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, Cross Heading: Restrictions on a company's power to make loans, etc., to directors and persons connected with them. (See end of Document for details)*

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**F14** Words substituted by virtue of [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 18\(6\)](#) and (subject to the transitional and saving provisions in S.I. 1990/355, [arts. 6–9](#)) [Companies Act 1989 \(c.40, SIF 27\)](#), ss. 23, 213(2), [Sch. 10 para. 10](#)

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

**C5** [S. 344](#) applied with modifications by [S.I. 1985/680](#), regs. 4–6, [Sch.](#)

**Status:**

Point in time view as at 01/12/2001. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1985, Cross Heading: Restrictions on a company's power to make loans, etc., to directors and persons connected with them.