Companies Act 1985

1985 CHAPTER 6

PART XI

COMPANY ADMINISTRATION AND PROCEDURE

CHAPTER IV

MEETINGS AND RESOLUTIONS

Meetings

366 Annual general meeting.

(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.

(2) However, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) Not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.

(4) If default is made in holding a meeting in accordance with this section, the company and every officer of it who is in default is liable to a fine.

[F1 366A Election by private company to dispense with annual general meetings.

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the holding of annual general meetings.

***Status:** Point in time view as at 25/09/1991. This version of this chapter 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, Chapter IV. (See end of Document for details)*

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(4) If such a notice is given, the provisions of section 366(1) and (4) apply with respect to the calling of the meeting and the consequences of default.

(5) If the election ceases to have effect, the company is not obliged under section 366 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (3).**]**

Textual Amendments

F1 S. 366A 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(2)**, 213(2)

367 Secretary of State's power to call meeting in default.

(1) If default is made in holding a meeting in accordance with section 366, the Secretary of State may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as he thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles.

(2) The directions that may be given under subsection (1) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) If default is made in complying with directions of the Secretary of State under subsection (1), the company and every officer of it who is in default is liable to a fine.

(4) A general meeting held under this section shall, subject to any directions of the Secretary of State, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it be so treated.

(5) Where a company so resolves, a copy of the resolution shall, within 15 days after its passing, be forwarded to the registrar of companies and recorded by him; and if default is made in complying with this subsection, 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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368 Extraordinary general meeting on members' requisition.

(1) The directors of a company shall, on a members' requisition, forthwith proceed duly to convene an extraordinary general meeting of the company.

This applies notwithstanding anything in the company's articles.

(2) A member's requisition is a requisition of —

(a) members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting at general meetings of the company; or

(b) in the case of a company not having a share capital, members of it representing not less than one-tenth of the total voting rights of all the members having at the date of deposit of the requisition a right to vote at general meetings.

(3) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the cocmpany, and may consist of several documents in like form each signed by one or more requisitionists.

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.

(5) A meeting convened under this section by requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(7) In the case of a meeting at which a resolution is to be proposed as a special resolution, the directors are deemed not to have duly convened the meeting if they do not give the notice required for special resolutions by section 378(2).

[[F2](8) The directors are deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening the meeting.**]**

Textual Amendments

F2 S. 368(8) added by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 9**

369 Length of notice for calling meetings.

(1) A provision of a company's articles is void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

(a) in the case of the annual general meeting, 21 days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—

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(i) 7 days' notice in writing in the case of an unlimited company, and
(ii) otherwise, 14 days' notice in writing.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)), a meeting of the company (other than an adjourned meeting) may be called—
(a) in the case of the annual general meeting, by 21 days' notice in writing; and
(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—
(i) by 7 days' notice in writing in the case of an unlimited company, and
(ii) otherwise, 14 days' notice in writing.

(3) Notwithstanding that a meeting is called by shorter notice than that specified in subsection (2) or in the company's articles (as the case may be), it is deemed to have been duly called if it is so agreed—
(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote at it; and
(b) otherwise, by the requisite majority.

(4) The requisite majority for this purpose is a majority in number of the members having a right to attend and vote at the meeting, being a majority—
(a) together holding not less than 95 per cent. in nominal value of the shares given a right to attend and vote at the meeting; or
(b) in the case of a company not having a share capital, together representing not less than 95 per cent. of the total voting rights at that meeting of all the members.

[[F3]A private company may elect (by elective resolution in accordance with section 379A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent. as may be specified in the resolution or subsequently determined by the company in general meeting.**]**

Textual Amendments

F3 Paragraph inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(3)**, 213(2)

370 General provisions as to meetings and votes.

(1) The following provisions have effect in so far as the articles of the company do not make other provision in that behalf.

(2) Notice of the meeting of a company shall be served on every member of it in the manner in which notices are required to be served by Table A (as for the time being in force).

(3) Two or more members holding not less than one-tenth of the issued share capital or, if the company does not have a share capital, not less than 5 per cent. in number of the members of the company may call a meeting.

(4) Two members personally present are a quorum.

(5) Any member elected by the members present at a meeting may be chairman of it.

(6) In the case of a company originally having a share capital, every member has one vote in respect of each share or each £10 of stock held by him; and in any other case every member has one vote.

VALID FROM 15/07/1992

[F4 370A Quorum at meetings of the sole member

Notwithstanding any provision to the contrary in the articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy shall be a quorum.]

Textual Amendments

F4 S. 370A inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.5**.

371 Power of court to order meeting.

(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application—

(a) of any director of the company, or

(b) of any member of the company who would be entitled to vote at the meeting,

order a meeting to be called, held and conducted in any manner the court thinks fit.

(2) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.

(3) A meeting called, held and conducted in accordance with an order under subsection (1) is deemed for all purposes a meeting of the company duly called, held and conducted.

372 Proxies.

(1) Any member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him; and in the case of a private company a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at the meeting.

(2) But, unless the articles otherwise provide—

(a) subsection (1) does not apply in the case of a company not having a share capital; and

(b) a member of a private company is not entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy is not entitled to vote except on a poll.

(3) In the case of a company having a share capital, in every notice calling a meeting of the company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member.

(4) If default is made in complying with subsection (3) as respects any meeeting, every officer of the company who is in default is liable to a fine.

(5) A provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective.

(6) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at it by proxy, then every officer of the company who knowingly and wilfully authorises or permits their issue in that manner is liable to a fine.

However, an officer is not so liable by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(7) This section applies to meetings of any class of members of a company as it applies to general meetings of the company.

373 Right to demand a poll.

(1) A provision contained in a company's articles is void in so far as it would have the effect either—

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made either—
  - (i) by not less than 5 members having the right to vote at the meeting; or
  - (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
  - (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of subsection (1) a demand by a person as proxy for a member is the same as a demand by the member.

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374 Voting on a poll.

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

375 Representation of corporations at meetings.

(1) A corporation, whether or not a company within the meaning of this Act, may—

(a) if it is a member of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of creditors of the company held in pursuance of this Act or of rules made under it, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or debenture-holder of the other company.

Resolutions

376 Circulation of members' resolutions.

(1) Subject to the section next following, it is the duty of a company, on the requisition in writing of such number of members as is specified below and (unless the company otherwise resolves) at the expense of the requisitionists—

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) is—

(a) any number representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than £100.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting.

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(4) Notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.

(5) For compliance with subsections (3) and (4), the copy must be served, or notice of the effect of the resolution be given (as the case may be), in the same manner and (so far as practicable) at the same time as notice of the meeting; and, where it is not practicable for it to be served or given at the same time, it must be served or given as soon as practicable thereafter.

(6) The business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section; and for purposes of this subsection notice is deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members. This has effect notwithstanding anything in the company's articles.

(7) In the event of default in complying with this section, every officer of the company who is in default is liable to a fine.

Modifications etc. (not altering text)

C1 S. 376(7) applied (26.11.2001) by S.I. 2001/3755, **reg. 16(7)** (with regs. 39, 45)

377 In certain cases, compliance with s. 376 not required.

(1) A company is not bound under section 376 to give notice of a resolution or to circulate a statement unless—

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain for signatures of all the requisitionists) is deposited at the registered office of the company—
  - (i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting, and
  - (ii) otherwise, not less than one week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to it.

(2) But it, after a copy of a requisition requiring notice of a resolution has been deposited at the company's registered office, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy (though not deposited within the time required by subsection (1)) is deemed properly deposited for the purposes of that subsection.

(3) The company is also not bound under section 376 to circulate a statement 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 that section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

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378 Extraordinary and special resolutions.

(1) A resolution is an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution is a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at such a meeting, being a majority—

(a) together holding not less than 95 per cent. in nominal value of the shares giving that right; or

(b) in the case of a company not having a share capital, together representing not less than 95 per cent. of the total voting rights at that meeting of all the members,

a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

[[F5]A private company may elect (by elective resolution in accordance with section 379A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent. as may be specified in the resolution or subsequently determined by the company in general meeting.**]**

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration by the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(5) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference is to be had to the number of votes cast for and against the resolution.

(6) For purposes of this section, notice of a meeting is deemed duly given, and the meeting duly held, when the notice is given and the meeting held in the manner provided by this Act or the company's articles.

Textual Amendments

F5 Paragraph inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 115(3)**, 213(2)

Modifications etc. (not altering text)

C2 S. 378(3) excluded (1.12.2001) by 2000 c. 8, **s. 366(4)(a)**; S.I. 2001/3538, **art. 2(1)**

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379 Resolution requiring special notice.

(1) Where by any provision of this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.

(2) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the company's articles, at least 21 days before the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed properly given, though not given within the time required.

[F6 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) section 252 (election to dispense with laying of accounts and reports before general meeting),
- (c) section 366A (election to dispense with holding of annual general meeting),
- (d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or
- (e) section 386 (election to dispense with appointment of auditors annually),

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.

(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.

(5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provision in the company's articles of association.**]**

Textual Amendments

F6 S. 379A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 116(2)**, 213(2)

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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 every such resolution or agreement 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) special resolutions;

(b) extraordinary resolutions;

[[F7](bb) an elective resolution or a resolution revoking such a resolution;**]**

(c) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless (as the case may be) they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) a resolution passed by the directors of a company in compliance with a direction under section 31(2) (change of name on Secretary of State's direction);

(f) a resolution of a company to give, vary, revoke or renew an authority to the directors for the purposes of section 80 (allotment of relevant securities);

(g) a resolution of the directors passed under section 147(2) (alteration of memorandum on company ceasing to be a public company, following acquisition of its own shares);

(h) a resolution conferring, varying, revoking or renewing authority under section 166 (market purchase of company's own shares);

(j) a resolution for voluntary winding up, passed under **[**[F8]section 84(1)(*a*) of the Insolvency Act**]**;

(k) a resolution passed by the directors of an old public company, under section 2(1) of the Consequential Provisions Act, that the company should be re-registered as a public company.

(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.

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(7) For purposes of subsections (5) and (6), a liquidator of a company is deemed an officer of it.

Textual Amendments

F7 S. 380(4)(bb) inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 116(3)**, 213(2)

F8 Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**

Modifications etc. (not altering text)

C3 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)

C4 S. 380(6) extended (12.2.1992) by S.I. 1992/225, **regs. 77(2)**, 89(4).

381 Resolution passed at adjourned meeting.

Where a resolution is passed at an adjourned meeting of—

(a) a company;

(b) the holders of any class of shares in a company;

(c) the directors of a company;

the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Written resolutions of private companies

381A Written resolutions of private companies.

(1) Anything which in the case of a private company may be done—

(a) by resolution of the company in general meeting, or

(b) by resolution of a meeting of any class of members of the company,

may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting.

(2) The signatures need not be on a single document provided each is on a document which accurately states the terms of the resolution.

(3) The date of the resolution means when the resolution is signed by or on behalf of the last member to sign.

(4) A resolution agreed to in accordance with this section has effect as if passed—

(a) by the company in general meeting, or

(b) by a meeting of the relevant class of members of the company,

as the case may be; and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(5) Any reference in any enactment to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this section, a reference to the date of the resolution, unless section 381B(4) applies in which case it shall be construed as a reference to the date from which the resolution has effect.

(6) A resolution may be agreed to in accordance with this section which would otherwise be required to be passed as a special, extraordinary or elective resolution; and any reference in any enactment to a special, extraordinary or elective resolution includes such a resolution.

(7) This section has effect subject to the exceptions specified in Part I of Schedule 15A; and in relation to certain descriptions of resolution under this section the procedural requirements of this Act have effect with the adaptations specified in Part II of that Schedule.

[F9 381B Rights of auditors in relation to written resolution.

(1) A copy of any written resolution proposed to be agreed to in accordance with section 381A shall be sent to the company's auditors.

(2) If the resolution concerns the auditors as auditors, they may within seven days from the day on which they receive the copy give notice to the company stating their opinion that the resolution should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company.

(3) A written resolution shall not have effect unless—
   (a) the auditors notify the company that in their opinion the resolution—
      (i) does not concern them as auditors, or
      (ii) does so concern them but need not be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company, or
   (b) the period for giving a notice under subsection (2) expires without any notice having been given in accordance with that subsection.

(4) A written resolution previously agreed to in accordance with section 381A shall not have effect until that notification is given or, as the case may be, that period expires.**]**

Textual Amendments

F9 Ss. 381A–381C inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 113(2)**, 213(2)

[F10 381C Written resolutions: supplementary provisions.

(1) Sections 381A and 381B have effect notwithstanding any provision of the company's memorandum or articles.

(2) Nothing in those sections affects any enactment or rule of law as to—
   (a) things done otherwise than by passing a resolution, or
   (b) cases in which a resolution is treated as having been passed, or a person is precluded from alleging that a resolution has not been duly passed.**]**

Textual Amendments

F10 Ss. 381A–381C inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 113(2)**, 213(2)

Status: *Point in time view as at 25/09/1991. This version of this chapter 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, Chapter IV. (See end of Document for details)*

Records of proceedings

382 Minutes of meetings.

(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, is evidence of the proceedings.

(3) Where a shadow director by means of a notice required by section 317(8) declares an interest in a contract or proposed contract, this section applies—

(a) if it is a specific notice under paragraph (a) of that subsection, as if the declaration had been made at the meeting there referred to, and

(b) otherwise, as if it had been made at the meeting of the directors next following the giving of the notice;

and the making of the declaration is in either case deemed to form part of the proceedings at the meeting.

(4) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings had at the meeting to have been duly had; and all appointments of directors, managers or liquidators are deemed valid.

(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.

[F11 382A Recording of written resolutions.

(1) Where a written resolution is agreed to in accordance with section 381A which has effect as if agreed by the company in general meeting, the company shall cause a record of the resolution (and of the signatures) to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

(2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution; and where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to be complied with.

(3) Section 382(5) (penalties) applies in relation to a failure to comply with subsection (1) above as it applies in relation to a failure to comply with subsection (1) of that section; and section 383 (inspection of minute books) applies in relation to a record made in accordance with this section as it applies in relation to the minutes of a general meeting.**]**

Textual Amendments

F11 S. 382A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 113(3)**, 213(2)

Status: *Point in time view as at 25/09/1991. This version of this chapter 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, Chapter IV. (See end of Document for details)*

VALID FROM 15/07/1992

[F12 382B Recording of decisions by the sole member

(1) Where a private company limited by shares or by guarantee has only one member and he takes any decision which may be taken by the company in general meeting and which has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(2) If the sole member fails to comply with subsection (1) he shall be liable to a fine.

(3) Failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.]

Textual Amendments

F12 S. 382B inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 6(1)**.

383 Inspection of minute books.

(1) The books containing the minutes of proceedings of any general meeting of a company held on or after 1st November 1929 shall be kept at the company's registered office, and shall [F13 during business hours] be open to the inspection of any member without charge.

[F14 (2) The reference to business hours is subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than 2 hours in each day be allowed for inspection.]

(3) Any member shall be entitled [F15 on payment of such fee as may be prescribed] to be furnished, within 7 days after he has made a request in that behalf to the company, with a copy of any such minutes as are referred to above, [F16 at a charge of not more than 2.5 pence for every 100 words].

(4) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company and every officer of it who is in default is liable in respect of each offence to a fine.

(5) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required be sent to the persons requiring them.

Textual Amendments

F13 Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 143(9)(a), 212, 213(2), 215(2), **Sch. 24**

F14 S. 383(2) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 143(9)(b), 212, 213(2), 215(2), **Sch. 24**

F15 Words inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 143(9)(c)**, 213(2), 215(2)

Status: Point in time view as at 25/09/1991. This version of this chapter 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, Chapter IV. (See end of Document for details)

F16 Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 143(9)(c), 212, 213(2), 215(2), **Sch. 24**

[F17 *Appointment of auditors*]

Textual Amendments

F17 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.

(1) Every company shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to section 388A (dormant company exempt from obligation to appoint auditors).

(2) Auditors shall be appointed in accordance with section 385 (appointment at general meeting at which accounts are laid), except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with section 385A.

(3) References in this Chapter to the end of the time for appointing auditors are to the end of the time within which an appointment must be made under section 385(2) or 385A(2), according to whichever of those sections applies.

(4) Sections 385 and 385A have effect subject to section 386 under which a private company may elect to dispense with the obligation to appoint auditors annually.

Modifications etc. (not altering text)

C5 S. 384 applied with modifications by S.I. 1985/680, regs. 4, 6, **Sch.**

[F18 385 Appointment at general meeting at which accounts laid.

(1) This section applies to every public company and to a private company which has not elected to dispense with the laying of accounts.

(2) The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.

(3) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.]

***Status:** Point in time view as at 25/09/1991. This version of this chapter 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, Chapter IV. (See end of Document for details)*

Textual Amendments

F18 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)

Modifications etc. (not altering text)

C6 S. 385 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F19 385A Appointment by private company which is not obliged to lay accounts.

(1) This section applies to a private company which has elected in accordance with section 252 to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the previous financial year are sent to members under section 238 or, if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditors of the company may be appointed by the directors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under section 238, or

(b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

(5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.**]**

Textual Amendments

F19 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)

[F20386 Election by private company to dispense with annual appointment.

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless-

(a) a resolution has been passed under section 250 by virtue of which the company is exempt from the obligation to appoint auditors, or

(b) a resolution has been passed under section 393 to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office-

(a) where section 385 then applies, until the conclusion of the next general meeting of the company at which accounts are laid;

(b) where section 385A then applies, until the end of the time for appointing auditors for the next financial year under that section.

(4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.**]**

Textual Amendments

F20 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)

[F21387 Appointment by Secretary of State in default of appointment by company.

(1) If in any case no auditors are appointed, re-appointed or deemed to be re-appointed before the end of the time for appointing auditors, the Secretary of State may appoint a person to fill the vacancy.

(2) In such a case the company shall within one week of the end of the time for appointing auditors give notice to the Secretary of State of his power having become exercisable.

If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.**]**

Textual Amendments

F21 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)

Modifications etc. (not altering text)

C7 S. 387 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F22388 Filling of casual vacancies.

(1) The directors, or the company in general meeting, may fill a casual vacancy in the office of auditor.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

(3) Special notice is required for a resolution at a general meeting of a company—

(a) filling a casual vacancy in the office of auditor, or

(b) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy.

(4) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it—

(a) to the person proposed to be appointed, and

(b) if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.]

Textual Amendments

F22 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)

Modifications etc. (not altering text)

C8 S. 388 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F23388A Dormant company exempt from obligation to appoint auditors.

(1) A company which by virtue of section 250 (dormant companies: exemption from provisions as to audit of accounts) is exempt from the provisions of Part VII relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if the exemption ceases.

(3) Where section 385 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where section 385A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under section 238, or

(b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.]

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***Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Chapter IV. (See end of Document for details)*

Textual Amendments

F23 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)

[F24 389 Qualification for appointment as auditor.

(1) Subject to the next subsection, a person is not qualified for appointment as auditor of a company unless either—

(a) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Secretary of State; or

(b) he is for the time being authorised by the Secretary of State to be so appointed, as having similar qualifications obtained outside the United Kingdom or else he retains an authorisation formerly granted by the Board of Trade or the Secretary of State under section 161(1)(b) of the M1 Companies Act 1948 (adequate knowledge and experience, or pre-1947 practice).

(2) Subject to subsections (6) to (8) below, a person is qualified for appointment as auditor of an unquoted company if he retains an authorisation granted by the Board of Trade or the Secretary of State under section 13(1) of the M2 Companies Act 1967.

In this subsection—

(a) "unquoted company" means a company in the case of which, at the time of the person's appointment, the following condition is satisfied, namely, that no shares or debentures of the company, or of a body corporate of which it is the subsidiary, have been quoted on a stock exchange (whether in Great Britain or elsewhere) to the public for subscription or purchase, and

(b) "company" does not include a company that carries on business as the promoter of a trading stamp scheme within the meaning of the Trading Stamps Act 1964.

(3) Subject to the next subsection, the bodies of accountants recognised for the purposes of subsection (1)(a) 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, and

(d) the Institute of Chartered Accountants in Ireland.

(4) The Secretary of State may by regulations in a statutory instrument amend subsection (3) by adding or deleting any body, but shall not make regulations—

(a) adding any body, or

(b) deleting any body which has not consented in writing to its deletion,

unless he has published notice of his intention to do so in the London and Edinburgh Gazettes at least 4 months before making the regulations.

(5) The Secretary of State may refuse an authorisation under subsection (1)(b) to a person as having qualifications obtained outside the United Kingdom if it appears to him that the country in which the qualifications were obtained does not confer on persons

qualified in the United Kingdom privileges corresponding to those conferred by that subsection.

(6) None of the following persons is qualified for appointment as auditor of a company—

(a) an officer or servant of the company;

(b) a person who is a partner of or in the employment of an officer or servant of the company;

(c) a body corporate;

and for this purpose an auditor of a company is not to be regarded as either officer or servant of it.

(7) A person is also not qualified for appointment as auditor of a company if he is, under subsection (6), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(8) Notwithstanding subsections (1), (6) and (7), a Scottish firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of it.

(9) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office; and if an auditor of a company to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.

(10) A person who acts as auditor in contravention of subsection (9), or fails without reasonable excuse to give notice of vacating his office as required by that subsection, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.**]**

Textual Amendments

F24 S. 389 repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), 215(2), **Sch. 24**

Modifications etc. (not altering text)

C9 S. 389 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

Marginal Citations

M1 1948 c. 38.

M2 1967 c. 81.

[F25 Rights of auditors]

Textual Amendments

F25 New ss. 389A–390 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**, 120(1) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

***Status:** Point in time view as at 25/09/1991. This version of this chapter 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, Chapter IV. (See end of Document for details)*

389A Rights to information.

(1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers, and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which—

(a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company, and

(b) is misleading, false or deceptive in a material particular.

A person guilty of an offence under this subsection is liable to imprisonment or a fine, or both.

(3) A subsidiary undertaking which is a body corporate incorporated in Great Britain, and the auditors of such an undertaking, shall give to the auditors of any parent company of the undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a subsidiary undertaking fails to comply with this subsection, the undertaking and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with this subsection he is guilty of an offence and liable to a fine.

(4) A parent company having a subsidiary undertaking which is not a body corporate incorporated in Great Britain shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a parent company fails to comply with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Section 734 (criminal proceedings against unincorporated bodies) applies to an offence under subsection (3).

Modifications etc. (not altering text)

C10 S. 389A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C11 S. 389A(1) applied (with modifications) (23.12.1996) by S.I. 1996/943, **reg. 29(2)(a)**

C12 S.389A(3)(4) applied (with modifications) (23.12.1996) by S.I. 1996/943, **reg. 29(2)(b)**

VALID FROM 06/04/2005

389B Offences relating to the provision of information to auditors

(1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—

(a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 389A(1)(b), and

(b) is misleading, false or deceptive in a material particular,

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***Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Chapter IV. (See end of Document for details)*

the person is guilty of an offence and liable to imprisonment or a fine, or both.

(2) A person who fails to comply with a requirement under section 389A(1)(b) without delay is guilty of an offence and is liable to a fine.

(3) However, it is a defence for a person charged with an offence under subsection (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.

(4) If a company fails to comply with section 389A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Nothing in this section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 389A.

Modifications etc. (not altering text)

C13 Ss. 389A, 389B applied (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 43(3)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

[F26 390 Right to attend company meetings, &c.

(1) A company's auditors are entitled—

- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;
- (b) to attend any general meeting of the company; and
- (c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(2) In relation to a written resolution proposed to be agreed to by a private company in accordance with section 381A, the company's auditors are entitled—

- (a) to receive all such communications relating to the resolution as, by virtue of any provision of Schedule 15A, are required to be supplied to a member of the company,
- (b) to give notice in accordance with section 381B of their opinion that the resolution concerns them as auditors and should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company,
- (c) to attend any such meeting, and
- (d) to be heard at any such meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(3) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.**]**

Textual Amendments

F26 New ss. 389A–390 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**, 120(1) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Status: *Point in time view as at 25/09/1991. This version of this chapter 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, Chapter IV. (See end of Document for details)*

Modifications etc. (not altering text)

C14 S. 390 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

Remuneration of auditors

390A Remuneration of auditors.

(1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) The remuneration of auditors appointed by the directors or the Secretary of State shall be fixed by the directors or the Secretary of State, as the case may be.

(3) There shall be stated in a note to the company's annual accounts the amount of the remuneration of the company's auditors in their capacity as such.

(4) For the purposes of this section "remuneration" includes sums paid in respect of expenses.

(5) This section applies in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value.

The nature of any such benefit shall also be disclosed.

Modifications etc. (not altering text)

C15 S. 390A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F27 390B Remuneration of auditors or their associates for non-audit work.

(1) The Secretary of State may make provision by regulations for securing the disclosure of the amount of any remuneration received or receivable by a company's auditors or their associates in respect of services other than those of auditors in their capacity as such.

(2) The regulations may—

- (a) provide that "remuneration" includes sums paid in respect of expenses,
- (b) apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit require disclosure of its nature and its estimated money value,
- (c) define "associate" in relation to an auditor,
- (d) require the disclosure of remuneration in respect of services rendered to associated undertakings of the company, and
- (e) define "associated undertaking" for that purpose.

(3) The regulations may require the auditors to disclose the relevant information in their report or require the relevant information to be disclosed in a note to the company's accounts and require the auditors to supply the directors of the company with such information as is necessary to enable that disclosure to be made.

(4) The regulations may make different provision for different cases.

(5) 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

F27 New ss. 390A and 390B 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**, 121 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C16 S. 390B applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

C17 S. 390B extended (with modifications) (6.1.1997) by S.I. 1996/2827, reg. 63, **Sch. 6 para. 11**

Removal, resignation, &c. of auditors

391 Removal of auditors.

(1) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar.

If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Nothing in this section shall 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 auditor or of any appointment terminating with that as auditor.

(4) An auditor of a company who has been removed has, notwithstanding his removal, the rights conferred by section 390 in relation to any general meeting of the company—

(a) at which his term of office would otherwise have expired, or

(b) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

Modifications etc. (not altering text)

C18 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C19 S. 391 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F28 391A Rights of auditors who are removed or not re-appointed.

(1) Special notice is required for a resolution at a general meeting of a company—

(a) removing an auditor before the expiration of his term of office, or

(b) appointing as auditor a person other than a retiring auditor.

(2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) 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 or has been sent.

(5) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.**]**

Textual Amendments

F28 New ss. 391–393 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**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C20 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C21 S. 391A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F29 392 Resignation of auditors.

(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

The notice is not effective unless it is accompanied by the statement required by section 394.

(2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.

If default is made in complying with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, a daily default fine.]

Textual Amendments

F29 New ss. 391–393 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**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C22 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C23 S. 392 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F30 392A Rights of resigning auditors.

(1) This section applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) He may request the company to circulate to its members—

(a) before the meeting convened on his requisition, or

(b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company shall (unless the statement is received too late for it to comply)—

(a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and

(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.

(6) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out and the statement 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; and the court may

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***Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Chapter IV. (See end of Document for details)*

order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 390 in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b).

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.**]**

Textual Amendments

F30 New ss. 391–393 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**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C24 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

C25 S. 392A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F31 393 Termination of appointment of auditors not appointed annually.

(1) When an election is in force under section 386 (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

No member may deposit more than one such notice in any financial year of the company.

(2) If such a notice is deposited it is the duty of the directors—

(a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and

(b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed reappointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under section 238 and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

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(5) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this section.**]**

Textual Amendments

F31 New ss. 391–393 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**, 122 as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C26 Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**

[F32 394 Statement by person ceasing to hold office as auditor.

(1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—

(a) send a copy of it to every person who under section 238 is entitled to be sent copies of the accounts, or

(b) apply to the court.

(4) The company shall if it applies to the court notify the auditor of the application.

(5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—

(a) it shall direct that copies of the statement need not be sent out, and

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(b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;

and the company shall within 14 days of the court's decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within 14 days of the court's decision—

(a) send copies of the statement to the persons mentioned in subsection (3)(a), and

(b) notify the auditor of the court's decision;

and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.**]**

Textual Amendments

F32 New ss. 394, 394A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 123(1), 213(2) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C27 S. 394 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

[F33 394A Offences of failing to comply with s. 394.

(1) If a person ceasing to hold office as auditor fails to comply with section 394 he is guilty of an offence and liable to a fine.

(2) In proceedings for an offence under subsection (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) Sections 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under subsection (1).

(4) If a company makes default in complying with section 394, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.**]**

Textual Amendments

F33 New ss. 394, 394A inserted (subject to the saving and transitional provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4**) by Companies Act 1989 (c. 40, SIF 27), **ss. 118**, 123(1), 213(2) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

Modifications etc. (not altering text)

C28 S. 394A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

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Changes to legislation:
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