



# Companies Act 1985

## 1985 CHAPTER 6

### PART XXV

#### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### **716 Prohibition of partnerships with more than 20 members.**

- (1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by its individual members, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.
- (2) However, this does not prohibit the formation—
  - (a) for the purpose of carrying on practice as solicitors, of a partnership consisting of persons each of whom is a solicitor;
  - (b) for the purpose of carrying on practice as accountants, of [<sup>F1</sup>a partnership which is eligible for appointment as a company auditor under section 25 of the Companies Act 1989];
  - (c) for the purpose of carrying on business as members of a recognised stock exchange, of a partnership consisting of persons each of whom is a member of that stock exchange.
  - [<sup>F2</sup>(d) for any purpose prescribed by regulations (which may include a purpose mentioned above), of a partnership of a description so prescribed.]
  - [<sup>F3</sup>(e) of an investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.]
- [<sup>F4</sup>(3) In subsection (2)(a) “solicitor”—
  - (a) in relation to England and Wales, means solicitor of the Supreme Court, and
  - (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.
- (4) In subsection (2)(c) “recognised stock exchange” means—

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- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and
  - (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.]
- (5) Subsection (1) does not apply in relation to any body of persons for the time being approved for the purposes of the Marine and Aviation Insurance (War Risks) Act 1952 by the Secretary of State, being a body the objects of which are or include the carrying on of business by way of the re-insurance of risks which may be re-insured under any agreement for the purpose mentioned in section 1(1)(b) of that Act.

#### Textual Amendments

- F1 Words in s. 716(2)(b) substituted by S.I. 1991/1997, reg. 2, **Sch. para. 53(3)**.
- F2 S. 716(2)(d) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 15(2)**
- F3 S. 716(2)(e) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 8**
- F4 S. 716(3)(4) substituted by Companies Act 1989 (c. 40, SIF 27), s. 145, **Sch. 19 para. 15(3)**

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

- C1 S. 716 excluded (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 127(3), 302.
- C2 S. 716(1) amended (30.4.1992) by S.I. 1992/1028, **reg. 2(1)**.
- C3 S. 716(1) excluded (1.9.1997) by S.I. 1996/1937, **reg. 2**  
S. 716(1) excluded (30.9.1999) by S.I. 1999/2464, **reg. 2**  
S. 716(1) excluded (31.3.2000) by S.I. 2000/486, **reg. 2**  
S. 716(1) excluded (10.5.2001) by S.I. 2001/1389, **reg. 2**
- C4 S. 716(2): by Financial Services Act 1986 (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 22** certain words were inserted at the end of s. 716(2) and those words were repealed (subject to any relevant transitional or saving provisions mentioned in S.I. 1990/355, **art. 5**) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 212, 213(2), **Sch. 19 para. 15(2)**, **Sch. 24**

### 717 Limited partnerships: limit on number of members.

- (1) So much of the <sup>M1</sup>Limited Partnerships Act 1907 as provides that a limited partnership shall not consist of more than 20 persons does not apply—
- (a) to a partnership carrying on practice as solicitors and consisting of persons each of whom is a solicitor,
  - (b) to a partnership carrying on practice as accountants [<sup>F5</sup>which is eligible for appointment as a company auditor under [<sup>F6</sup>section 5] of the Companies Act 1989],
  - (c) to a partnership carrying on business as members of a recognised stock exchange and consisting of persons each of whom is a member of that exchange.
- [<sup>F7</sup>(d) to a partnership carrying on business of any description prescribed by regulations (which may include a business of any description mentioned above), of a partnership of a description so prescribed.]
- [<sup>F8</sup>(2) In subsection (1)(a) “solicitor”—
- (a) in relation to England and Wales, means solicitor of the Supreme Court, and
  - (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.

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- (3) In subsection (1)(c) “recognised stock exchange” means—
- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and
  - (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.]

#### Textual Amendments

- F5** Words in s. 717(1)(b) substituted by S.I. 1991/1997, reg. 2, **Sch. para. 53(4)**.
- F6** Words in s. 717(1)(b) substituted (23.5.1995) by S.I. 1995/1163, **reg. 2**
- F7** S. 717(1)(d) inserted by **Companies Act 1989** (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 16(2)**
- F8** S. 717(2)(3) substituted by **Companies Act 1989** (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 16(3)**

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

- C5** S. 717(1): by **Financial Services Act 1986** (c. 60, SIF 69), s. 212(2), **Sch. 16 para. 22** certain words were inserted at the end of s. 717(1) and those words were repealed (subject to any relevant transitional or saving provisions mentioned in S.I. 1990/355, **art. 5**) by **Companies Act 1989** (c.40, SIF 27), ss. 145, 212, 213(2), **Sch. 19 para. 16(2)**, **Sch. 24**

#### Marginal Citations

- M1** 1907 7 Edw. 7 c. 24

## 718 Unregistered companies.

- (1) The provisions of this Act specified in the first column of Schedule 22 (relating respectively to the matters specified in the second column of the Schedule) apply to all bodies corporate incorporated in and having a principal place of business in Great Britain, other than those mentioned in subsection (2) below, as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column and to such adaptations and modifications (if any) as may be specified by regulations made by the Secretary of State.
- (2) Those provisions of this Act do not apply by virtue of this section to any of the following—
- (a) any body incorporated by or registered under any public general Act of Parliament,
  - (b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or its individual members,
  - (c) any body for the time being exempted by direction of the Secretary of State (or before him by the Board of Trade).
  - [<sup>F9</sup>(d) any investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.]
- (3) Where against any provision of this Act specified in the first column of Schedule 22 there appears in the third column the entry “Subject to section 718(3)”, it means that the provision is to apply by virtue of this section so far only as may be specified by regulations made by the Secretary of State and to such bodies corporate as may be so specified.

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- (4) The provisions specified in the first column of the Schedule also apply in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the <sup>M2</sup>Chartered Companies Act 1837 and not registered under any other public general Act of Parliament, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (b) and (c) of subsection (2).
- (5) This section does not repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which those provisions are applied by virtue of this section, or restrict the power of Her Majesty to grant a charter in lieu of or supplementary to any such charter as above mentioned; but, in relation to any such body, the operation of any such enactment, charter or instrument is suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body.
- (6) The power to make regulations conferred by this section (whether regulations under subsection (1) or subsection (3)) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F9** S. 718(2)(d) inserted (6.1.1997) by S.I. 1996/2827, reg. 75, Sch. 8 Pt. 1 para. 9

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

**C6** S. 718(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 20

#### Marginal Citations

**M2** 1837 c. 73.

## 719 Power of company to provide for employees on cessation or transfer of business.

- (1) The powers of a company include (if they would not otherwise do so apart from this section) power to make the following provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.
- (2) The power conferred by subsection (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.
- (3) The power which a company may exercise by virtue only of subsection (1) shall only be exercised by the company if sanctioned—
- in a case not falling within paragraph (b) or (c) below, by an ordinary resolution of the company, or
  - if so authorised by the memorandum or articles, a resolution of the directors, or
  - if the memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description;
- and in any case after compliance with any other requirements of the memorandum or articles applicable to its exercise.

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- (4) Any payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

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

- C7 S. 719 modified (subject to the transitional and savings provisions mentioned in S.I. 1990/1392, art. 6) by Companies Act 1989 (c. 40, SIF 27), ss. 144(4), 213(2), Sch. 18 para. 36

**720 Certain companies to publish periodical statement.**

- (1) Every company, being an insurance company or a deposit provident or benefit society, shall before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in Schedule 23, or as near to it as circumstances admit.
- (2) A copy of the statement shall be put up in a conspicuous place in the company's registered office, and in every branch office or place where the business of the company is carried on.
- (3) Every member and every creditor of the company is entitled to a copy of the statement, on payment of a sum not exceeding 2 1/2 pence.
- (4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (5) For purposes of this Act, a company which carries on the business of insurance in common with any other business or businesses is deemed an insurance company.
- (6) In the case of an insurance company to which Part II of the <sup>M3</sup>Insurance Companies Act 1982 applies, this section does not apply if the company complies with provisions of that Act as to the accounts and balance sheet to be prepared annually and deposited by such a company.
- (7) The Secretary of State may, by regulations in a statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament), alter the form in Schedule 23.

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

- C8 S. 720 applied with modifications by S.I. 1985/680, regs. 4–6, Sch.  
C9 S. 720 excluded (1.7.1994) by S.I. 1994/1696, reg. 68, Sch. 8 Pt. I para. 9(6)

**Marginal Citations**

- M3 1982 c. 50.

**721 Production and inspection of books where offence suspected.**

- (1) The following applies if on an application made—
- (a) in England and Wales, to a judge of the High Court by the Director of Public Prosecutions, the Secretary of State or a chief officer of police, or

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(b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate,

there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company.

(2) An order may be made—

- (a) authorising any person named in it to inspect the books or papers in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or
- (b) requiring the secretary of the company or such other officer of it as may be named in the order to produce the books or papers (or any of them) to a person named in the order at a place so named.

(3) The above applies also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in subsection (2)(b) shall be made by virtue of this subsection.

(4) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section is not appealable.

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

**C10** S. 721 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**722 Form of company registers, etc.**

- (1) Any register, index, minute book or accounting records required by the Companies Acts to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.
- (2) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
- (3) If default is made in complying with subsection (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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

**C11** S. 722 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

S. 722 applied (with modifications) (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 paras. 18, 20, 21 (with regs. 39, 45)

**723 Use of computers for company records.**

- (1) The power conferred on a company by section 722(1) to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those

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matters otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form.

- (2) Any provision of an instrument made by a company before 12th February 1979 which requires a register of holders of the company's debentures to be kept in a legible form is to be read as requiring the register to be kept in a legible or non-legible form.
- (3) If any such register or other record of a company as is mentioned in section 722(1), or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by this Act to allow inspection of, or to furnish a copy of, the register or other record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.
- (4) The Secretary of State may by regulations in a statutory instrument make such provision in addition to subsection (3) as he considers appropriate in connection with such registers or other records as are mentioned in that subsection, and are kept as so mentioned; and the regulations may make modifications of provisions of this Act relating to such registers or other records.
- (5) A statutory instrument under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

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

**C12** S. 723 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C13** S. 723(1)(2) applied (26.11.2001) by S.I. 2001/3755, reg. 23(4), Sch. 4 para. 18 (with regs. 39, 45)

**[<sup>F10</sup>723A Obligations of company as to inspection of registers, &c.**

- (1) The Secretary of State may make provision by regulations as to the obligations of a company which is required by any provision of this Act—
  - (a) to make available for inspection any register, index or document, or
  - (b) to provide copies of any such register, index or document, or part of it;and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.
- (2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.
- (3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.
- (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
- (5) Regulations under this section may make different provision for different classes of case.
- (6) Nothing in any provision of this Act or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by

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the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.

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

#### Textual Amendments

**F10** S. 723A inserted (1. 11. 1991) by Companies Act 1989 (c. 40, SIF 27), ss. 143(1), 213(2); S.I. 1991/1996, art. 2(2)(b)

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

**C14** S. 723A applied (with modifications) (12.2.1992) by S.I. 1992/225, reg. 26(2).  
S. 723A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

VALID FROM 19/06/2001

### [<sup>F11</sup>723B Confidentiality orders

- (1) Subject to the provisions of this section, an individual may make an application under this section to the Secretary of State where the condition in subsection (2) is satisfied.
- (2) That condition is that the individual—
  - (a) is or proposes to become a director, secretary or permanent representative of a relevant company; and
  - (b) considers that the availability for inspection by members of the public of particulars of his usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that he or a person who lives with him will be subjected to violence or intimidation.
- (3) Where, on an application made by an individual under this section, the Secretary of State is satisfied that the availability for inspection by members of the public of particulars of the individual's usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation, he shall make an order under this section ("a confidentiality order") in relation to him.
- (4) Otherwise, he shall dismiss the application.
- (5) An application under this section shall specify, in relation to each company of which the individual is a director, secretary or permanent representative, an address satisfying such conditions as may be prescribed.
- (6) The Secretary of State shall give the applicant notice of his decision under subsection (3) or (4); and a notice under this subsection shall be given within the prescribed period after the making of the decision and contain such information as may be prescribed.
- (7) Regulations may make provision about applications for confidentiality orders; and the regulations may in particular—
  - (a) require the payment, on the making of an application, of such fees as may be specified in the regulations;



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- (b) make provision about the form and manner in which applications are to be made;
  - (c) provide that applications shall contain such information, and be accompanied by such evidence, as the Secretary of State may from time to time direct.
- (8) Regulations may make provision—
- (a) about the manner in which determinations are to be made under subsection (3) or (4);
  - (b) for questions to be referred to such persons as the Secretary of State thinks fit for the purposes of such determinations;
  - (c) about the review of such determinations;
  - (d) about the period for which confidentiality orders shall remain in force and the renewal of confidentiality orders.
- (9) The Secretary of State may at any time revoke a confidentiality order if he is satisfied that such conditions as may be prescribed are satisfied.
- (10) Regulations may make provision about the manner in which a determination under subsection (9) is to be made and notified to the individual concerned.]

#### Textual Amendments

**F11** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

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

**C15** Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

VALID FROM 19/06/2001

#### <sup>F12</sup>723C Effect of confidentiality orders

- (1) At any time when a confidentiality order is in force in relation to an individual—
- (a) section 709(1) shall not apply to so much of any record kept by the registrar as contains information which is recorded as particulars of the individual's usual residential address that were contained in a document delivered to the registrar after the order came into force;
  - (b) section 364 shall have effect in relation to each affected company of which the individual is a director or secretary as if the reference in subsection (4)(a) of that section to the individual's usual residential address were a reference to the address for the time being specified by the individual in relation to that company under section 723B(5) or subsection (7) below.
- (2) Regulations may make provision about the inspection and copying of confidential records, and such provision may include—
- (a) provision as to the persons by whom, and the circumstances in which, confidential records may be inspected or copies taken of such records;

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- (b) provision under which the registrar may be required to provide certified copies of, or of extracts from, such records.
- (3) Provision under subsection (2) may include provision—
  - (a) for persons of a prescribed description to be entitled to apply to the court for authority to inspect or take copies of confidential records;
  - (b) as to the criteria to be used by the court in determining whether an authorisation should be given.
- (4) Regulations may make provision for restricting the persons to whom, and the purposes for which, relevant information may be disclosed.
- (5) In subsection (4) “relevant information” means information, relating to the usual residential address of an individual in relation to whom a confidentiality order is in force, which has been obtained in prescribed circumstances.
- (6) Regulations may—
  - (a) provide that, where a confidentiality order is in force in relation to an individual who is a director or secretary of a company, subsections (3) and (5) of section 288 shall not apply in relation to so much of the register kept by the company under that section as contains particulars of the usual residential address of that individual (“the protected part of the register”); and
  - (b) make provision as to the persons by whom the protected part of the register may be inspected and the conditions (which may include conditions as to the payment of a fee) on which they may inspect it.
- (7) Regulations may make provision—
  - (a) requiring any individual in relation to whom a confidentiality order is in force to specify in the prescribed manner, in relation to each company of which he becomes a director, secretary or permanent representative at a time when the order is in force, an address satisfying such conditions as may be prescribed;
  - (b) as to the manner in which the address specified in relation to a company under section 723B(5) or this subsection may be changed.
- (8) A company is an affected company for the purposes of subsection (1) if—
  - (a) it is required to deliver annual returns in accordance with section 363; and
  - (b) the individual has specified an address in relation to it under section 723B(5) or subsection (7) above.

#### Textual Amendments

**F12** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

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

**C16** Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

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VALID FROM 19/06/2001

**F13 723D Construction of sections 723B and 723C**

- (1) In section 723B “relevant company” means—
  - (a) a company formed and registered under this Act or an existing company; or
  - (b) an overseas company.
- (2) For the purposes of sections 723B and 723C, an individual is a permanent representative of a company if—
  - (a) the company is a company to which section 690A applies; and
  - (b) he is authorised to represent the company as a permanent representative of the company for the business of one or more of its branches in Great Britain.
- (3) In section 723C “confidential records” means so much of any records kept by the registrar for the purposes of the Companies Acts as contains information—
  - (a) which relates to an individual in relation to whom a confidentiality order is in force; and
  - (b) is recorded as particulars of the individual’s usual residential address that were contained in a document delivered to the registrar after the order came into force.
- (4) In sections 723B and 723C—
  - “confidentiality order” means an order under section 723B;
  - “the court” means such court as may be specified in regulations;
  - “director” and “secretary”, in relation to an overseas company, have the same meanings as in Chapter 1 of Part 23 of this Act;
  - “document” has the same meaning as in Part 24 of this Act;
  - “prescribed” means prescribed by regulations.
- (5) Section 715A(2) applies in relation to sections 723B and 723C as it applies in relation to Part 24 of this Act.
- (6) Regulations may provide that in determining for the purposes of sections 723B and 723C whether a document has been delivered after the coming into force of a confidentiality order, any document delivered to the registrar after the latest time permitted for the delivery of that document shall be deemed to have been delivered at that time.
- (7) For the purposes of section 723B(2)(a) and subsection (2) above it is immaterial whether or not the company in question has already been incorporated or become a relevant company or a company to which section 690A applies at the time of the application under section 723B.
- (8) For the purposes of section 723C(1) and subsection (3) above, it is immaterial whether the record in question consists in the original document concerned.

**Textual Amendments**

**F13** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

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

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

**C17** Ss. 723B-723F applied (with modifications) (2.4.2002) by [The Limited Liability Partnerships \(No. 2\) Regulations 2002 \(S.I. 2002/913\)](#) {art. 3}, Sch.

VALID FROM 19/06/2001

**<sup>F14</sup>723E Sections 723B and 723C: offences**

- (1) Regulations may provide—
  - (a) that any person who in an application under section 723B makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence;
  - (b) that any person who discloses information in contravention of regulations under section 723C(4) shall be guilty of an offence.
- (2) Regulations may provide that a person guilty of an offence under subsection (1) shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both.

**Textual Amendments**

**F14** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by [2001 c. 16, ss. 45\(2\), 138\(2\); S.I. 2001/2223, art. 2\(2\)\(c\); S.I. 2002/533, art. 3](#)

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

**C18** Ss. 723B-723F applied (with modifications) (2.4.2002) by [The Limited Liability Partnerships \(No. 2\) Regulations 2002 \(S.I. 2002/913\)](#) {art. 3}, Sch.

VALID FROM 19/06/2001

**<sup>F15</sup>723F Regulations under sections 723B to 723E**

- (1) In sections 723B to 723E “regulations” means regulations made by the Secretary of State.
- (2) Any power of the Secretary of State to make regulations under any of those sections shall be exercisable by statutory instrument.
- (3) Regulations under sections 723B to 723E—
  - (a) may make different provision for different cases;
  - (b) may contain such incidental, supplemental, consequential and transitional provision, as the Secretary of State thinks fit.
- (4) The provision that may be made by virtue of subsection (3)(b) includes provision repealing or modifying any enactment.

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- (5) No regulations shall be made under any of sections 723B to 723E unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.

#### Textual Amendments

**F15** Ss. 723B-723F inserted (19.6.2001 for certain purposes and otherwise 2.4.2002) by 2001 c. 16, ss. 45(2), 138(2); S.I. 2001/2223, art. 2(2)(c); S.I. 2002/533, art. 3

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

**C19** Ss. 723B-723F applied (with modifications) (2.4.2002) by The Limited Liability Partnerships (No. 2) Regulations 2002 (S.I. 2002/913) {art. 3}, Sch.

F16 724 .....

#### Textual Amendments

**F16** S. 724 repealed (E.W.S.) by Insolvency Act 1986 (c. 45, SIF 66), s. 438, Sch. 12

### 725 Service of documents.

- (1) A document may be served on a company by leaving it at, or sending it by post to, the company's registered office.
- (2) Where a company registered in Scotland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company's principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company.
- (3) Where process is served on a company under subsection (2), the person issuing out the process shall send a copy of it by post to the company's registered office.

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

**C20** S. 725 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 21

**C21** S. 725 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

### 726 Costs and expenses in actions by certain limited companies.

- (1) Where in England and Wales a limited company is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.
- (2) Where in Scotland a limited company is pursuer in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony

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that there is reason to believe that the company will be unable to pay the defender's expenses if successful in his defence, order the company to find caution and sist the proceedings until caution is found.

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

**C22** S. 726 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**727 Power of court to grant relief in certain cases.**

- (1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.
- (2) If any such officer or person as above-mentioned has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.

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

- C23** S. 727 applied by Building Societies Act 1986 (c. 53, SIF 1), s. 110(4)  
S. 727 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 106(4), (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.3  
S. 727 applied (E.W.) (*prosp.*) by Charities Act 1992 (c. 41), ss. 22(3), 24(1)(2), 79(2) (which ss. 22(3), 24(1)(2) were repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch.7)  
S. 727 extended (E.W.) (1.3.1996) by 1993 c. 10, s. 44(3); S.I. 1995/2695, art. 2 (subject to arts. 3, 4)  
S. 727 modified (27.7.1993) by 1993 c. 37, s.57  
S. 727 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I
- C24** S. 727 applied by Charities Act 1993 (c. 10), s. 73E (as inserted (27.2.2007 and 1.4.2008 for certain purposes and otherwise *prosp.*) by Charities Act 2006 (c. 50), ss. 38, 79 (with Sch. 10 para. 13); S.I. 2007/309, art. 2, Sch. (subject to arts. 4-13); S.I. 2008/945, art. 2, Sch. 1 (subject to arts. 4-9))

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## 728 Enforcement of High Court orders.

Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending in that court.

### Modifications etc. (not altering text)

C25 S. 728 applied (with modifications) (19.3.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

## 729 Annual report by Secretary of State.

The Secretary of State shall cause a general annual report of matters within the Companies Acts to be prepared and laid before both Houses of Parliament.

### Modifications etc. (not altering text)

C26 S. 729 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

## 730 Punishment of offences.

- (1) Schedule 24 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.
- (2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.
- (3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.
- (4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent summary conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).
- (5) For the purpose of any enactment in the Companies Acts which provides that an officer of a company [<sup>F17</sup>or other body] who is in default is liable to a fine or penalty, the expression “officer who is in default” means any officer of the company [<sup>F17</sup>or other body] who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

### Textual Amendments

F17 Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), Sch. 19 para. 17

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

**C27** S. 730 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 paras. 22, 23

**C28** S. 730 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

VALID FROM 01/10/2007

**730A Meaning of “officer in default”**

- (1) This section applies to—
- (a) offences under this Act (other than an offence under Part 14 or 15),
  - (b) offences under the insider dealing legislation, and
  - (c) offences under the Companies Consolidation (Consequential Provisions) Act 1985.
- (2) For the purposes of an offence to which this section applies “officer who is in default” means any officer who knowingly and wilfully authorises or permits the default, refusal or contravention in question.

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

**C29** S. 730A applied (temp.) (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 4, Sch. 1 para. 2

**731 Summary proceedings.**

- (1) Summary proceedings for any offence under the Companies Acts may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.
- (2) Notwithstanding anything in section 127(1) of the <sup>M4</sup>Magistrates’ Courts Act 1980, an information relating to an offence under the Companies Acts which is triable by a magistrates’ court in England and Wales may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.
- (3) Summary proceedings in Scotland for an offence under the Companies Acts shall not be commenced after the expiration of 3 years from the commission of the offence.

Subject to this (and notwithstanding anything in <sup>F18</sup>section 136 of the Criminal Procedure (Scotland) Act 1995], such proceedings may (in Scotland) be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within 12 months after the date on which it came to the knowledge of the latter; and subsection (3) of that section applies for the purpose of this subsection as it applies for the purpose of that section.



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- (4) For purposes of this section, a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

#### Textual Amendments

**F18** Words in s. 731(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 56(3)**

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

**C30** S. 731 amended by Business Names Act 1985 (c. 7, SIF 90), s. 7(6)(a)

**C31** S. 731 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 paras. 22, 23**

**C32** S. 731 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C33** S. 731 applied (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 7(7)**

#### Marginal Citations

**M4** 1980 c. 43.

### 732 Prosecution by public authorities.

- (1) In respect of an offence under any of sections 210, 324, 329, 447 to 451 and 455, proceedings shall not, in England and Wales, be instituted except by or with the consent of the appropriate authority.
- (2) That authority is—
- for an offence under any of sections 210, 324 and 329, the Secretary of State or the Director of Public Prosecutions,
  - for an offence under any of sections 447 to 451, either one of those two persons or the Industrial Assurance Commissioner, and
  - for an offence under section 455, the Secretary of State.
- (3) Where proceedings are instituted under the Companies Acts against any person by the Director of Public Prosecutions or by or on behalf of the Secretary of State or the Lord Advocate, nothing in those Acts is to be taken to require any person to disclose any information which he is entitled to refuse to disclose on grounds of legal professional privilege.

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

**C34** S. 732 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 24**

**C35** S. 732 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**C36** S. 732(3) amended by Business Names Act 1985 (c. 7, SIF 90), s. 7(6)(b)

### 733 Offences by bodies corporate.

- (1) The following applies to offences under any of sections 210, 216(3) [<sup>F19</sup>, 394A(1)] . . . <sup>F20</sup> and 447 to 451.
- (2) Where a body corporate is guilty of such an offence and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the

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part of any director, manager, secretary or other similar officer of the body, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

- (3) Where the affairs of a body corporate are managed by its members, . . . <sup>F21</sup> subsection (2) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) In this section “director”, in relation to an offence under any of sections 447 to 451, includes a shadow director.

#### Textual Amendments

- F19** Words 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. 123(3)**, 213(2)
- F20** Words inserted by *Insolvency Act 1985* (c. 65, SIF 27), s. 109, **Sch. 6 para. 7** and repealed by *Insolvency Act 1986* (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**
- F21** Words repealed by *Companies Act 1989* (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

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

- C37** *S. 733* extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 24**
- C38** *S. 733* applied (21.7.1993) by S.I. 1993/1820, **reg. 8(5)(b)**  
*S. 733* applied (19.12.1993) by S.I. 1993/3245, **reg. 6(5)(b)**  
*S. 733* applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

### 734 Criminal proceedings against unincorporated bodies.

- (1) Proceedings for an offence alleged to have been committed under [<sup>F22</sup>section 389A(3) or] [<sup>F23</sup>section 394A(1) or] any of sections 447 to 451 by an unincorporated body shall be brought in the name of that body (and not in that of any of its members), and for the purposes of any such proceedings, any rules of court relating to the service of documents apply as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of such an offence shall be paid out of the funds of that body.
- (3) In a case in which an unincorporated body is charged in England and Wales with such an offence, section 33 of the <sup>M5</sup>Criminal Justice Act 1925 and Schedule 3 to the <sup>M6</sup>Magistrates’ Courts Act 1980 (procedure on charge of an offence against a corporation) have effect in like manner as in the case of a corporation so charged.
- (4) In relation to proceedings on indictment in Scotland for such an offence alleged to have been committed by an unincorporated body, [<sup>F24</sup>section 70 of the Criminal Procedure (Scotland) Act 1995] (proceedings on indictment against bodies corporate) has effect as if that body were a body corporate.
- [<sup>F25</sup>(5) Where such an offence committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) Where such an offence committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or

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to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.]

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#### Textual Amendments

- F22** Words inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4** as amended by S.I. 1990/1707, **art. 8**) by Companies Act 1989 (c. 40, SIF 27), **ss. 120(2)**, 213(2)
- F23** Words inserted (subject to the transitional and saving provisions in S.I. 1990/355, arts. 4, 10, **Sch. 4** as amended by S.I. 1990/1707, **art. 8**) by Companies Act 1989 (c. 40, SIF 27), **ss. 123(4)**, 213(2)
- F24** Words in s. 734(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 56(4)**
- F25** S. 734(5)(6) added by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 18**

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

- C39** S. 734 applied (21.7.1993) by S.I. 1993/1820, **reg. 8(5)(c)**  
S. 734 applied (19.12.1993) by S.I. 1993/3245, **reg. 6(5)(c)**  
S. 734 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**

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#### Marginal Citations

- M5** 1925 c. 86.  
**M6** 1980 c. 43.

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