

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Part 10: Company Directors

277. This Part replaces Part 10 of the 1985 Act (enforcement of fair dealing by directors), the provisions relating to directors in Part 9 of that Act and the provisions relating to confidentiality orders in Part 25 of that Act. It also introduces a statutory statement of directors' general duties to the company.

Who is a director?

278. [Section 250](#) defines a director as including any person occupying the position of director, by whatever name called. This is the same as the definition contained in section 741(1) of the 1985 Act. The Act does not attempt a more detailed definition of a director because it is important to ensure that the term is applied to anybody who exercises real power within the company, particularly in relation to decision taking. The term "director" therefore includes:

- an executive director who has been properly appointed by the company;
- a non-executive director who has been properly appointed by the company;
- a de facto director (that is, a person who has assumed the status and functions of a company director even though he has not been properly appointed).

279. A "shadow director" is defined by section 251 as "a person in accordance with whose directions or instructions the directors of the company are accustomed to act". The section provides that a person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity. This definition is the same as the definition contained in section 741(2) of the 1985 Act.

Powers of directors

280. This Part of the Act does not generally directly give powers to the directors, but, under the draft model articles of association for private companies limited by shares, the directors' functions are:

- to manage the company's business; and
- to exercise all the powers of the company.