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STATUTORY INSTRUMENTS

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**1996 No. 1471**

**DEREGULATION**

**The Deregulation (Resolutions of  
Private Companies) Order 1996**

*Made* - - - - *5th June 1996*

*Coming into force* - - *19th June 1996*

Whereas:

- (a) the Secretary of State is of the opinion that certain provisions of the Companies Act 1985<sup>(1)</sup> which are the subject of this Order impose burdens affecting persons in the carrying on of a trade, business, profession or otherwise and that by amending or repealing the provisions concerned and by making certain other provision it is possible to remove or reduce the burdens without removing any necessary protection;
- (b) the Secretary of State has consulted such organisations as appear to him to be representative of interests substantially affected by his proposals and such other persons as he considers appropriate;
- (c) as a result of that consultation it appears to the Secretary of State appropriate to vary part of his proposals, and he has undertaken such further consultation with respect to the variations as appears to him to be appropriate;
- (d) it appears to the Secretary of State that it is appropriate, following those consultations, to proceed with the making of this Order;
- (e) a document setting out the Secretary of State's proposals has been laid before Parliament in accordance with section 3 of the Deregulation and Contracting Out Act 1994<sup>(2)</sup> and the period for Parliamentary consideration under section 4 of that Act has expired;
- (f) the Secretary of State has had regard to the representations made during that period;
- (g) a draft of this Order has been laid before Parliament with a statement giving details of such representations and the changes (if any) to the Secretary of State's proposals in the light of those representations; and
- (h) a draft of this Order has been approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 1 of the Deregulation and Contracting Out Act 1994, hereby makes the following Order:—

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(1) 1985 c. 6.  
(2) 1994 c. 40.

### **Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Deregulation (Resolutions of Private Companies) Order 1996 and shall come into force 14 days after the day on which it is made.

(2) In this Order “the 1985 Act” means the Companies Act 1985.

### **Elective resolutions: effect when passed at meetings convened at short notice**

2. In section 379A of the 1985 Act (elective resolutions)(3) after subsection (2) (under which an elective resolution is not effective unless passed at a meeting of which at least 21 days' notice has been given) there shall be inserted—

“(2A) An elective resolution is effective notwithstanding the fact that less than 21 days' notice in writing of the meeting is given if all the members entitled to attend and vote at the meeting so agree.”

### **Written resolutions: auditors**

3.—(1) For section 381B of the 1985 Act (under which a written resolution which concerns the auditors as auditors is not effective if the auditors give notice to the company that it should be considered at a general meeting)(4) there shall be substituted—

#### **“381B Duty to notify auditors of proposed written resolution**

(1) If a director or secretary of a company—

- (a) knows that it is proposed to seek agreement to a resolution in accordance with section 381A, and
- (b) knows the terms of the resolution,

he shall, if the company has auditors, secure that a copy of the resolution is sent to them, or that they are otherwise notified of its contents, at or before the time the resolution is supplied to a member for signature.

(2) A person who fails to comply with subsection (1) is liable to a fine.

(3) In any proceedings for an offence under this section it is a defence for the accused to prove—

- (a) that the circumstances were such that it was not practicable for him to comply with subsection (1), or
- (b) that he believed on reasonable grounds that a copy of the resolution had been sent to the company's auditors or that they had otherwise been informed of its contents.

(4) Nothing in this section affects the validity of any resolution.”

(2) In consequence of paragraph (1) above—

- (a) in section 381A(5) of that Act (date of passing of a written resolution), the words from “unless” to the end are hereby repealed,
- (b) in section 390(2) of that Act (further provision with respect to the rights of auditors in relation to a proposed written resolution)(5), paragraphs (b) to (d) are hereby repealed, and
- (c) in Schedule 24 to that Act (punishment of offences) there shall be inserted at the appropriate place—

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(3) Section 379A was inserted by section 116(1) and (2) of the Companies Act 1989 (c. 40).

(4) Sections 381A to 381C were inserted by section 113(1) and (2) of the Companies Act 1989.

(5) Section 390 was substituted by sections 118 and 120(1) of the Companies Act 1989.

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“381B(2)	Director or secretary of company failing to notify auditors of proposed written resolution.	Summary.	Level 3 on the standard scale.”
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(3) This article has effect in relation to written resolutions first proposed on or after the day on which this Order comes into force.

**Written resolutions: relationship of statutory procedure and company’s constitution**

4. In section 381C(1) of the 1985 Act (under which the procedure for written resolutions under sections 381A and 381B of that Act is expressed to have effect notwithstanding any provision of the company’s memorandum or articles) there shall be inserted at the end “, but do not prejudice any power conferred by any such provision.”

5th June 1996

*Phillip Oppenheim,*  
Minister for Company Affairs,  
Department of Trade and Industry

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which is made under section 1 of the Deregulation and Contracting Out Act 1994 (c. 40), amends certain provisions of the Companies Act 1985 (c. 6) concerning the resolutions of private companies.

Article 2 amends section 379A (elective resolution of private company) by enabling less than 21 days' notice to be given of a meeting at which an elective resolution is to be proposed, provided that all members entitled to attend and vote at that meeting agree to the short notice.

Article 3(1) substitutes a new section 381B (duty to notify auditors of proposed written resolution). The new section imposes a duty on the directors and secretary of a company to send the company's auditors a copy, or otherwise inform them of the contents, of any written resolution proposed under section 381A (written resolutions of private companies) at or before the time that resolution is supplied to a member for signature. Breach of the duty will result in the commission of a criminal offence (for which the new section provides certain defences), but will not affect the validity of any resolution passed under section 381A. Article 3(2) makes amendments consequential on the substitution of the new section. Article 3(3) provides for the new section to apply to written resolutions first proposed on or after the day on which this Order comes into force.

Article 4 amends section 381C(1) (written resolutions: supplementary provisions) to make clear that the statutory written resolution procedure under sections 381A and 381B may be used notwithstanding any provision in a private company's memorandum or articles, but does not prejudice any power conferred by any such provision.