



# Companies Act 1985

## 1985 CHAPTER 6

### PART IX

#### A COMPANY'S MANAGEMENT; DIRECTORS AND SECRETARIES; THEIR QUALIFICATIONS, DUTIES AND RESPONSIBILITIES

##### *Officers and registered office*

#### **282 Directors.**

- (1) Every company registered on or after 1st November 1929 (other than a private company) shall have at least two directors.
- (2) Every company registered before that date (other than a private company) shall have at least one director.
- (3) Every private company shall have at least one director.

#### **283 Secretary.**

- (1) Every company shall have a secretary.
- (2) A sole director shall not also be secretary.
- (3) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.
- (4) No company shall—
  - (a) have as secretary to the company a corporation the sole director of which is a sole director of the company;
  - (b) have as sole director of the company a corporation the sole director of which is secretary to the company.

*Status: Point in time view as at 01/10/2005.*

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**284 Acts done by person in dual capacity.**

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

**285 Validity of acts of directors.**

The acts of a director or manager are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification; and this provision is not excluded by section 292(2) (void resolution to appoint).

**286 Qualifications of company secretaries.**

- (1) It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who—
  - (a) on 22nd December 1980 held the office of secretary or assistant or deputy secretary of the company; or
  - (b) for at least 3 of the 5 years immediately preceding his appointment as secretary held the office of secretary of a company other than a private company; or
  - (c) is a member of any of the bodies specified in the following subsection; or
  - (d) is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom; or
  - (e) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.
- (2) The bodies referred to in subsection (1)(c) are—
  - (a) the Institute of Chartered Accountants in England and Wales;
  - (b) the Institute of Chartered Accountants of Scotland;
  - (c) the Chartered Association of Certified Accountants;
  - (d) the Institute of Chartered Accountants in Ireland;
  - (e) the Institute of Chartered Secretaries and Administrators;
  - (f) the Institute of Cost and Management Accountants;
  - (g) the Chartered Institute of Public Finance and Accountancy.

**[<sup>F1</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.

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- (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.]

#### Textual Amendments

- F1** 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)

- C1** S. 287 modified by S.I. 1985/680, arts. 4–6, Sch.  
**C2** 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>F2</sup> . . . be open to the inspection of any member of the company without charge and of any other person on payment of [<sup>F3</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.

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(5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

[<sup>F4</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>F5</sup>.....

#### Textual Amendments

- F2** 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)**.
- F3** 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)**.
- F4** 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)**
- F5** 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)

- C3** S. 288 applied (with modifications) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C4** 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)
- C5** 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)**
- C6** 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**
- C7** 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)
- C8** 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)
- C9** 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.

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## **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>F6</sup>name],
    - (ii) any former [<sup>F7</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>F8</sup>(vii) the date of his birth;]
  - (b) in the case of a corporation [<sup>F9</sup>or Scottish firm], its corporate [<sup>F9</sup>or firm] name and registered or principal office.

[<sup>F10</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 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>F11</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>F12</sup>section 249AA(3)] applies as regards whether and when a company is or has been dormant, and

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- (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

- F6** 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](#))
- F7** 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](#))
- F8** [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\(2\)\(b\)](#)
- F9** 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](#))
- F10** [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\(2\)](#)
- F11** [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\(4\)](#)
- F12** Words in [s. 289\(4\)\(a\)](#) substituted (26.5.2000) by [S.I. 2000/1430](#), [art. 8\(7\)](#)

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

- C10** [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 or, where there are joint secretaries, with respect to each of them—
- (a) in the case of an individual, his present [<sup>F13</sup>name], any former [<sup>F13</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>F14</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>F15</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

- F13** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 145, 213(2), [Sch. 19 para. 3\(2\)](#)
- F14** [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\(2\)](#)

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**F15** 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.
- (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.**

- (1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.
- (2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time; but where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies.
- (3) For purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is to be treated as a motion for his appointment.
- (4) Nothing in this section applies to a resolution altering the company's articles.

#### **293 Age limit for directors.**

- (1) A company is subject to this section if—
  - (a) it is a public company, or
  - (b) being a private company, it is a subsidiary of a public company or of a body corporate registered under the law relating to companies for the time being in force in Northern Ireland as a public company.
- (2) No person is capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has attained the age of 70.

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- (3) A director of such a company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of 70; but acts done by a person as director are valid notwithstanding that it is afterwards discovered that his appointment had terminated under this subsection.
- (4) Where a person retires under subsection (3), no provision for the automatic reappointment of retiring directors in default of another appointment applies; and if at the meeting at which he retires the vacancy is not filled, it may be filled as a casual vacancy.
- (5) Nothing in subsections (2) to (4) prevents the appointment of a director at any age, or requires a director to retire at any time, if his appointment is or was made or approved by the company in general meeting; but special notice is required of a resolution appointing or approving the appointment of a director for it to have effect under this subsection, and the notice of the resolution given to the company, and by the company to its members, must state, or have stated, the age of the person to whom it relates.
- (6) A person reappointed director on retiring under subsection (3), or appointed in place of a director so retiring, is to be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the retiring director was last appointed before his retirement.  
  
Subject to this, the retirement of a director out of turn under subsection (3) is to be disregarded in determining when any other directors are to retire.
- (7) In the case of a company first registered after the beginning of 1947, this section has effect subject to the provisions of the company's articles; and in the case of a company first registered before the beginning of that year—
  - (a) this section has effect subject to any alterations of the company's articles made after the beginning of that year; and
  - (b) if at the beginning of that year the company's articles contained provision for retirement of directors under an age limit, or for preventing or restricting appointments of directors over a given age, this section does not apply to directors to whom that provision applies.

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

**C11** S. 293 restricted (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. 34

**294 Duty of director to disclose his age.**

- (1) A person who is appointed or to his knowledge proposed to be appointed director of a company subject to section 293 at a time when he has attained any retiring age applicable to him under that section or under the company's articles shall give notice of his age to the company.
- (2) For purposes of this section, a company is deemed subject to section 293 notwithstanding that all or any of the section's provisions are excluded or modified by the company's articles.
- (3) Subsection (1) does not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.



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- (4) A person who—
- (a) fails to give notice of his age as required by this section; or
  - (b) acts as director under any appointment which is invalid or has terminated by reason of his age,
- is liable to a fine and, for continued contravention, to a daily default fine.
- (5) For purposes of subsection (4), a person who has acted as director under an appointment which is invalid or has terminated is deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated (as the case may be), until the last day on which he is shown to have acted thereunder.

### *Disqualification*

<sup>F16</sup>295— .....  
299

#### **Textual Amendments**

**F16** Ss. 295–299 repealed by [Company Directors Disqualification Act 1986 \(c. 46, SIF 27\)](#), s. 23(2), **Sch. 4**

<sup>F17</sup>300 .....

#### **Textual Amendments**

**F17** 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>F18</sup>301, .....  
302.

#### **Textual Amendments**

**F18** 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.**

- (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.
- (2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.

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- (3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
- (4) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (5) This section is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

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

**C12** S. 303(1) restricted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 14

**304 Director's right to protest removal.**

- (1) On receipt of notice of an intended resolution to remove a director under section 303, the company shall forthwith send a copy of the notice to the director concerned; and he (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.
- (2) Where notice is given of an intended resolution to remove a director under that section, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—
  - (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).
- (3) If a copy of the representations is not sent as required by subsection (2) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (4) But copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.
- (5) The court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

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### *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 which the company's name appears unless it states on the letter in legible characters [<sup>F19</sup>the 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.
- [<sup>F20</sup>(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**

**F19** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 145, 213(2), [Sch. 19 para. 4\(2\)](#)

**F20** [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)**

**C13** [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](#))

**C14** [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.

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- (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.
- (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.**

- (1) The matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company’s employees in general, as well as the interests of its members.
- (2) Accordingly, the duty imposed by this section on the directors is owed by them to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.
- (3) This section applies to shadow directors as it does to directors.

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### **309A Provisions protecting directors from liability**

- (1) This section applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.
- (2) Any provision which purports to exempt (to any extent) a director of a company from any liability within subsection (1) is void.
- (3) Any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—
  - (a) the company, or
  - (b) an associated company,against any liability within subsection (1) is void  
This is subject to subsections (4) and (5).
- (4) Subsection (3) does not apply to a qualifying third party indemnity provision (see section 309B(1)).
- (5) Subsection (3) does not prevent a company from purchasing and maintaining for a director of—
  - (a) the company, or
  - (b) an associated company,insurance against any liability within subsection (1).
- (6) In this section—

“associated company”, in relation to a company (“C”), means a company which is C’s subsidiary, or C’s holding company or a subsidiary of C’s holding company;

“provision” means a provision of any nature, whether or not it is contained in a company’s articles or in any contract with a company.

### **309B Qualifying third party indemnity provisions**

- (1) For the purposes of section 309A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in section 309A(3) in relation to which conditions A to C below are satisfied.
- (2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—
  - (a) to the company, or
  - (b) to any associated company.
- (3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—
  - (a) a fine imposed in criminal proceedings, or
  - (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).
- (4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—
  - (a) in defending any criminal proceedings in which he is convicted, or

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- (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
  - (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
    - (i) section 144(3) or (4) (acquisition of shares by innocent nominee), or
    - (ii) section 727 (general power to grant relief in case of honest and reasonable conduct).
- (5) In paragraph (a), (b) or (c) of subsection (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.
- (6) For the purposes of subsection (5) 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.
- (7) 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.
- (8) In this section “associated company” and “provision” have the same meaning as in section 309A.

### **309C Disclosure of qualifying third party indemnity provisions**

- (1) Subsections (2) and (3) impose disclosure requirements in relation to a directors' report under section 234 in respect of a financial year.
- (2) If —
- (a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
  - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,
- the report must state that any such provision is or (as the case may be) was so in force.
- (3) If the company has made a qualifying third party indemnity provision and—
- (a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or
  - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,
- the report must state that any such provision is or (as the case may be) was so in force.
- (4) Subsection (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.
- (5) Section 318 shall apply to—
- (a) the company, and
  - (b) if the director is a director of an associated company, the associated company,

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as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in section 318(1).

(6) In this section—

“associated company” and “provision” have the same meaning as in section 309A; and

“qualifying third party indemnity provision” has the meaning given by section 309B(1).

### **310 Provisions [<sup>F21</sup>protecting] auditors from liability.**

(1) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise, for exempting <sup>F22</sup> . . . any person (whether an officer or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

(2) Except as provided by the following subsection, any such provision is void.

[<sup>F23</sup>(3) This section does not prevent a company—

(a) from purchasing and maintaining for any such <sup>F24</sup> . . . auditor insurance against any such liability, or

(b) from indemnifying any such <sup>F24</sup> . . . auditor against any liability incurred by him—

(i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or

(ii) in connection with any application under <sup>F25</sup> . . . section 727 (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.]

#### **Textual Amendments**

**F21** S. 310: words in sidenote substituted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 19(2), 65; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to arts. 3-13)

**F22** Words in s. 310(1) repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 19(2)(a), 64, 65, Sch. 8; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to arts. 3-13)

**F23** S. 310(3) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 137(1), 213(2)

**F24** Words in s. 310(3) repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 19(2)(b)(i), 64, 65, Sch. 8; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to arts. 3-13)

**F25** Words in s. 310(3) repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 19(2)(b)(ii), 64, 65, Sch. 8; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to arts. 3-13)

**Status:**

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**Changes to legislation:**

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