ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied, under the transaction in question.

(5) The value of a guarantee or security is the amount guaranteed or secured.

(6) The value of an arrangement to which section 203 (related arrangements) applies is the value of the transaction to which the arrangement relates.

(7) If the value of a transaction or arrangement is not capable of being expressed as a specific sum of money—

(a) whether because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason, and

(b) whether or not any liability under the transaction or arrangement has been reduced,

its value is deemed to exceed £50,000.

212 The person for whom a transaction or arrangement is entered into

For the purposes of sections 197 to 214 (loans etc) the person for whom a transaction or arrangement is entered into is—

(a) in the case of a loan or quasi-loan, the person to whom it is made;

(b) in the case of a credit transaction, the person to whom goods, land or services are supplied, sold, hired, leased or otherwise disposed of under the transaction;

(c) in the case of a guarantee or security, the person for whom the transaction is made in connection with which the guarantee or security is entered into;

(d) in the case of an arrangement within section 203 (related arrangements), the person for whom the transaction is made to which the arrangement relates.

213 Loans etc: civil consequences of contravention

(1) This section applies where a company enters into a transaction or arrangement in contravention of section 197, 198, 200, 201 or 203 (requirement of members' approval for loans etc).

(2) The transaction or arrangement is voidable at the instance of the company, unless—

(a) restitution of any money or other asset that was the subject matter of the transaction or arrangement is no longer possible,

(b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement, or

(c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the transaction or arrangement would be affected by the avoidance.

(3) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (4) is liable—

(a) to account to the company for any gain that he has made directly or indirectly by the transaction or arrangement, and

(b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the transaction or arrangement.

(4) The persons so liable are—

(a) any director of the company or of its holding company with whom the company entered into the transaction or arrangement in contravention of section 197, 198, 201 or 203,

(b) any person with whom the company entered into the transaction or arrangement in contravention of any of those sections who is connected with a director of the company or of its holding company,

(c) the director of the company or of its holding company with whom any such person is connected, and

(d) any other director of the company who authorised the transaction or arrangement.

(5) Subsections (3) and (4) are subject to the following two subsections.

(6) In the case of a transaction or arrangement entered into by a company in contravention of section 200, 201 or 203 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company's compliance with the section concerned.

(7) In any case—

(a) a person so connected is not liable by virtue of subsection (4)(b), and

(b) a director is not liable by virtue of subsection (4)(d),

if he shows that, at the time the transaction or arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

(8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction or arrangement may be called in question or any liability to the company may arise.

214 Loans etc: effect of subsequent affirmation

Where a transaction or arrangement is entered into by a company in contravention of section 197, 198, 200, 201 or 203 (requirement of members' approval for loans etc) but, within a reasonable period, it is affirmed—

(a) in the case of a contravention of the requirement for a resolution of the members of the company, by a resolution of the members of the company, and

(b) in the case of a contravention of the requirement for a resolution of the members of the company's holding company, by a resolution of the members of the holding company,

the transaction or arrangement may no longer be avoided under section 213.

Payments for loss of office

215 Payments for loss of office

(1) In this Chapter a "payment for loss of office" means a payment made to a director or past director of a company—

(a) by way of compensation for loss of office as director of the company,

(b) by way of compensation for loss, while director of the company or in connection with his ceasing to be a director of it, of—

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,

(c) as consideration for or in connection with his retirement from his office as director of the company, or

(d) as consideration for or in connection with his retirement, while director of the company or in connection with his ceasing to be a director of it, from—

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(2) The references to compensation and consideration include benefits otherwise than in cash and references in this Chapter to payment have a corresponding meaning.

(3) For the purposes of sections 217 to 221 (payments requiring members' approval)—

(a) payment to a person connected with a director, or

(b) payment to any person at the direction of, or for the benefit of, a director or a person connected with him,

is treated as payment to the director.

(4) References in those sections to payment by a person include payment by another person at the direction of, or on behalf of, the person referred to.

216 Amounts taken to be payments for loss of office

(1) This section applies where in connection with any such transfer as is mentioned in section 218 or 219 (payment in connection with transfer of undertaking, property or shares) a director of the company—

(a) is to cease to hold office, or

(b) is to cease to be the holder of—

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(2) If in connection with any such transfer—

(a) the price to be paid to the director for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of like shares, or

(b) any valuable consideration is given to the director by a person other than the company,

the excess or, as the case may be, the money value of the consideration is taken for the purposes of those sections to have been a payment for loss of office.

217 Payment by company: requirement of members' approval

(1) A company may not make a payment for loss of office to a director of the company unless the payment has been approved by a resolution of the members of the company.

(2) A company may not make a payment for loss of office to a director of its holding company unless the payment has been approved by a resolution of the members of each of those companies.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought—

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(b) in the case of a resolution at a meeting, by being made available for inspection by the members both—

(i) at the company's registered office for not less than 15 days ending with the date of the meeting, and

(ii) at the meeting itself.

(4) No approval is required under this section on the part of the members of a body corporate that—

(a) is not a UK-registered company, or

(b) is a wholly-owned subsidiary of another body corporate.

218 Payment in connection with transfer of undertaking etc: requirement of members' approval

(1) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company unless the payment has been approved by a resolution of the members of the company.

(2) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of a subsidiary of the company unless the payment has been approved by a resolution of the members of each of the companies.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought—

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(b) in the case of a resolution at a meeting, by being made available for inspection by the members both—

(i) at the company's registered office for not less than 15 days ending with the date of the meeting, and

(ii) at the meeting itself.

(4) No approval is required under this section on the part of the members of a body corporate that—

(a) is not a UK-registered company, or
(b) is a wholly-owned subsidiary of another body corporate.

(5) A payment made in pursuance of an arrangement—
(a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and
(b) to which the company whose undertaking or property is transferred, or any person to whom the transfer is made, is privy,
is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

219 Payment in connection with share transfer: requirement of members' approval

(1) No payment for loss of office may be made by any person to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid unless the payment has been approved by a resolution of the relevant shareholders.

(2) The relevant shareholders are the holders of the shares to which the bid relates and any holders of shares of the same class as any of those shares.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought—
(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
(b) in the case of a resolution at a meeting, by being made available for inspection by the members both—
(i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
(ii) at the meeting itself.

(4) Neither the person making the offer, nor any associate of his (as defined in section 988), is entitled to vote on the resolution, but—
(a) where the resolution is proposed as a written resolution, they are entitled (if they would otherwise be so entitled) to be sent a copy of it, and
(b) at any meeting to consider the resolution they are entitled (if they would otherwise be so entitled) to be given notice of the meeting, to attend and speak and if present (in person or by proxy) to count towards the quorum.

(5) If at a meeting to consider the resolution a quorum is not present, and after the meeting has been adjourned to a later date a quorum is again not present, the payment is (for the purposes of this section) deemed to have been approved.

(6) No approval is required under this section on the part of shareholders in a body corporate that—
(a) is not a UK-registered company, or
(b) is a wholly-owned subsidiary of another body corporate.

(7) A payment made in pursuance of an arrangement—

(a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and

(b) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy,

is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

220 Exception for payments in discharge of legal obligations etc

(1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) for a payment made in good faith—

(a) in discharge of an existing legal obligation (as defined below),

(b) by way of damages for breach of such an obligation,

(c) by way of settlement or compromise of any claim arising in connection with the termination of a person's office or employment, or

(d) by way of pension in respect of past services.

(2) In relation to a payment within section 217 (payment by company) an existing legal obligation means an obligation of the company, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office.

(3) In relation to a payment within section 218 or 219 (payment in connection with transfer of undertaking, property or shares) an existing legal obligation means an obligation of the person making the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question.

(4) In the case of a payment within both section 217 and section 218, or within both section 217 and section 219, subsection (2) above applies and not subsection (3).

(5) A payment part of which falls within subsection (1) above and part of which does not is treated as if the parts were separate payments.

221 Exception for small payments

(1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) if—

(a) the payment in question is made by the company or any of its subsidiaries, and

(b) the amount or value of the payment, together with the amount or value of any other relevant payments, does not exceed £200.

(2) For this purpose "other relevant payments" are payments for loss of office in relation to which the following conditions are met.

(3) Where the payment in question is one to which section 217 (payment by company) applies, the conditions are that the other payment was or is paid—

(a) by the company making the payment in question or any of its subsidiaries,

(b) to the director to whom that payment is made, and

(c) in connection with the same event.

(4) Where the payment in question is one to which section 218 or 219 applies (payment in connection with transfer of undertaking, property or shares), the

conditions are that the other payment was (or is) paid in connection with the same transfer—

(a) to the director to whom the payment in question was made, and

(b) by the company making the payment or any of its subsidiaries.

222 Payments made without approval: civil consequences

(1) If a payment is made in contravention of section 217 (payment by company)—

(a) it is held by the recipient on trust for the company making the payment, and

(b) any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.

(2) If a payment is made in contravention of section 218 (payment in connection with transfer of undertaking etc), it is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.

(3) If a payment is made in contravention of section 219 (payment in connection with share transfer)—

(a) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and

(b) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) If a payment is in contravention of section 217 and section 218, subsection (2) of this section applies rather than subsection (1).

(5) If a payment is in contravention of section 217 and section 219, subsection (3) of this section applies rather than subsection (1), unless the court directs otherwise.

Supplementary

223 Transactions requiring members' approval: application of provisions to shadow directors

(1) For the purposes of—

(a) sections 188 and 189 (directors' service contracts),

(b) sections 190 to 196 (property transactions),

(c) sections 197 to 214 (loans etc), and

(d) sections 215 to 222 (payments for loss of office),

a shadow director is treated as a director.

(2) Any reference in those provisions to loss of office as a director does not apply in relation to loss of a person's status as a shadow director.

224 Approval by written resolution: accidental failure to send memorandum

(1) Where—

(a) approval under this Chapter is sought by written resolution, and

(b) a memorandum is required under this Chapter to be sent or submitted to every eligible member before the resolution is passed,

any accidental failure to send or submit the memorandum to one or more members shall be disregarded for the purpose of determining whether the requirement has been met.

(2) Subsection (1) has effect subject to any provision of the company's articles.

225 Cases where approval is required under more than one provision

(1) Approval may be required under more than one provision of this Chapter.

(2) If so, the requirements of each applicable provision must be met.

(3) This does not require a separate resolution for the purposes of each provision.

226 Requirement of consent of Charity Commission: companies that are charities

For section 66 of the Charities Act 1993 (c. 10) substitute—

"66 Consent of Commission required for approval etc by members of charitable companies

(1) Where a company is a charity—

(a) any approval given by the members of the company under any provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors requiring approval by members) listed in subsection (2) below, and

(b) any affirmation given by members of the company under section 196 or 214 of that Act (affirmation of unapproved property transactions and loans),

is ineffective without the prior written consent of the Commission.

(2) The provisions are—

(a) section 188 (directors' long-term service contracts);

(b) section 190 (substantial property transactions with directors etc);

(c) section 197, 198 or 200 (loans and quasi-loans to directors etc);

(d) section 201 (credit transactions for benefit of directors etc);

(e) section 203 (related arrangements);

(f) section 217 (payments to directors for loss of office);

(g) section 218 (payments to directors for loss of office: transfer of undertaking etc).

66A Consent of Commission required for certain acts of charitable company

(1) A company that is a charity may not do an act to which this section applies without the prior written consent of the Commission.

(2) This section applies to an act that—

(a) does not require approval under a listed provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors) by the members of the company, but

(b) would require such approval but for an exemption in the provision in question that disapplies the need for approval on the part of the members of a body corporate which is a wholly-owned subsidiary of another body corporate.

(3) The reference to a listed provision is a reference to a provision listed in section 66(2) above.

(4) If a company acts in contravention of this section, the exemption referred to in subsection (2)(b) shall be treated as of no effect in relation to the act.".

CHAPTER 5

DIRECTORS' SERVICE CONTRACTS

227 Directors' service contracts

(1) For the purposes of this Part a director's "service contract", in relation to a company, means a contract under which—

(a) a director of the company undertakes personally to perform services (as director or otherwise) for the company, or for a subsidiary of the company, or

(b) services (as director or otherwise) that a director of the company undertakes personally to perform are made available by a third party to the company, or to a subsidiary of the company.

(2) The provisions of this Part relating to directors' service contracts apply to the terms of a person's appointment as a director of a company.

They are not restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

228 Copy of contract or memorandum of terms to be available for inspection

(1) A company must keep available for inspection—

(a) a copy of every director's service contract with the company or with a subsidiary of the company, or

(b) if the contract is not in writing, a written memorandum setting out the terms of the contract.

(2) All the copies and memoranda must be kept available for inspection at—

(a) the company's registered office, or

(b) a place specified in regulations under section 1136.

(3) The copies and memoranda must be retained by the company for at least one year from the date of termination or expiry of the contract and must be kept available for inspection during that time.

(4) The company must give notice to the registrar—

(a) of the place at which the copies and memoranda are kept available for inspection, and

(b) of any change in that place,

unless they have at all times been kept at the company's registered office.

(5) If default is made in complying with subsection (1), (2) or (3), or default is made for 14 days in complying with subsection (4), an offence is committed by every officer of the company who is in default.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for

continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(7) The provisions of this section apply to a variation of a director's service contract as they apply to the original contract.

229 Right of member to inspect and request copy

(1) Every copy or memorandum required to be kept under section 228 must be open to inspection by any member of the company without charge.

(2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.
The copy must be provided within seven days after the request is received by the company.

(3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

230 Directors' service contracts: application of provisions to shadow directors

A shadow director is treated as a director for the purposes of the provisions of this Chapter.

CHAPTER 6

CONTRACTS WITH SOLE MEMBERS WHO ARE DIRECTORS

231 Contract with sole member who is also a director

(1) This section applies where—
(a) a limited company having only one member enters into a contract with the sole member,
(b) the sole member is also a director of the company, and
(c) the contract is not entered into in the ordinary course of the company's business.

(2) The company must, unless the contract is in writing, ensure that the terms of the contract are either—
(a) set out in a written memorandum, or
(b) recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(3) If a company fails to comply with this section an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) For the purposes of this section a shadow director is treated as a director.

(6) Failure to comply with this section in relation to a contract does not affect the validity of the contract.

(7) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of the company.

CHAPTER 7

DIRECTORS' LIABILITIES

Provision protecting directors from liability

232 Provisions protecting directors from liability

(1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by—

(a) section 233 (provision of insurance),

(b) section 234 (qualifying third party indemnity provision), or

(c) section 235 (qualifying pension scheme indemnity provision).

(3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.

(4) Nothing in this section prevents a company's articles from making such provision as has previously been lawful for dealing with conflicts of interest.

233 Provision of insurance

Section 232(2) (voidness of provisions for indemnifying directors) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company, insurance against any such liability as is mentioned in that subsection.

234 Qualifying third party indemnity provision

(1) Section 232(2) (voidness of provisions for indemnifying directors) does not apply to qualifying third party indemnity provision.

(2) Third party indemnity provision means provision for indemnity against liability incurred by the director to a person other than the company or an associated company.

Such provision is qualifying third party indemnity provision if the following requirements are met.

(3) The provision must not provide any indemnity against—

(a) any liability of the director to pay—

(i) a fine imposed in criminal proceedings, or

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or

(b) any liability incurred by the director—

(i) in defending criminal proceedings in which he is convicted, or

(ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him, or

(iii) in connection with an application for relief (see subsection (6)) in which the court refuses to grant him relief.

(4) The references in subsection (3)(b) to a conviction, judgment or refusal of relief are to the final decision in the proceedings.

(5) For this purpose—

(a) a conviction, judgment or refusal of relief becomes final—

(i) if not appealed against, at the end of the period for bringing an appeal, or

(ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and

(b) an appeal is disposed of—

(i) if it is determined and the period for bringing any further appeal has ended, or

(ii) if it is abandoned or otherwise ceases to have effect.

(6) The reference in subsection (3)(b)(iii) to an application for relief is to an application for relief under—

section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee), or

section 1157 (general power of court to grant relief in case of honest and reasonable conduct).

235 Qualifying pension scheme indemnity provision

(1) Section 232(2) (voidness of provisions for indemnifying directors) does not apply to qualifying pension scheme indemnity provision.

(2) Pension scheme indemnity provision means provision indemnifying a director of a company that is a trustee of an occupational pension scheme against liability incurred in connection with the company's activities as trustee of the scheme.

Such provision is qualifying pension scheme indemnity provision if the following requirements are met.

(3) The provision must not provide any indemnity against—

(a) any liability of the director to pay—

(i) a fine imposed in criminal proceedings, or

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or

(b) any liability incurred by the director in defending criminal proceedings in which he is convicted.

(4) The reference in subsection (3)(b) to a conviction is to the final decision in the proceedings.

(5) For this purpose—

(a) a conviction becomes final—

(i) if not appealed against, at the end of the period for bringing an appeal, or

(ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and

(b) an appeal is disposed of—

(i) if it is determined and the period for bringing any further appeal has ended, or

(ii) if it is abandoned or otherwise ceases to have effect.

(6) In this section "occupational pension scheme" means an occupational pension scheme as defined in section 150(5) of the Finance Act 2004 (c. 12) that is established under a trust.

236 Qualifying indemnity provision to be disclosed in directors' report

(1) This section requires disclosure in the directors' report of—

(a) qualifying third party indemnity provision, and

(b) qualifying pension scheme indemnity provision.

Such provision is referred to in this section as "qualifying indemnity provision".

(2) If when a directors' report is approved any qualifying indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that such provision is in force.

(3) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of the company, the report must state that such provision was in force.

(4) If when a directors' report is approved qualifying indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, the report must state that such provision is in force.

(5) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of an associated company, the report must state that such provision was in force.

237 Copy of qualifying indemnity provision to be available for inspection

(1) This section has effect where qualifying indemnity provision is made for a director of a company, and applies—

(a) to the company of which he is a director (whether the provision is made by that company or an associated company), and

(b) where the provision is made by an associated company, to that company.

(2) That company or, as the case may be, each of them must keep available for inspection—

(a) a copy of the qualifying indemnity provision, or

(b) if the provision is not in writing, a written memorandum setting out its terms.

(3) The copy or memorandum must be kept available for inspection at—

(a) the company's registered office, or

(b) a place specified in regulations under section 1136.

(4) The copy or memorandum must be retained by the company for at least one year from the date of termination or expiry of the provision and must be kept available for inspection during that time.

(5) The company must give notice to the registrar—

(a) of the place at which the copy or memorandum is kept available for inspection, and

(b) of any change in that place,

unless it has at all times been kept at the company's registered office.

(6) If default is made in complying with subsection (2), (3) or (4), or default is made for 14 days in complying with subsection (5), an offence is committed by every officer of the company who is in default.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(8) The provisions of this section apply to a variation of a qualifying indemnity provision as they apply to the original provision.

(9) In this section "qualifying indemnity provision" means—

(a) qualifying third party indemnity provision, and

(b) qualifying pension scheme indemnity provision.

238 Right of member to inspect and request copy

(1) Every copy or memorandum required to be kept by a company under section 237 must be open to inspection by any member of the company without charge.

(2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.

The copy must be provided within seven days after the request is received by the company.

(3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

Ratification of acts giving rise to liability

239 Ratification of acts of directors

(1) This section applies to the ratification by a company of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company.

(2) The decision of the company to ratify such conduct must be made by resolution of the members of the company.

(3) Where the resolution is proposed as a written resolution neither the director (if a member of the company) nor any member connected with him is an eligible member.

(4) Where the resolution is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the director (if a member of the company) and any member connected with him.

This does not prevent the director or any such member from attending, being counted towards the quorum and taking part in the proceedings at any meeting at which the decision is considered.

(5) For the purposes of this section—

(a) "conduct" includes acts and omissions;

(b) "director" includes a former director;

(c) a shadow director is treated as a director; and

(d) in section 252 (meaning of "connected person"), subsection (3) does not apply (exclusion of person who is himself a director).

(6) Nothing in this section affects—

(a) the validity of a decision taken by unanimous consent of the members of the company, or

(b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.

(7) This section does not affect any other enactment or rule of law imposing additional requirements for valid ratification or any rule of law as to acts that are incapable of being ratified by the company.

CHAPTER 8

DIRECTORS' RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE

240 Protected information

(1) This Chapter makes provision for protecting, in the case of a company director who is an individual—

(a) information as to his usual residential address;

(b) the information that his service address is his usual residential address.

(2) That information is referred to in this Chapter as "protected information".

(3) Information does not cease to be protected information on the individual ceasing to be a director of the company.

References in this Chapter to a director include, to that extent, a former director.

241 Protected information: restriction on use or disclosure by company

(1) A company must not use or disclose protected information about any of its directors, except—

(a) for communicating with the director concerned,

(b) in order to comply with any requirement of the Companies Acts as to particulars to be sent to the registrar, or

(c) in accordance with section 244 (disclosure under court order).

(2) Subsection (1) does not prohibit any use or disclosure of protected information with the consent of the director concerned.

242 Protected information: restriction on use or disclosure by registrar

(1) The registrar must omit protected information from the material on the register that is available for inspection where—

(a) it is contained in a document delivered to him in which such information is required to be stated, and

(b) in the case of a document having more than one part, it is contained in a part of the document in which such information is required to be stated.

(2) The registrar is not obliged—

(a) to check other documents or (as the case may be) other parts of the document to ensure the absence of protected information, or

(b) to omit from the material that is available for public inspection anything registered before this Chapter comes into force.

(3) The registrar must not use or disclose protected information except—

(a) as permitted by section 243 (permitted use or disclosure by registrar), or

(b) in accordance with section 244 (disclosure under court order).

243 Permitted use or disclosure by the registrar

(1) The registrar may use protected information for communicating with the director in question.

(2) The registrar may disclose protected information—

(a) to a public authority specified for the purposes of this section by regulations made by the Secretary of State, or

(b) to a credit reference agency.

(3) The Secretary of State may make provision by regulations—

(a) specifying conditions for the disclosure of protected information in accordance with this section, and

(b) providing for the charging of fees.

(4) The Secretary of State may make provision by regulations requiring the registrar, on application, to refrain from disclosing protected information relating to a director to a credit reference agency.

(5) Regulations under subsection (4) may make provision as to—

(a) who may make an application,

(b) the grounds on which an application may be made,

(c) the information to be included in and documents to accompany an application, and

(d) how an application is to be determined.

(6) Provision under subsection (5)(d) may in particular—

(a) confer a discretion on the registrar;

(b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application.

(7) In this section—

"credit reference agency" means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose; and

"public authority" includes any person or body having functions of a public nature.

(8) Regulations under this section are subject to negative resolution procedure.

244 Disclosure under court order

(1) The court may make an order for the disclosure of protected information by the company or by the registrar if—

(a) there is evidence that service of documents at a service address other than the director's usual residential address is not effective to bring them to the notice of the director, or

(b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the court,

and the court is otherwise satisfied that it is appropriate to make the order.

(2) An order for disclosure by the registrar is to be made only if the company—

(a) does not have the director's usual residential address, or

(b) has been dissolved.

(3) The order may be made on the application of a liquidator, creditor or member of the company, or any other person appearing to the court to have a sufficient interest.

(4) The order must specify the persons to whom, and purposes for which, disclosure is authorised.

245 Circumstances in which registrar may put address on the public record

(1) The registrar may put a director's usual residential address on the public record if—

(a) communications sent by the registrar to the director and requiring a response within a specified period remain unanswered, or

(b) there is evidence that service of documents at a service address provided in place of the director's usual residential address is not effective to bring them to the notice of the director.

(2) The registrar must give notice of the proposal—

(a) to the director, and

(b) to every company of which the registrar has been notified that the individual is a director.

(3) The notice must—

(a) state the grounds on which it is proposed to put the director's usual residential address on the public record, and

(b) specify a period within which representations may be made before that is done.

(4) It must be sent to the director at his usual residential address, unless it appears to the registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any service address provided in place of that address.

(5) The registrar must take account of any representations received within the specified period.

(6) What is meant by putting the address on the public record is explained in section 246.

246 Putting the address on the public record

(1) The registrar, on deciding in accordance with section 245 that a director's usual residential address is to be put on the public record, shall proceed as if notice of a change of registered particulars had been given—

(a) stating that address as the director's service address, and

(b) stating that the director's usual residential address is the same as his service address.

(2) The registrar must give notice of having done so—

(a) to the director, and

(b) to the company.

(3) On receipt of the notice the company must—

(a) enter the director's usual residential address in its register of directors as his service address, and

(b) state in its register of directors' residential addresses that his usual residential address is the same as his service address.

(4) If the company has been notified by the director in question of a more recent address as his usual residential address, it must—

(a) enter that address in its register of directors as the director's service address, and

(b) give notice to the registrar as on a change of registered particulars.

(5) If a company fails to comply with subsection (3) or (4), an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

(7) A director whose usual residential address has been put on the public record by the registrar under this section may not register a service address other than his usual residential address for a period of five years from the date of the registrar's decision.

CHAPTER 9

SUPPLEMENTARY PROVISIONS

Provision for employees on cessation or transfer of business

247 Power to make provision for employees on cessation or transfer of business

(1) The powers of the directors of a company include (if they would not otherwise do so) power to make provision for the benefit of persons employed or formerly employed by the company, or any of its subsidiaries, 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) This power is exercisable notwithstanding the general duty imposed by section 172 (duty to promote the success of the company).

(3) In the case of a company that is a charity it is exercisable notwithstanding any restrictions on the directors' powers (or the company's capacity) flowing from the objects of the company.

(4) The power may only be exercised if sanctioned—

(a) by a resolution of the company, or

(b) by a resolution of the directors,

in accordance with the following provisions.

(5) A resolution of the directors—

(a) must be authorised by the company's articles, and

(b) is not sufficient sanction for payments to or for the benefit of directors, former directors or shadow directors.

(6) Any other requirements of the company's articles as to the exercise of the power conferred by this section must be complied with.

(7) Any payment under this section must be made—
(a) before the commencement of any winding up of the company, and
(b) out of profits of the company that are available for dividend.

Records of meetings of directors

248 Minutes of directors' meetings

(1) Every company must cause minutes of all proceedings at meetings of its directors to be recorded.

(2) The records must be kept for at least ten years from the date of the meeting.

(3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

249 Minutes as evidence

(1) Minutes recorded in accordance with section 248, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting.

(2) Where minutes have been made in accordance with that section of the proceedings of a meeting of directors, then, until the contrary is proved—
(a) the meeting is deemed duly held and convened,
(b) all proceedings at the meeting are deemed to have duly taken place, and
(c) all appointments at the meeting are deemed valid.

Meaning of "director" and "shadow director"

250 "Director"

In the Companies Acts "director" includes any person occupying the position of director, by whatever name called.

251 "Shadow director"

(1) In the Companies Acts "shadow director", in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(2) 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.

(3) A body corporate is not to be regarded as a shadow director of any of its subsidiary companies for the purposes of—

Chapter 2 (general duties of directors),

Chapter 4 (transactions requiring members' approval), or

Chapter 6 (contract with sole member who is also a director),

by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

Other definitions

252 Persons connected with a director

(1) This section defines what is meant by references in this Part to a person being "connected" with a director of a company (or a director being "connected" with a person).

(2) The following persons (and only those persons) are connected with a director of a company—

(a) members of the director's family (see section 253);

(b) a body corporate with which the director is connected (as defined in section 254);

(c) a person acting in his capacity as trustee of a trust—

(i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him, or

(ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,

other than a trust for the purposes of an employees' share scheme or a pension scheme;

(d) a person acting in his capacity as partner—

(i) of the director, or

(ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;

(e) a firm that is a legal person under the law by which it is governed and in which—

(i) the director is a partner,

(ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the director, or

(iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.

(3) References in this Part to a person connected with a director of a company do not include a person who is himself a director of the company.

253 Members of a director's family

(1) This section defines what is meant by references in this Part to members of a director's family.

(2) For the purposes of this Part the members of a director's family are—

(a) the director's spouse or civil partner;

(b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship;
(c) the director's children or step-children;
(d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18;
(e) the director's parents.

(3) Subsection (2)(b) does not apply if the other person is the director's grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece.

254 Director "connected with" a body corporate

(1) This section defines what is meant by references in this Part to a director being "connected with" a body corporate.

(2) A director is connected with a body corporate if, but only if, he and the persons connected with him together—
(a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
(b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.

(3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.

(4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.

(5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.

(6) For the avoidance of circularity in the application of section 252 (meaning of "connected person") —
(a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
(b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

255 Director "controlling" a body corporate

(1) This section defines what is meant by references in this Part to a director "controlling" a body corporate.

(2) A director of a company is taken to control a body corporate if, but only if—
(a) he or any person connected with him—
(i) is interested in any part of the equity share capital of that body, or

(ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body, and

(b) he, the persons connected with him and the other directors of that company, together—

(i) are interested in more than 50% of that share capital, or

(ii) are entitled to exercise or control the exercise of more than 50% of that voting power.

(3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.

(4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.

(5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.

(6) For the avoidance of circularity in the application of section 252 (meaning of "connected person")—

(a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and

(b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

256 Associated bodies corporate

For the purposes of this Part—

(a) bodies corporate are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

(b) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

257 References to company's constitution

(1) References in this Part to a company's constitution include—

(a) any resolution or other decision come to in accordance with the constitution, and

(b) any decision by the members of the company, or a class of members, that is treated by virtue of any enactment or rule of law as equivalent to a decision by the company.

(2) This is in addition to the matters mentioned in section 17 (general provision as to matters contained in company's constitution).

General

258 Power to increase financial limits

(1) The Secretary of State may by order substitute for any sum of money specified in this Part a larger sum specified in the order.

(2) An order under this section is subject to negative resolution procedure.

(3) An order does not have effect in relation to anything done or not done before it comes into force.
Accordingly, proceedings in respect of any liability incurred before that time may be continued or instituted as if the order had not been made.

259 Transactions under foreign law

For the purposes of this Part it is immaterial whether the law that (apart from this Act) governs an arrangement or transaction is the law of the United Kingdom, or a part of it, or not.

PART 11

DERIVATIVE CLAIMS AND PROCEEDINGS BY MEMBERS

CHAPTER 1

DERIVATIVE CLAIMS IN ENGLAND AND WALES OR NORTHERN IRELAND

260 Derivative claims

(1) This Chapter applies to proceedings in England and Wales or Northern Ireland by a member of a company—
(a) in respect of a cause of action vested in the company, and
(b) seeking relief on behalf of the company.
This is referred to in this Chapter as a "derivative claim".

(2) A derivative claim may only be brought—
(a) under this Chapter, or
(b) in pursuance of an order of the court in proceedings under section 994 (proceedings for protection of members against unfair prejudice).

(3) A derivative claim under this Chapter may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.
The cause of action may be against the director or another person (or both).

(4) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.

(5) For the purposes of this Chapter—
(a) "director" includes a former director;
(b) a shadow director is treated as a director; and

(c) references to a member of a company include a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

261 Application for permission to continue derivative claim

(1) A member of a company who brings a derivative claim under this Chapter must apply to the court for permission (in Northern Ireland, leave) to continue it.

(2) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court—

(a) must dismiss the application, and

(b) may make any consequential order it considers appropriate.

(3) If the application is not dismissed under subsection (2), the court—

(a) may give directions as to the evidence to be provided by the company, and

(b) may adjourn the proceedings to enable the evidence to be obtained.

(4) On hearing the application, the court may—

(a) give permission (or leave) to continue the claim on such terms as it thinks fit,

(b) refuse permission (or leave) and dismiss the claim, or

(c) adjourn the proceedings on the application and give such directions as it thinks fit.

262 Application for permission to continue claim as a derivative claim

(1) This section applies where—

(a) a company has brought a claim, and

(b) the cause of action on which the claim is based could be pursued as a derivative claim under this Chapter.

(2) A member of the company may apply to the court for permission (in Northern Ireland, leave) to continue the claim as a derivative claim on the ground that—

(a) the manner in which the company commenced or continued the claim amounts to an abuse of the process of the court,

(b) the company has failed to prosecute the claim diligently, and

(c) it is appropriate for the member to continue the claim as a derivative claim.

(3) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court—

(a) must dismiss the application, and

(b) may make any consequential order it considers appropriate.

(4) If the application is not dismissed under subsection (3), the court—

(a) may give directions as to the evidence to be provided by the company, and

(b) may adjourn the proceedings to enable the evidence to be obtained.

(5) On hearing the application, the court may—

(a) give permission (or leave) to continue the claim as a derivative claim on such terms as it thinks fit,

(b) refuse permission (or leave) and dismiss the application, or

(c) adjourn the proceedings on the application and give such directions as it thinks fit.

263 Whether permission to be given

(1) The following provisions have effect where a member of a company applies for permission (in Northern Ireland, leave) under section 261 or 262.

(2) Permission (or leave) must be refused if the court is satisfied—

(a) that a person acting in accordance with section 172 (duty to promote the success of the company) would not seek to continue the claim, or

(b) where the cause of action arises from an act or omission that is yet to occur, that the act or omission has been authorised by the company, or

(c) where the cause of action arises from an act or omission that has already occurred, that the act or omission—

(i) was authorised by the company before it occurred, or

(ii) has been ratified by the company since it occurred.

(3) In considering whether to give permission (or leave) the court must take into account, in particular—

(a) whether the member is acting in good faith in seeking to continue the claim;

(b) the importance that a person acting in accordance with section 172 (duty to promote the success of the company) would attach to continuing it;

(c) where the cause of action results from an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

(i) authorised by the company before it occurs, or

(ii) ratified by the company after it occurs;

(d) where the cause of action arises from an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company;

(e) whether the company has decided not to pursue the claim;

(f) whether the act or omission in respect of which the claim is brought gives rise to a cause of action that the member could pursue in his own right rather than on behalf of the company.

(4) In considering whether to give permission (or leave) the court shall have particular regard to any evidence before it as to the views of members of the company who have no personal interest, direct or indirect, in the matter.

(5) The Secretary of State may by regulations—

(a) amend subsection (2) so as to alter or add to the circumstances in which permission (or leave) is to be refused;

(b) amend subsection (3) so as to alter or add to the matters that the court is required to take into account in considering whether to give permission (or leave).

(6) Before making any such regulations the Secretary of State shall consult such persons as he considers appropriate.

(7) Regulations under this section are subject to affirmative resolution procedure.

264 Application for permission to continue derivative claim brought by another member

(1) This section applies where a member of a company ("the claimant")—

(a) has brought a derivative claim,

(b) has continued as a derivative claim a claim brought by the company, or

(c) has continued a derivative claim under this section.

(2) Another member of the company ("the applicant") may apply to the court for permission (in Northern Ireland, leave) to continue the claim on the ground that—

(a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the court,

(b) the claimant has failed to prosecute the claim diligently, and

(c) it is appropriate for the applicant to continue the claim as a derivative claim.

(3) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court—

(a) must dismiss the application, and

(b) may make any consequential order it considers appropriate.

(4) If the application is not dismissed under subsection (3), the court—

(a) may give directions as to the evidence to be provided by the company, and

(b) may adjourn the proceedings to enable the evidence to be obtained.

(5) On hearing the application, the court may—

(a) give permission (or leave) to continue the claim on such terms as it thinks fit,

(b) refuse permission (or leave) and dismiss the application, or

(c) adjourn the proceedings on the application and give such directions as it thinks fit.

CHAPTER 2

DERIVATIVE PROCEEDINGS IN SCOTLAND

265 Derivative proceedings

(1) In Scotland, a member of a company may raise proceedings in respect of an act or omission specified in subsection (3) in order to protect the interests of the company and obtain a remedy on its behalf.

(2) A member of a company may raise such proceedings only under subsection (1).

(3) The act or omission referred to in subsection (1) is any actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

(4) Proceedings may be raised under subsection (1) against (either or both)—
(a) the director referred to in subsection (3), or
(b) another person.

(5) It is immaterial whether the act or omission in respect of which the proceedings are to be raised or, in the case of continuing proceedings under section 267 or 269, are raised, arose before or after the person seeking to raise or continue them became a member of the company.

(6) This section does not affect—
(a) any right of a member of a company to raise proceedings in respect of an act or omission specified in subsection (3) in order to protect his own interests and obtain a remedy on his own behalf, or
(b) the court's power to make an order under section 996(2)(c) or anything done under such an order.

(7) In this Chapter—
(a) proceedings raised under subsection (1) are referred to as "derivative proceedings",
(b) the act or omission in respect of which they are raised is referred to as the "cause of action",
(c) "director" includes a former director,
(d) references to a director include a shadow director, and
(e) references to a member of a company include a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

266 Requirement for leave and notice

(1) Derivative proceedings may be raised by a member of a company only with the leave of the court.

(2) An application for leave must—
(a) specify the cause of action, and
(b) summarise the facts on which the derivative proceedings are to be based.

(3) If it appears to the court that the application and the evidence produced by the applicant in support of it do not disclose a prima facie case for granting it, the court—
(a) must refuse the application, and
(b) may make any consequential order it considers appropriate.

(4) If the application is not refused under subsection (3)—
(a) the applicant must serve the application on the company,
(b) the court—
(i) may make an order requiring evidence to be produced by the company, and
(ii) may adjourn the proceedings on the application to enable the evidence to be obtained, and

(c) the company is entitled to take part in the further proceedings on the application.

(5) On hearing the application, the court may—

(a) grant the application on such terms as it thinks fit,

(b) refuse the application, or

(c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

267 Application to continue proceedings as derivative proceedings

(1) This section applies where—

(a) a company has raised proceedings, and

(b) the proceedings are in respect of an act or omission which could be the basis for derivative proceedings.

(2) A member of the company may apply to the court to be substituted for the company in the proceedings, and for the proceedings to continue in consequence as derivative proceedings, on the ground that—

(a) the manner in which the company commenced or continued the proceedings amounts to an abuse of the process of the court,

(b) the company has failed to prosecute the proceedings diligently, and

(c) it is appropriate for the member to be substituted for the company in the proceedings.

(3) If it appears to the court that the application and the evidence produced by the applicant in support of it do not disclose a prima facie case for granting it, the court—

(a) must refuse the application, and

(b) may make any consequential order it considers appropriate.

(4) If the application is not refused under subsection (3)—

(a) the applicant must serve the application on the company,

(b) the court—

(i) may make an order requiring evidence to be produced by the company, and

(ii) may adjourn the proceedings on the application to enable the evidence to be obtained, and

(c) the company is entitled to take part in the further proceedings on the application.

(5) On hearing the application, the court may—

(a) grant the application on such terms as it thinks fit,

(b) refuse the application, or

(c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

268 Granting of leave

(1) The court must refuse leave to raise derivative proceedings or an application under section 267 if satisfied—

(a) that a person acting in accordance with section 172 (duty to promote the success of the company) would not seek to raise or continue the proceedings (as the case may be), or

(b) where the cause of action is an act or omission that is yet to occur, that the act or omission has been authorised by the company, or

(c) where the cause of action is an act or omission that has already occurred, that the act or omission—

(i) was authorised by the company before it occurred, or

(ii) has been ratified by the company since it occurred.

(2) In considering whether to grant leave to raise derivative proceedings or an application under section 267, the court must take into account, in particular—

(a) whether the member is acting in good faith in seeking to raise or continue the proceedings (as the case may be),

(b) the importance that a person acting in accordance with section 172 (duty to promote the success of the company) would attach to raising or continuing them (as the case may be),

(c) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

(i) authorised by the company before it occurs, or

(ii) ratified by the company after it occurs,

(d) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company,

(e) whether the company has decided not to raise proceedings in respect of the same cause of action or to persist in the proceedings (as the case may be),

(f) whether the cause of action is one which the member could pursue in his own right rather than on behalf of the company.

(3) In considering whether to grant leave to raise derivative proceedings or an application under section 267, the court shall have particular regard to any evidence before it as to the views of members of the company who have no personal interest, direct or indirect, in the matter.

(4) The Secretary of State may by regulations—

(a) amend subsection (1) so as to alter or add to the circumstances in which leave or an application is to be refused,

(b) amend subsection (2) so as to alter or add to the matters that the court is required to take into account in considering whether to grant leave or an application.

(5) Before making any such regulations the Secretary of State shall consult such persons as he considers appropriate.

(6) Regulations under this section are subject to affirmative resolution procedure.

269 Application by member to be substituted for member pursuing derivative proceedings

(1) This section applies where a member of a company ("the claimant")—

(a) has raised derivative proceedings,

(b) has continued as derivative proceedings raised by the company, or

(c) has continued derivative proceedings under this section.

(2) Another member of the company ("the applicant") may apply to the court to be substituted for the claimant in the action on the ground that—

(a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the court,

(b) the claimant has failed to prosecute the proceedings diligently, and

(c) it is appropriate for the applicant to be substituted for the claimant in the proceedings.

(3) If it appears to the court that the application and the evidence produced by the applicant in support of it do not disclose a prima facie case for granting it, the court—

(a) must refuse the application, and

(b) may make any consequential order it considers appropriate.

(4) If the application is not refused under subsection (3)—

(a) the applicant must serve the application on the company,

(b) the court—

(i) may make an order requiring evidence to be produced by the company, and

(ii) may adjourn the proceedings on the application to enable the evidence to be obtained, and

(c) the company is entitled to take part in the further proceedings on the application.

(5) On hearing the application, the court may—

(a) grant the application on such terms as it thinks fit,

(b) refuse the application, or

(c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

PART 12

COMPANY SECRETARIES

Private companies

270 Private company not required to have secretary

(1) A private company is not required to have a secretary.

(2) References in the Companies Acts to a private company "without a secretary" are to a private company that for the time being is taking advantage of the exemption in subsection (1); and references to a private company "with a secretary" shall be construed accordingly.

(3) In the case of a private company without a secretary—

(a) anything authorised or required to be given or sent to, or served on, the company by being sent to its secretary—

(i) may be given or sent to, or served on, the company itself, and

(ii) if addressed to the secretary shall be treated as addressed to the company; and

(b) anything else required or authorised to be done by or to the secretary of the company may be done by or to—

(i) a director, or

(ii) a person authorised generally or specifically in that behalf by the directors.

Public companies

271 Public company required to have secretary

A public company must have a secretary.

272 Direction requiring public company to appoint secretary

(1) If it appears to the Secretary of State that a public company is in breach of section 271 (requirement to have secretary), the Secretary of State may give the company a direction under this section.

(2) The direction must state that the company appears to be in breach of that section and specify—

(a) what the company must do in order to comply with the direction, and

(b) the period within which it must do so.

That period must be not less than one month or more than three months after the date on which the direction is given.

(3) The direction must also inform the company of the consequences of failing to comply.

(4) Where the company is in breach of section 271 it must comply with the direction by—

(a) making the necessary appointment, and

(b) giving notice of it under section 276,

before the end of the period specified in the direction.

(5) If the company has already made the necessary appointment, it must comply with the direction by giving notice of it under section 276 before the end of the period specified in the direction.

(6) If a company fails to comply with a direction under this section, an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

273 Qualifications of secretaries of public companies

(1) It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company—

(a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, and

(b) has one or more of the following qualifications.

(2) The qualifications are—

(a) that he has held the office of secretary of a public company for at least three of the five years immediately preceding his appointment as secretary;

(b) that he is a member of any of the bodies specified in subsection (3);

(c) that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom;

(d) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging the functions of secretary of the company.

(3) The bodies referred to in subsection (2)(b) are—

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Association of Chartered Certified Accountants;

(d) the Institute of Chartered Accountants in Ireland;

(e) the Institute of Chartered Secretaries and Administrators;

(f) the Chartered Institute of Management Accountants;

(g) the Chartered Institute of Public Finance and Accountancy.

Provisions applying to private companies with a secretary and to public companies

274 Discharge of functions where office vacant or secretary unable to act

Where in the case of any company the office of secretary is vacant, or there is for any other reason no secretary capable of acting, anything required or authorised to be done by or to the secretary may be done—

(a) by or to an assistant or deputy secretary (if any), or

(b) if there is no assistant or deputy secretary or none capable of acting, by or to any person authorised generally or specifically in that behalf by the directors.

275 Duty to keep register of secretaries

(1) A company must keep a register of its secretaries.

(2) The register must contain the required particulars (see sections 277 to 279) of the person who is, or persons who are, the secretary or joint secretaries of the company.

(3) The register must be kept available for inspection—

(a) at the company's registered office, or

(b) at a place specified in regulations under section 1136.

(4) The company must give notice to the registrar—

(a) of the place at which the register is kept available for inspection, and

(b) of any change in that place,

unless it has at all times been kept at the company's registered office.

(5) The register must be open to the inspection—
(a) of any member of the company without charge, and
(b) of any other person on payment of such fee as may be prescribed.

(6) If default is made in complying with subsection (1), (2) or (3), or if default is made for 14 days in complying with subsection (4), or if an inspection required under subsection (5) is refused, an offence is committed by—
(a) the company, and
(b) every officer of the company who is in default.
For this purpose a shadow director is treated as an officer of the company.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

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

276 Duty to notify registrar of changes

(1) A company must, within the period of 14 days from—
(a) a person becoming or ceasing to be its secretary or one of its joint secretaries, or
(b) the occurrence of any change in the particulars contained in its register of secretaries,
give notice to the registrar of the change and of the date on which it occurred.

(2) Notice of a person having become secretary, or one of joint secretaries, of the company must be accompanied by a consent by that person to act in the relevant capacity.

(3) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.
For this purpose a shadow director is treated as an officer of the company.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

277 Particulars of secretaries to be registered: individuals

(1) A company's register of secretaries must contain the following particulars in the case of an individual—
(a) name and any former name;
(b) address.

(2) For the purposes of this section "name" means a person's Christian name (or other forename) and surname, except that in the case of—
(a) a peer, or
(b) an individual usually known by a title,
the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.

(3) For the purposes of this section a "former name" means a name by which the individual was formerly known for business purposes.

Where a person is or was formerly known by more than one such name, each of them must be stated.

(4) It is not necessary for the register to contain particulars of a former name in the following cases—

(a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;

(b) in the case of any person, where the former name—

(i) was changed or disused before the person attained the age of 16 years, or

(ii) has been changed or disused for 20 years or more.

(5) The address required to be stated in the register is a service address.

This may be stated to be "The company's registered office".

278 Particulars of secretaries to be registered: corporate secretaries and firms

(1) A company's register of secretaries must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—

(a) corporate or firm name;

(b) registered or principal office;

(c) in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of—

(i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and

(ii) the registration number in that register;

(d) in any other case, particulars of—

(i) the legal form of the company or firm and the law by which it is governed, and

(ii) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

(2) If all the partners in a firm are joint secretaries it is sufficient to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

279 Particulars of secretaries to be registered: power to make regulations

(1) The Secretary of State may make provision by regulations amending—

section 277 (particulars of secretaries to be registered: individuals), or

section 278 (particulars of secretaries to be registered: corporate secretaries and firms),

so as to add to or remove items from the particulars required to be contained in a company's register of secretaries.

(2) Regulations under this section are subject to affirmative resolution procedure.

280 Acts done by person in dual capacity

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

PART 13

RESOLUTIONS AND MEETINGS

CHAPTER 1

GENERAL PROVISIONS ABOUT RESOLUTIONS

281 Resolutions

(1) A resolution of the members (or of a class of members) of a private company must be passed—

(a) as a written resolution in accordance with Chapter 2, or

(b) at a meeting of the members (to which the provisions of Chapter 3 apply).

(2) A resolution of the members (or of a class of members) of a public company must be passed at a meeting of the members (to which the provisions of Chapter 3 and, where relevant, Chapter 4 apply).

(3) Where a provision of the Companies Acts—

(a) requires a resolution of a company, or of the members (or a class of members) of a company, and

(b) does not specify what kind of resolution is required,

what is required is an ordinary resolution unless the company's articles require a higher majority (or unanimity).

(4) Nothing in this Part affects any enactment or rule of law as to—

(a) things done otherwise than by passing a resolution,

(b) circumstances in which a resolution is or is not treated as having been passed, or

(c) cases in which a person is precluded from alleging that a resolution has not been duly passed.

282 Ordinary resolutions

(1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.

(2) A written resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of eligible members (see Chapter 2).

(3) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of—

(a) the members who, being entitled to do so, vote in person on the resolution, and

(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who (being entitled to do so) vote in person or by proxy on the resolution.

(5) Anything that may be done by ordinary resolution may also be done by special resolution.

283 Special resolutions

(1) A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%.

(2) A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members (see Chapter 2).

(3) Where a resolution of a private company is passed as a written resolution—
(a) the resolution is not a special resolution unless it stated that it was proposed as a special resolution, and
(b) if the resolution so stated, it may only be passed as a special resolution.

(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 75% if it is passed by not less than 75% of—
(a) the members who, being entitled to do so, vote in person on the resolution, and
(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.

(6) Where a resolution is passed at a meeting—
(a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution, and
(b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

284 Votes: general rules

(1) On a vote on a written resolution—
(a) in the case of a company having a share capital, every member has one vote in respect of each share or each £10 of stock held by him, and
(b) in any other case, every member has one vote.

(2) On a vote on a resolution on a show of hands at a meeting—
(a) every member present in person has one vote, and
(b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(3) On a vote on a resolution on a poll taken at a meeting—
(a) in the case of a company having a share capital, every member has one vote in respect of each share or each £10 of stock held by him, and

(b) in any other case, every member has one vote.

(4) The provisions of this section have effect subject to any provision of the company's articles.

285 Votes: specific requirements

(1) Where a member entitled to vote on a resolution has appointed one proxy only, and the company's articles provide that the proxy has fewer votes in a vote on a resolution on a show of hands taken at a meeting than the member would have if he were present in person—

(a) the provision about how many votes the proxy has on a show of hands is void, and

(b) the proxy has the same number of votes on a show of hands as the member who appointed him would have if he were present at the meeting.

(2) Where a member entitled to vote on a resolution has appointed more than one proxy, subsection (1) applies as if the references to the proxy were references to the proxies taken together.

(3) In relation to a resolution required or authorised by an enactment, if a private company's articles provide that a member has a different number of votes in relation to a resolution when it is passed as a written resolution and when it is passed on a poll taken at a meeting—

(a) the provision about how many votes a member has in relation to the resolution passed on a poll is void, and

(b) a member has the same number of votes in relation to the resolution when it is passed on a poll as he has when it is passed as a written resolution.

286 Votes of joint holders of shares

(1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorised by him) may be counted by the company.

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

287 Saving for provisions of articles as to determination of entitlement to vote

Nothing in this Chapter affects—

(a) any provision of a company's articles—

(i) requiring an objection to a person's entitlement to vote on a resolution to be made in accordance with the articles, and

(ii) for the determination of any such objection to be final and conclusive, or

(b) the grounds on which such a determination may be questioned in legal proceedings.

CHAPTER 2

WRITTEN RESOLUTIONS

General provisions about written resolutions

288 Written resolutions of private companies

(1) In the Companies Acts a "written resolution" means a resolution of a private company proposed and passed in accordance with this Chapter.

(2) The following may not be passed as a written resolution—

(a) a resolution under section 168 removing a director before the expiration of his period of office;

(b) a resolution under section 510 removing an auditor before the expiration of his term of office.

(3) A resolution may be proposed as a written resolution—

(a) by the directors of a private company (see section 291), or

(b) by the members of a private company (see sections 292 to 295).

(4) References in enactments passed or made before this Chapter comes into force to—

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

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

have effect as if they included references to a written resolution of the members, or of a class of members, of a private company (as appropriate).

(5) A written resolution of a private company has effect as if passed (as the case may be)—

(a) by the company in general meeting, or

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

and references in enactments passed or made before this section comes into force to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

289 Eligible members

(1) In relation to a resolution proposed as a written resolution of a private company, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution (see section 290).

(2) If the persons entitled to vote on a written resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent or submitted to a member for his agreement.

Circulation of written resolutions

290 Circulation date

References in this Part to the circulation date of a written resolution are to the date on which copies of it are sent or submitted to members in accordance with

this Chapter (or if copies are sent or submitted to members on different days, to the first of those days).

291 Circulation of written resolutions proposed by directors

(1) This section applies to a resolution proposed as a written resolution by the directors of the company.

(2) The company must send or submit a copy of the resolution to every eligible member.

(3) The company must do so—

(a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or

(b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),

or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).

(4) The copy of the resolution must be accompanied by a statement informing the member—

(a) how to signify agreement to the resolution (see section 296), and

(b) as to the date by which the resolution must be passed if it is not to lapse (see section 297).

(5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(6) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

292 Members' power to require circulation of written resolution

(1) The members of a private company may require the company to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution.

(2) Any resolution may properly be moved as a written resolution unless—

(a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),

(b) it is defamatory of any person, or

(c) it is frivolous or vexatious.

(3) Where the members require a company to circulate a resolution they may require the company to circulate with it a statement of not more than 1,000 words on the subject matter of the resolution.

(4) A company is required to circulate the resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.

(5) The "requisite percentage" is 5% or such lower percentage as is specified for this purpose in the company's articles.

(6) A request—

(a) may be in hard copy form or in electronic form,

(b) must identify the resolution and any accompanying statement, and

(c) must be authenticated by the person or persons making it.

293 Circulation of written resolution proposed by members

(1) A company that is required under section 292 to circulate a resolution must send or submit to every eligible member—

(a) a copy of the resolution, and

(b) a copy of any accompanying statement.

This is subject to section 294(2) (deposit or tender of sum in respect of expenses of circulation) and section 295 (application not to circulate members' statement).

(2) The company must do so—

(a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or

(b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),

or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).

(3) The company must send or submit the copies (or, if copies are sent or submitted to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under section 292 to circulate the resolution.

(4) The copy of the resolution must be accompanied by guidance as to—

(a) how to signify agreement to the resolution (see section 296), and

(b) the date by which the resolution must be passed if it is not to lapse (see section 297).

(5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(6) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

294 Expenses of circulation

(1) The expenses of the company in complying with section 293 must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.

(2) Unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

295 Application not to circulate members' statement

(1) A company is not required to circulate a members' statement under section 293 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 292 and that section are being abused.

(2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

Agreeing to written resolutions

296 Procedure for signifying agreement to written resolution

(1) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) an authenticated document—

(a) identifying the resolution to which it relates, and

(b) indicating his agreement to the resolution.

(2) The document must be sent to the company in hard copy form or in electronic form.

(3) A member's agreement to a written resolution, once signified, may not be revoked.

(4) A written resolution is passed when the required majority of eligible members have signified their agreement to it.

297 Period for agreeing to written resolution

(1) A proposed written resolution lapses if it is not passed before the end of—

(a) the period specified for this purpose in the company's articles, or

(b) if none is specified, the period of 28 days beginning with the circulation date.

(2) The agreement of a member to a written resolution is ineffective if signified after the expiry of that period.

Supplementary

298 Sending documents relating to written resolutions by electronic means

(1) Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document).

(2) In this section "electronic address" means any address or number used for the purposes of sending or receiving documents or information by electronic means.

299 Publication of written resolution on website

(1) This section applies where a company sends—

(a) a written resolution, or

(b) a statement relating to a written resolution,

to a person by means of a website.

(2) The resolution or statement is not validly sent for the purposes of this Chapter unless the resolution is available on the website throughout the period beginning with the circulation date and ending on the date on which the resolution lapses under section 297.

300 Relationship between this Chapter and provisions of company's articles

A provision of the articles of a private company is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.

CHAPTER 3

RESOLUTIONS AT MEETINGS

General provisions about resolutions at meetings

301 Resolutions at general meetings

A resolution of the members of a company is validly passed at a general meeting if—

(a) notice of the meeting and of the resolution is given, and

(b) the meeting is held and conducted,

in accordance with the provisions of this Chapter (and, where relevant, Chapter 4) and the company's articles.

Calling meetings

302 Directors' power to call general meetings

The directors of a company may call a general meeting of the company.

303 Members' power to require directors to call general meeting

(1) The members of a company may require the directors to call a general meeting of the company.

(2) The directors are required to call a general meeting once the company has received requests to do so from—

(a) members representing at least the required percentage of such of the paid-up capital of the company as carries the right of voting at general meetings of the company (excluding any paid-up capital held as treasury shares); or

(b) in the case of a company not having a share capital, members who represent at least the required percentage of the total voting rights of all the members having a right to vote at general meetings.

(3) The required percentage is 10% unless, in the case of a private company, more than twelve months has elapsed since the end of the last general meeting—

(a) called in pursuance of a requirement under this section, or

(b) in relation to which any members of the company had (by virtue of an enactment, the company's articles or otherwise) rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been so called at their request,

in which case the required percentage is 5%.

(4) A request—

(a) must state the general nature of the business to be dealt with at the meeting, and

(b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.

(5) A resolution may properly be moved at a meeting unless—

(a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),

(b) it is defamatory of any person, or

(c) it is frivolous or vexatious.

(6) A request—

(a) may be in hard copy form or in electronic form, and

(b) must be authenticated by the person or persons making it.

304 Directors' duty to call meetings required by members

(1) Directors required under section 303 to call a general meeting of the company must call a meeting—

(a) within 21 days from the date on which they become subject to the requirement, and

(b) to be held on a date not more than 28 days after the date of the notice convening the meeting.

(2) If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(4) If the resolution is to be proposed as a special resolution, the directors are treated as not having duly called the meeting if they do not give the required notice of the resolution in accordance with section 283.

305 Power of members to call meeting at company's expense

(1) If the directors—

(a) are required under section 303 to call a meeting, and

(b) do not do so in accordance with section 304,

the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.

(2) Where the requests received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The meeting must be called for a date not more than three months after the date on which the directors become subject to the requirement to call a meeting.

(4) The meeting must be called in the same manner, as nearly as possible, as that in which meetings are required to be called by directors of the company.

(5) The business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors duly to call a meeting must be reimbursed by the company.

(7) Any sum so reimbursed 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 the services of such of the directors as were in default.

306 Power of court to order meeting

(1) This section applies if for any reason it is impracticable—

(a) to call a meeting of a company in any manner in which meetings of that company may be called, or

(b) to conduct the meeting in the manner prescribed by the company's articles or this Act.

(2) The court may, either of its own motion or on the application—

(a) of a director of the company, or

(b) of a 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.

(3) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient.

(4) Such directions may include a direction that one member of the company present at the meeting be deemed to constitute a quorum.

(5) A meeting called, held and conducted in accordance with an order under this section is deemed for all purposes to be a meeting of the company duly called, held and conducted.

Notice of meetings

307 Notice required of general meeting

(1) A general meeting of a private company (other than an adjourned meeting) must be called by notice of at least 14 days.

(2) A general meeting of a public company (other than an adjourned meeting) must be called by notice of—

(a) in the case of an annual general meeting, at least 21 days, and

(b) in any other case, at least 14 days.

(3) The company's articles may require a longer period of notice than that specified in subsection (1) or (2).

(4) A general meeting may be called by shorter notice than that otherwise required if shorter notice is agreed by the members.

(5) The shorter notice must be agreed to by a majority in number of the members having a right to attend and vote at the meeting, being a majority who—

(a) together hold not less than the requisite percentage in nominal value of the shares giving a right to attend and vote at the meeting (excluding any shares in the company held as treasury shares), or

(b) in the case of a company not having a share capital, together represent not less than the requisite percentage of the total voting rights at that meeting of all the members.

(6) The requisite percentage is—

(a) in the case of a private company, 90% or such higher percentage (not exceeding 95%) as may be specified in the company's articles;

(b) in the case of a public company, 95%.

(7) Subsections (5) and (6) do not apply to an annual general meeting of a public company (see instead section 337(2)).

308 Manner in which notice to be given

Notice of a general meeting of a company must be given—

(a) in hard copy form,

(b) in electronic form, or

(c) by means of a website (see section 309),

or partly by one such means and partly by another.

309 Publication of notice of meeting on website

(1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section.

(2) When the company notifies a member of the presence of the notice on the website the notification must—

(a) state that it concerns a notice of a company meeting,

(b) specify the place, date and time of the meeting, and
(c) in the case of a public company, state whether the meeting will be an annual general meeting.

(3) The notice must be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

310 Persons entitled to receive notice of meetings

(1) Notice of a general meeting of a company must be sent to—
(a) every member of the company, and
(b) every director.

(2) In subsection (1), the reference to members includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of their entitlement.

(3) In subsection (2), the reference to the bankruptcy of a member includes—
(a) the sequestration of the estate of a member;
(b) a member's estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)).

(4) This section has effect subject to—
(a) any enactment, and
(b) any provision of the company's articles.

311 Contents of notices of meetings

(1) Notice of a general meeting of a company must state—
(a) the time and date of the meeting, and
(b) the place of the meeting.

(2) Notice of a general meeting of a company must state the general nature of the business to be dealt with at the meeting.
This subsection has effect subject to any provision of the company's articles.

312 Resolution requiring special notice

(1) Where by any provision of the Companies Acts 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 must, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(3) Where that is not practicable, the company must give its members notice at least 14 days before the meeting—
(a) by advertisement in a newspaper having an appropriate circulation, or
(b) in any other manner allowed by the company's articles.

(4) 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 to have been properly given, though not given within the time required.

313 Accidental failure to give notice of resolution or meeting

(1) Where a company gives notice of—

(a) a general meeting, or

(b) a resolution intended to be moved at a general meeting,

any accidental failure to give notice to one or more persons shall be disregarded for the purpose of determining whether notice of the meeting or resolution (as the case may be) is duly given.

(2) Except in relation to notice given under—

(a) section 304 (notice of meetings required by members),

(b) section 305 (notice of meetings called by members), or

(c) section 339 (notice of resolutions at AGMs proposed by members),

subsection (1) has effect subject to any provision of the company's articles.

Members' statements

314 Members' power to require circulation of statements

(1) The members of a company may require the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than 1,000 words with respect to—

(a) a matter referred to in a proposed resolution to be dealt with at that meeting, or

(b) other business to be dealt with at that meeting.

(2) A company is required to circulate a statement once it has received requests to do so from—

(a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or

(b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

(3) In subsection (2), a "relevant right to vote" means—

(a) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate, and

(b) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request—

(a) may be in hard copy form or in electronic form,

(b) must identify the statement to be circulated,

(c) must be authenticated by the person or persons making it, and

(d) must be received by the company at least one week before the meeting to which it relates.

315 Company's duty to circulate members' statement

(1) A company that is required under section 314, to circulate a statement must send a copy of it to each member of the company entitled to receive notice of the meeting—

(a) in the same manner as the notice of the meeting, and

(b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to section 316(2) (deposit or tender of sum in respect of expenses of circulation) and section 317 (application not to circulate members' statement).

(3) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

316 Expenses of circulating members' statement

(1) The expenses of the company in complying with section 315 need not be paid by the members who requested the circulation of the statement if—

(a) the meeting to which the requests relate is an annual general meeting of a public company, and

(b) requests sufficient to require the company to circulate the statement are received before the end of the financial year preceding the meeting.

(2) Otherwise—

(a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the statement unless the company resolves otherwise, and

(b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

317 Application not to circulate members' statement

(1) A company is not required to circulate a members' statement under section 315 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 314 and that section are being abused.

(2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

Procedure at meetings

318 Quorum at meetings

(1) In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum.

(2) In any other case, subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum, unless—

(a) each is a qualifying person only because he is authorised under section 323 to act as the representative of a corporation in relation to the meeting, and they are representatives of the same corporation; or

(b) each is a qualifying person only because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.

(3) For the purposes of this section a "qualifying person" means—

(a) an individual who is a member of the company,

(b) a person authorised under section 323 (representation of corporations at meetings) to act as the representative of a corporation in relation to the meeting, or

(c) a person appointed as proxy of a member in relation to the meeting.

319 Chairman of meeting

(1) A member may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or may not be chairman.

320 Declaration by chairman on a show of hands

(1) On a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution—

(a) has or has not been passed, or

(b) passed with a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of such a declaration in minutes of the meeting recorded in accordance with section 355 is also conclusive evidence of that fact without such proof.

(3) This section does not have effect if a poll is demanded in respect of the resolution (and the demand is not subsequently withdrawn).

321 Right to demand a poll

(1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than—

(a) the election of the chairman of the meeting, or

(b) the adjournment of the meeting.

(2) A provision of a company's articles is void in so far as it would have the effect of making ineffective a demand for a poll on any such question which is made—

(a) by not less than 5 members having the right to vote on the resolution; or

(b) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote on the resolution (excluding any voting rights attached to any shares in the company held as treasury shares); or

(c) by a member or members holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right (excluding shares in the company conferring a right to vote on the resolution which are held as treasury shares).

322 Voting on a poll

On a poll taken at a general meeting 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.

323 Representation of corporations at meetings

(1) If a corporation (whether or not a company within the meaning of this Act) is a member of a company, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives at any meeting of the company.

(2) Where the corporation authorises only one person, he is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.

(3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under subsection (3)—

(a) if they purport to exercise the power in the same way, the power is treated as exercised in that way,

(b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Proxies

324 Rights to appoint proxies

(1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.

(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him, or (as the case may be) to a different £10, or multiple of £10, of stock held by him.

325 Notice of meeting to contain statement of rights

(1) In every notice calling a meeting of a company there must appear, with reasonable prominence, a statement informing the member of—

(a) his rights under section 324, and

(b) any more extensive rights conferred by the company's articles to appoint more than one proxy.

(2) Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting.

(3) If this section is not complied with as respects any meeting, an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

326 Company-sponsored invitations to appoint proxies

(1) If for the purposes of a meeting there are issued at the company's expense invitations to members to appoint as proxy a specified person or a number of specified persons, the invitations must be issued to all members entitled to vote at the meeting.

(2) Subsection (1) is not contravened if—

(a) there is issued to a member at his request a form of appointment naming the proxy or a list of persons willing to act as proxy, and

(b) the form or list is available on request to all members entitled to vote at the meeting.

(3) If subsection (1) is contravened as respects a meeting, an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

327 Notice required of appointment of proxy etc

(1) This section applies to—

(a) the appointment of a proxy, and

(b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

(2) Any provision of the company's articles is void in so far as it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than the following time—

(a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;

(b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;

(c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2) no account shall be taken of any part of a day that is not a working day.

328 Chairing meetings

(1) A proxy may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairman.

329 Right of proxy to demand a poll

(1) The appointment of a proxy to vote on a matter at a meeting of a company authorises the proxy to demand, or join in demanding, a poll on that matter.

(2) In applying the provisions of section 321(2) (requirements for effective demand), a demand by a proxy counts—

(a) for the purposes of paragraph (a), as a demand by the member;

(b) for the purposes of paragraph (b), as a demand by a member representing the voting rights that the proxy is authorised to exercise;

(c) for the purposes of paragraph (c), as a demand by a member holding the shares to which those rights are attached.

330 Notice required of termination of proxy's authority

(1) This section applies to notice that the authority of a person to act as proxy is terminated ("notice of termination").

(2) The termination of the authority of a person to act as proxy does not affect—

(a) whether he counts in deciding whether there is a quorum at a meeting,

(b) the validity of anything he does as chairman of a meeting, or

(c) the validity of a poll demanded by him at a meeting,

unless the company receives notice of the termination before the commencement of the meeting.

(3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination—

(a) before the commencement of the meeting or adjourned meeting at which the vote is given, or

(b) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for taking the poll.

(4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references above to the company receiving notice have effect as if they were or (as the case may be) included a reference to that person.

(5) Subsections (2) and (3) have effect subject to any provision of the company's articles which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.

This is subject to subsection (6).

(6) Any provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time—

(a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;
(b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
(c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(7) In calculating the periods mentioned in subsections (3)(b) and (6) no account shall be taken of any part of a day that is not a working day.

331 Saving for more extensive rights conferred by articles

Nothing in sections 324 to 330 (proxies) prevents a company's articles from conferring more extensive rights on members or proxies than are conferred by those sections.

Adjourned meetings

332 Resolution passed at adjourned meeting

Where a resolution is passed at an adjourned meeting 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.

Electronic communications

333 Sending documents relating to meetings etc in electronic form

(1) Where a company has given an electronic address in a notice calling a meeting, it is deemed to have agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).

(2) Where a company has given an electronic address—
(a) in an instrument of proxy sent out by the company in relation to the meeting, or
(b) in an invitation to appoint a proxy issued by the company in relation to the meeting,
it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).

(3) In subsection (2), documents relating to proxies include—
(a) the appointment of a proxy in relation to a meeting,
(b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and
(c) notice of the termination of the authority of a proxy.

(4) In this section "electronic address" means any address or number used for the purposes of sending or receiving documents or information by electronic means.

Application to class meetings

334 Application to class meetings

(1) The provisions of this Chapter apply (with necessary modifications) in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting.
This is subject to subsections (2) and (3).

(2) The following provisions of this Chapter do not apply in relation to a meeting of holders of a class of shares—
(a) sections 303 to 305 (members' power to require directors to call general meeting), and
(b) section 306 (power of court to order meeting).

(3) The following provisions (in addition to those mentioned in subsection (2)) do not apply in relation to a meeting in connection with the variation of rights attached to a class of shares (a "variation of class rights meeting")—
(a) section 318 (quorum), and
(b) section 321 (right to demand a poll).

(4) The quorum for a variation of class rights meeting is—
(a) for a meeting other than an adjourned meeting, two persons present holding at least one-third in nominal value of the issued shares of the class in question (excluding any shares of that class held as treasury shares);
(b) for an adjourned meeting, one person present holding shares of the class in question.

(5) For the purposes of subsection (4), where a person is present by proxy or proxies, he is treated as holding only the shares in respect of which those proxies are authorised to exercise voting rights.

(6) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.

(7) For the purposes of this section—
(a) any amendment of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
(b) references to the variation of rights attached to a class of shares include references to their abrogation.

335 Application to class meetings: companies without a share capital

(1) The provisions of this Chapter apply (with necessary modifications) in relation to a meeting of a class of members of a company without a share capital as they apply in relation to a general meeting.
This is subject to subsections (2) and (3).

(2) The following provisions of this Chapter do not apply in relation to a meeting of a class of members—
(a) sections 303 to 305 (members' power to require directors to call general meeting), and

(b) section 306 (power of court to order meeting).

(3) The following provisions (in addition to those mentioned in subsection (2)) do not apply in relation to a meeting in connection with the variation of the rights of a class of members (a "variation of class rights meeting")—

(a) section 318 (quorum), and

(b) section 321 (right to demand a poll).

(4) The quorum for a variation of class rights meeting is—

(a) for a meeting other than an adjourned meeting, two members of the class present (in person or by proxy) who together represent at least one-third of the voting rights of the class;

(b) for an adjourned meeting, one member of the class present (in person or by proxy).

(5) At a variation of class rights meeting, any member present (in person or by proxy) may demand a poll.

(6) For the purposes of this section—

(a) any amendment of a provision contained in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and

(b) references to the variation of rights of a class of members include references to their abrogation.

CHAPTER 4

PUBLIC COMPANIES: ADDITIONAL REQUIREMENTS FOR AGMS

336 Public companies: annual general meeting

(1) Every public company must hold a general meeting as its annual general meeting in each period of 6 months beginning with the day following its accounting reference date (in addition to any other meetings held during that period).

(2) A company that fails to comply with subsection (1) as a result of giving notice under section 392 (alteration of accounting reference date)—

(a) specifying a new accounting reference date, and

(b) stating that the current accounting reference period or the previous accounting reference period is to be shortened,

shall be treated as if it had complied with subsection (1) if it holds a general meeting as its annual general meeting within 3 months of giving that notice.

(3) If a company fails to comply with subsection (1), an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

337 Public companies: notice of AGM

(1) A notice calling an annual general meeting of a public company must state that the meeting is an annual general meeting.

(2) An annual general meeting may be called by shorter notice than that required by section 307(2) or by the company's articles (as the case may be), if all the members entitled to attend and vote at the meeting agree to the shorter notice.

338 Public companies: members' power to require circulation of resolutions for AGMs

(1) The members of a public company may require the company to give, to members of the company entitled to receive notice of the next annual general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting.

(2) A resolution may properly be moved at an annual general meeting unless—
- (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),
- (b) it is defamatory of any person, or
- (c) it is frivolous or vexatious.

(3) A company is required to give notice of a resolution once it has received requests that it do so from—
- (a) members representing at least 5% of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate (excluding any voting rights attached to any shares in the company held as treasury shares), or
- (b) at least 100 members who have a right to vote on the resolution at the annual general meeting to which the requests relate and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

(4) A request—
- (a) may be in hard copy form or in electronic form,
- (b) must identify the resolution of which notice is to be given,
- (c) must be authenticated by the person or persons making it, and
- (d) must be received by the company not later than—
  - (i) 6 weeks before the annual general meeting to which the requests relate, or
  - (ii) if later, the time at which notice is given of that meeting.

339 Public companies: company's duty to circulate members' resolutions for AGMs

(1) A company that is required under section 338 to give notice of a resolution must send a copy of it to each member of the company entitled to receive notice of the annual general meeting—
- (a) in the same manner as notice of the meeting, and
- (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to section 340(2) (deposit or tender of sum in respect of expenses of circulation).

(3) The business which may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with this section.

(4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

340 Public companies: expenses of circulating members' resolutions for AGM

(1) The expenses of the company in complying with section 339 need not be paid by the members who requested the circulation of the resolution if requests sufficient to require the company to circulate it are received before the end of the financial year preceding the meeting.

(2) Otherwise—

(a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise, and

(b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than—

(i) six weeks before the annual general meeting to which the requests relate, or

(ii) if later, the time at which notice is given of that meeting,

a sum reasonably sufficient to meet its expenses in complying with that section.

CHAPTER 5

ADDITIONAL REQUIREMENTS FOR QUOTED COMPANIES

Website publication of poll results

341 Results of poll to be made available on website

(1) Where a poll is taken at a general meeting of a quoted company, the company must ensure that the following information is made available on a website—

(a) the date of the meeting,

(b) the text of the resolution or, as the case may be, a description of the subject matter of the poll,

(c) the number of votes cast in favour, and

(d) the number of votes cast against.

(2) The provisions of section 353 (requirements as to website availability) apply.

(3) In the event of default in complying with this section (or with the requirements of section 353 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Failure to comply with this section (or the requirements of section 353) does not affect the validity of—

(a) the poll, or

(b) the resolution or other business (if passed or agreed to) to which the poll relates.

(6) This section only applies to polls taken after this section comes into force.

Independent report on poll

342 Members' power to require independent report on poll

(1) The members of a quoted company may require the directors to obtain an independent report on any poll taken, or to be taken, at a general meeting of the company.

(2) The directors are required to obtain an independent report if they receive requests to do so from—

(a) members representing not less than 5% of the total voting rights of all the members who have a right to vote on the matter to which the poll relates (excluding any voting rights attached to any shares in the company held as treasury shares), or

(b) not less than 100 members who have a right to vote on the matter to which the poll relates and hold shares in the company on which there has been paid up an average sum, per member, of not less than £100.

See also section 153 (exercise of rights where shares held on behalf of others).

(3) Where the requests relate to more than one poll, subsection (2) must be satisfied in relation to each of them.

(4) A request—

(a) may be in hard copy form or in electronic form,

(b) must identify the poll or polls to which it relates,

(c) must be authenticated by the person or persons making it, and

(d) must be received by the company not later than one week after the date on which the poll is taken.

343 Appointment of independent assessor

(1) Directors who are required under section 342 to obtain an independent report on a poll or polls must appoint a person they consider to be appropriate (an "independent assessor") to prepare a report for the company on it or them.

(2) The appointment must be made within one week after the company being required to obtain the report.

(3) The directors must not appoint a person who—

(a) does not meet the independence requirement in section 344, or

(b) has another role in relation to any poll on which he is to report (including, in particular, a role in connection with collecting or counting votes or with the appointment of proxies).

(4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) If at the meeting no poll on which a report is required is taken—
(a) the directors are not required to obtain a report from the independent assessor, and
(b) his appointment ceases (but without prejudice to any right to be paid for work done before the appointment ceased).

344 Independence requirement

(1) A person may not be appointed as an independent assessor—
(a) if he is—
(i) an officer or employee of the company, or
(ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
(b) if he is—
(i) an officer or employee of an associated undertaking of the company, or
(ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
(c) if there exists between—
(i) the person or an associate of his, and
(ii) the company or an associated undertaking of the company,
a connection of any such description as may be specified by regulations made by the Secretary of State.

(2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.

(3) In this section—
"associated undertaking" means—
(a) a parent undertaking or subsidiary undertaking of the company, or
(b) a subsidiary undertaking of a parent undertaking of the company; and
"associate" has the meaning given by section 345.

(4) Regulations under this section are subject to negative resolution procedure.

345 Meaning of "associate"

(1) This section defines "associate" for the purposes of section 344 (independence requirement).

(2) In relation to an individual, "associate" means—
(a) that individual's spouse or civil partner or minor child or step-child,

(b) any body corporate of which that individual is a director, and
(c) any employee or partner of that individual.

(3) In relation to a body corporate, "associate" means—
(a) any body corporate of which that body is a director,
(b) any body corporate in the same group as that body, and
(c) any employee or partner of that body or of any body corporate in the same group.

(4) In relation to a partnership that is a legal person under the law by which it is governed, "associate" means—
(a) any body corporate of which that partnership is a director,
(b) any employee of or partner in that partnership, and
(c) any person who is an associate of a partner in that partnership.

(5) In relation to a partnership that is not a legal person under the law by which it is governed, "associate" means any person who is an associate of any of the partners.

(6) In this section, in relation to a limited liability partnership, for "director" read "member".

346 Effect of appointment of a partnership

(1) This section applies where a partnership that is not a legal person under the law by which it is governed is appointed as an independent assessor.

(2) Unless a contrary intention appears, the appointment is of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment is to be treated as extending to—
(a) any partnership that succeeds to the practice of that partnership, or
(b) any other person who succeeds to that practice having previously carried it on in partnership.

(4) For the purposes of subsection (3)—
(a) a partnership is regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership, and
(b) a partnership or other person is regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and the appointment is not treated under subsection (3) as extending to any partnership or other person, the appointment may with the consent of the company be treated as extending to a partnership, or other person, who succeeds to—
(a) the business of the former partnership, or
(b) such part of it as is agreed by the company is to be treated as comprising the appointment.

347 The independent assessor's report

(1) The report of the independent assessor must state his opinion whether—

(a) the procedures adopted in connection with the poll or polls were adequate;
(b) the votes cast (including proxy votes) were fairly and accurately recorded and counted;
(c) the validity of members' appointments of proxies was fairly assessed;
(d) the notice of the meeting complied with section 325 (notice of meeting to contain statement of rights to appoint proxy);
(e) section 326 (company-sponsored invitations to appoint proxies) was complied with in relation to the meeting.

(2) The report must give his reasons for the opinions stated.

(3) If he is unable to form an opinion on any of those matters, the report must record that fact and state the reasons for it.

(4) The report must state the name of the independent assessor.

348 Rights of independent assessor: right to attend meeting etc

(1) Where an independent assessor has been appointed to report on a poll, he is entitled to attend—
(a) the meeting at which the poll may be taken, and
(b) any subsequent proceedings in connection with the poll.

(2) He is also entitled to be provided by the company with a copy of—
(a) the notice of the meeting, and
(b) any other communication provided by the company in connection with the meeting to persons who have a right to vote on the matter to which the poll relates.

(3) The rights conferred by this section are only to be exercised to the extent that the independent assessor considers necessary for the preparation of his report.

(4) If the independent assessor is a firm, the right under subsection (1) to attend the meeting and any subsequent proceedings in connection with the poll is exercisable by an individual authorised by the firm in writing to act as its representative for that purpose.

349 Rights of independent assessor: right to information

(1) The independent assessor is entitled to access to the company's records relating to—
(a) any poll on which he is to report;
(b) the meeting at which the poll or polls may be, or were, taken.

(2) The independent assessor may require anyone who at any material time was—
(a) a director or secretary of the company,
(b) an employee of the company,
(c) a person holding or accountable for any of the company's records,
(d) a member of the company, or
(e) an agent of the company,
to provide him with information or explanations for the purpose of preparing his report.

(3) For this purpose "agent" includes the company's bankers, solicitors and auditor.

(4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 350 (offences relating to provision of information).

(5) A person is not required by this section to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

350 Offences relating to provision of information

(1) A person who fails to comply with a requirement under section 349 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanation.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person commits an offence who knowingly or recklessly makes to an independent assessor a statement (oral or written) that—

(a) conveys or purports to convey any information or explanations which the independent assessor requires, or is entitled to require, under section 349, and

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

(4) A person guilty of an offence under subsection (3) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

(5) Nothing in this section affects any right of an independent assessor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 348 or 349.

351 Information to be made available on website

(1) Where an independent assessor has been appointed to report on a poll, the company must ensure that the following information is made available on a website—

(a) the fact of his appointment,

(b) his identity,

(c) the text of the resolution or, as the case may be, a description of the subject matter of the poll to which his appointment relates, and

(d) a copy of a report by him which complies with section 347.

(2) The provisions of section 353 (requirements as to website availability) apply.

(3) In the event of default in complying with this section (or with the requirements of section 353 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Failure to comply with this section (or the requirements of section 353) does not affect the validity of—

(a) the poll, or

(b) the resolution or other business (if passed or agreed to) to which the poll relates.

Supplementary

352 Application of provisions to class meetings

(1) The provisions of—

section 341 (results of poll to be made available on website), and

sections 342 to 351 (independent report on poll),

apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.

(2) For the purposes of this section—

(a) any amendment of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and

(b) references to the variation of rights attached to a class of shares include references to their abrogation.

353 Requirements as to website availability

(1) The following provisions apply for the purposes of—

section 341 (results of poll to be made available on website), and

section 351 (report of independent observer to be made available on website).

(2) The information must be made available on a website that—

(a) is maintained by or on behalf of the company, and

(b) identifies the company in question.

(3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted.

(4) The information—

(a) must be made available as soon as reasonably practicable, and

(b) must be kept available throughout the period of two years beginning with the date on which it is first made available on a website in accordance with this section.

(5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if—

(a) the information is made available on the website for part of that period, and

(b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

354 Power to limit or extend the types of company to which provisions of this Chapter apply

(1) The Secretary of State may by regulations—

(a) limit the types of company to which some or all of the provisions of this Chapter apply, or

(b) extend some or all of the provisions of this Chapter to additional types of company.

(2) Regulations under this section extending the application of any provision of this Chapter are subject to affirmative resolution procedure.

(3) Any other regulations under this section are subject to negative resolution procedure.

(4) Regulations under this section may—

(a) amend the provisions of this Chapter (apart from this section);

(b) repeal and re-enact provisions of this Chapter with modifications of form or arrangement, whether or not they are modified in substance;

(c) contain such consequential, incidental and supplementary provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State thinks fit.

CHAPTER 6

RECORDS OF RESOLUTIONS AND MEETINGS

355 Records of resolutions and meetings etc

(1) Every company must keep records comprising—

(a) copies of all resolutions of members passed otherwise than at general meetings,

(b) minutes of all proceedings of general meetings, and

(c) details provided to the company in accordance with section 357 (decisions of sole member).

(2) The records must be kept for at least ten years from the date of the resolution, meeting or decision (as appropriate).

(3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

356 Records as evidence of resolutions etc

(1) This section applies to the records kept in accordance with section 355.

(2) The record of a resolution passed otherwise than at a general meeting, if purporting to be signed by a director of the company or by the company secretary, is evidence (in Scotland, sufficient evidence) of the passing of the resolution.

(3) Where there is a record of a written resolution of a private company, the requirements of this Act with respect to the passing of the resolution are deemed to be complied with unless the contrary is proved.

(4) The minutes of proceedings of a general meeting, if purporting to be signed by the chairman of that meeting or by the chairman of the next general meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting.

(5) Where there is a record of proceedings of a general meeting of a company, then, until the contrary is proved—

(a) the meeting is deemed duly held and convened,

(b) all proceedings at the meeting are deemed to have duly taken place, and

(c) all appointments at the meeting are deemed valid.

357 Records of decisions by sole member

(1) This section applies to a company limited by shares or by guarantee that has only one member.

(2) Where the member takes any decision that—

(a) may be taken by the company in general meeting, and

(b) has effect as if agreed by the company in general meeting,

he must (unless that decision is taken by way of a written resolution) provide the company with details of that decision.

(3) If a person fails to comply with this section he commits an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) Failure to comply with this section does not affect the validity of any decision referred to in subsection (2).

358 Inspection of records of resolutions and meetings

(1) The records referred to in section 355 (records of resolutions etc) relating to the previous ten years must be kept available for inspection—

(a) at the company's registered office, or

(b) at a place specified in regulations under section 1136.

(2) The company must give notice to the registrar—

(a) of the place at which the records are kept available for inspection, and

(b) of any change in that place,

unless they have at all times been kept at the company's registered office.

(3) The records must be open to the inspection of any member of the company without charge.

(4) Any member may require a copy of any of the records on payment of such fee as may be prescribed.

(5) If default is made for 14 days in complying with subsection (2) or an inspection required under subsection (3) is refused, or a copy requested under subsection (4) is not sent, an offence is committed by every officer of the company who is in default.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(7) In a case in which an inspection required under subsection (3) is refused or a copy requested under subsection (4) is not sent, the court may by order compel an immediate inspection of the records or direct that the copies required be sent to the persons who requested them.

359 Records of resolutions and meetings of class of members

The provisions of this Chapter apply (with necessary modifications) in relation to resolutions and meetings of—

(a) holders of a class of shares, and

(b) in the case of a company without a share capital, a class of members,

as they apply in relation to resolutions of members generally and to general meetings.

CHAPTER 7

SUPPLEMENTARY PROVISIONS

360 Computation of periods of notice etc: clear day rule

(1) This section applies for the purposes of the following provisions of this Part—

section 307(1) and (2) (notice required of general meeting),

section 312(1) and (3) (resolution requiring special notice),

section 314(4)(d) (request to circulate members' statement),

section 316(2)(b) (expenses of circulating statement to be deposited or tendered before meeting),

section 338(4)(d)(i) (request to circulate member's resolution at AGM of public company), and

section 340(2)(b)(i) (expenses of circulating statement to be deposited or tendered before meeting).

(2) Any reference in those provisions to a period of notice, or to a period before a meeting by which a request must be received or sum deposited or tendered, is to a period of the specified length excluding—

(a) the day of the meeting, and

(b) the day on which the notice is given, the request received or the sum deposited or tendered.

361 Meaning of "quoted company"

In this Part "quoted company" has the same meaning as in Part 15 of this Act.

PART 14

CONTROL OF POLITICAL DONATIONS AND EXPENDITURE

Introductory

362 Introductory

This Part has effect for controlling—

(a) political donations made by companies to political parties, to other political organisations and to independent election candidates, and

(b) political expenditure incurred by companies.

Donations and expenditure to which this Part applies

363 Political parties, organisations etc to which this Part applies

(1) This Part applies to a political party if—

(a) it is registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41), or

(b) it carries on, or proposes to carry on, activities for the purposes of or in connection with the participation of the party in any election or elections to public office held in a member State other than the United Kingdom.

(2) This Part applies to an organisation (a "political organisation") if it carries on, or proposes to carry on, activities that are capable of being reasonably regarded as intended—

(a) to affect public support for a political party to which, or an independent election candidate to whom, this Part applies, or

(b) to influence voters in relation to any national or regional referendum held under the law of the United Kingdom or another member State.

(3) This Part applies to an independent election candidate at any election to public office held in the United Kingdom or another member State.

(4) Any reference in the following provisions of this Part to a political party, political organisation or independent election candidate, or to political expenditure, is to a party, organisation, independent candidate or expenditure to which this Part applies.

364 Meaning of "political donation"

(1) The following provisions have effect for the purposes of this Part as regards the meaning of "political donation".

(2) In relation to a political party or other political organisation—

(a) "political donation" means anything that in accordance with sections 50 to 52 of the Political Parties, Elections and Referendums Act 2000—

(i) constitutes a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties), or

(ii) would constitute such a donation reading references in those sections to a registered party as references to any political party or other political organisation,

and

(b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.

(3) In relation to an independent election candidate—

(a) "political donation" means anything that, in accordance with sections 50 to 52 of that Act, would constitute a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties) reading references in those sections to a registered party as references to the independent election candidate,

and

(b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.

(4) For the purposes of this section, sections 50 and 53 of the Political Parties, Elections and Referendums Act 2000 (c. 41) (definition of "donation" and value of donations) shall be treated as if the amendments to those sections made by the Electoral Administration Act 2006 (which remove from the definition of "donation" loans made otherwise than on commercial terms) had not been made.

365 Meaning of "political expenditure"

(1) In this Part "political expenditure", in relation to a company, means expenditure incurred by the company on—

(a) the preparation, publication or dissemination of advertising or other promotional or publicity material—

(i) of whatever nature, and

(ii) however published or otherwise disseminated,

that, at the time of publication or dissemination, is capable of being reasonably regarded as intended to affect public support for a political party or other political organisation, or an independent election candidate, or

(b) activities on the part of the company that are capable of being reasonably regarded as intended—

(i) to affect public support for a political party or other political organisation, or an independent election candidate, or

(ii) to influence voters in relation to any national or regional referendum held under the law of a member State.

(2) For the purposes of this Part a political donation does not count as political expenditure.

Authorisation required for donations or expenditure

366 Authorisation required for donations or expenditure

(1) A company must not—

(a) make a political donation to a political party or other political organisation, or to an independent election candidate, or
(b) incur any political expenditure,

unless the donation or expenditure is authorised in accordance with the following provisions.

(2) The donation or expenditure must be authorised—
(a) in the case of a company that is not a subsidiary of another company, by a resolution of the members of the company;
(b) in the case of a company that is a subsidiary of another company by—
(i) a resolution of the members of the company, and
(ii) a resolution of the members of any relevant holding company.

(3) No resolution is required on the part of a company that is a wholly-owned subsidiary of a UK-registered company.

(4) For the purposes of subsection (2)(b)(ii) a "relevant holding company" means a company that, at the time the donation was made or the expenditure was incurred—
(a) was a holding company of the company by which the donation was made or the expenditure was incurred,
(b) was a UK-registered company, and
(c) was not a subsidiary of another UK-registered company.

(5) The resolution or resolutions required by this section—
(a) must comply with section 367 (form of authorising resolution), and
(b) must be passed before the donation is made or the expenditure incurred.

(6) Nothing in this section enables a company to be authorised to do anything that it could not lawfully do apart from this section.

367 Form of authorising resolution

(1) A resolution conferring authorisation for the purposes of this Part may relate to—
(a) the company passing the resolution,
(b) one or more subsidiaries of that company, or
(c) the company passing the resolution and one or more subsidiaries of that company.

(2) A resolution may be expressed to relate to all companies that are subsidiaries of the company passing the resolution—
(a) at the time the resolution is passed, or
(b) at any time during the period for which the resolution has effect,

without identifying them individually.

(3) The resolution may authorise donations or expenditure under one or more of the following heads—
(a) donations to political parties or independent election candidates;
(b) donations to political organisations other than political parties;
(c) political expenditure.

(4) The resolution must specify a head or heads—

(a) in the case of a resolution under subsection (2), for all of the companies to which it relates taken together;
(b) in the case of any other resolution, for each company to which it relates.

(5) The resolution must be expressed in general terms conforming with subsection (2) and must not purport to authorise particular donations or expenditure.

(6) For each of the specified heads the resolution must authorise donations or, as the case may be, expenditure up to a specified amount in the period for which the resolution has effect (see section 368).

(7) The resolution must specify such amounts—
(a) in the case of a resolution under subsection (2), for all of the companies to which it relates taken together;
(b) in the case of any other resolution, for each company to which it relates.

368 Period for which resolution has effect

(1) A resolution conferring authorisation for the purposes of this Part has effect for a period of four years beginning with the date on which it is passed unless the directors determine, or the articles require, that it is to have effect for a shorter period beginning with that date.

(2) The power of the directors to make a determination under this section is subject to any provision of the articles that operates to prevent them from doing so.

Remedies in case of unauthorised donations or expenditure

369 Liability of directors in case of unauthorised donation or expenditure

(1) This section applies where a company has made a political donation or incurred political expenditure without the authorisation required by this Part.

(2) The directors in default are jointly and severally liable—
(a) to make good to the company the amount of the unauthorised donation or expenditure, with interest, and
(b) to compensate the company for any loss or damage sustained by it as a result of the unauthorised donation or expenditure having been made.

(3) The directors in default are—
(a) those who, at the time the unauthorised donation was made or the unauthorised expenditure was incurred, were directors of the company by which the donation was made or the expenditure was incurred, and
(b) where—
(i) that company was a subsidiary of a relevant holding company, and
(ii) the directors of the relevant holding company failed to take all reasonable steps to prevent the donation being made or the expenditure being incurred,
the directors of the relevant holding company.

(4) For the purposes of subsection (3)(b) a "relevant holding company" means a company that, at the time the donation was made or the expenditure was incurred—

(a) was a holding company of the company by which the donation was made or the expenditure was incurred,
(b) was a UK-registered company, and
(c) was not a subsidiary of another UK-registered company.

(5) The interest referred to in subsection (2)(a) is interest on the amount of the unauthorised donation or expenditure, so far as not made good to the company—
(a) in respect of the period beginning with the date when the donation was made or the expenditure was incurred, and
(b) at such rate as the Secretary of State may prescribe by regulations.
Section 379(2) (construction of references to date when donation made or expenditure incurred) does not apply for the purposes of this subsection.

(6) Where only part of a donation or expenditure was unauthorised, this section applies only to so much of it as was unauthorised.

370 Enforcement of directors' liabilities by shareholder action

(1) Any liability of a director under section 369 is enforceable—
(a) in the case of a liability of a director of a company to that company, by proceedings brought under this section in the name of the company by an authorised group of its members;
(b) in the case of a liability of a director of a holding company to a subsidiary, by proceedings brought under this section in the name of the subsidiary by—
(i) an authorised group of members of the subsidiary, or
(ii) an authorised group of members of the holding company.

(2) This is in addition to the right of the company to which the liability is owed to bring proceedings itself to enforce the liability.

(3) An "authorised group" of members of a company means—
(a) the holders of not less than 5% in nominal value of the company's issued share capital,
(b) if the company is not limited by shares, not less than 5% of its members, or
(c) not less than 50 of the company's members.

(4) The right to bring proceedings under this section is subject to the provisions of section 371.

(5) Nothing in this section affects any right of a member of a company to bring or continue proceedings under Part 11 (derivative claims or proceedings).

371 Enforcement of directors' liabilities by shareholder action: supplementary

(1) A group of members may not bring proceedings under section 370 in the name of a company unless—
(a) the group has given written notice to the company stating—
(i) the cause of action and a summary of the facts on which the proceedings are to be based,
(ii) the names and addresses of the members comprising the group, and

(iii) the grounds on which it is alleged that those members constitute an authorised group; and

(b) not less than 28 days have elapsed between the date of the giving of the notice to the company and the bringing of the proceedings.

(2) Where such a notice is given to a company, any director of the company may apply to the court within the period of 28 days beginning with the date of the giving of the notice for an order directing that the proposed proceedings shall not be brought, on one or more of the following grounds—

(a) that the unauthorised amount has been made good to the company;

(b) that proceedings to enforce the liability have been brought, and are being pursued with due diligence, by the company;

(c) that the members proposing to bring proceedings under this section do not constitute an authorised group.

(3) Where an application is made on the ground mentioned in subsection (2)(b), the court may as an alternative to directing that the proposed proceedings under section 370 are not to be brought, direct—

(a) that such proceedings may be brought on such terms and conditions as the court thinks fit, and

(b) that the proceedings brought by the company—

(i) shall be discontinued, or

(ii) may be continued on such terms and conditions as the court thinks fit.

(4) The members by whom proceedings are brought under section 370 owe to the company in whose name they are brought the same duties in relation to the proceedings as would be owed by the company's directors if the proceedings were being brought by the company.

But proceedings to enforce any such duty may be brought by the company only with the permission of the court.

(5) Proceedings brought under section 370 may not be discontinued or settled by the group except with the permission of the court, which may be given on such terms as the court thinks fit.

372 Costs of shareholder action

(1) This section applies in relation to proceedings brought under section 370 in the name of a company ("the company") by an authorised group ("the group").

(2) The group may apply to the court for an order directing the company to indemnify the group in respect of costs incurred or to be incurred by the group in connection with the proceedings.

The court may make such an order on such terms as it thinks fit.

(3) The group is not entitled to be paid any such costs out of the assets of the company except by virtue of such an order.

(4) If no such order has been made with respect to the proceedings, then—

(a) if the company is awarded costs in connection with the proceedings, or it is agreed that costs incurred by the company in connection with the proceedings should be paid by any defendant, the costs shall be paid to the group; and

(b) if any defendant is awarded costs in connection with the proceedings, or it is agreed that any defendant should be paid costs incurred by him in connection with the proceedings, the costs shall be paid by the group.

(5) In the application of this section to Scotland for "costs" read "expenses" and for "defendant" read "defender".

373 Information for purposes of shareholder action

(1) Where proceedings have been brought under section 370 in the name of a company by an authorised group, the group is entitled to require the company to provide it with all information relating to the subject matter of the proceedings that is in the company's possession or under its control or which is reasonably obtainable by it.

(2) If the company, having been required by the group to do so, refuses to provide the group with all or any of that information, the court may, on an application made by the group, make an order directing—

(a) the company, and

(b) any of its officers or employees specified in the application,

to provide the group with the information in question in such form and by such means as the court may direct.

Exemptions

374 Trade unions

(1) A donation to a trade union, other than a contribution to the union's political fund, is not a political donation for the purposes of this Part.

(2) A trade union is not a political organisation for the purposes of section 365 (meaning of "political expenditure").

(3) In this section—

"trade union" has the meaning given by section 1 of Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or Article 3 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5));

"political fund" means the fund from which payments by a trade union in the furtherance of political objects are required to be made by virtue of section 82(1)(a) of that Act or Article 57(2)(a) of that Order.

375 Subscription for membership of trade association

(1) A subscription paid to a trade association for membership of the association is not a political donation for the purposes of this Part.

(2) For this purpose—

"trade association" means an organisation formed for the purpose of furthering the trade interests of its members, or of persons represented by its members, and

"subscription" does not include a payment to the association to the extent that it is made for the purpose of financing any particular activity of the association.

376 All-party parliamentary groups

(1) An all-party parliamentary group is not a political organisation for the purposes of this Part.

(2) An "all-party parliamentary group" means an all-party group composed of members of one or both of the Houses of Parliament (or of such members and other persons).

377 Political expenditure exempted by order

(1) Authorisation under this Part is not needed for political expenditure that is exempt by virtue of an order of the Secretary of State under this section.

(2) An order may confer an exemption in relation to—

(a) companies of any description or category specified in the order, or

(b) expenditure of any description or category so specified (whether framed by reference to goods, services or other matters in respect of which such expenditure is incurred or otherwise),

or both.

(3) If or to the extent that expenditure is exempt from the requirement of authorisation under this Part by virtue of an order under this section, it shall be disregarded in determining what donations are authorised by any resolution of the company passed for the purposes of this Part.

(4) An order under this section is subject to affirmative resolution procedure.

378 Donations not amounting to more than £5,000 in any twelve month period

(1) Authorisation under this Part is not needed for a donation except to the extent that the total amount of—

(a) that donation, and

(b) other relevant donations made in the period of 12 months ending with the date on which that donation is made,

exceeds £5,000.

(2) In this section—

"donation" means a donation to a political party or other political organisation or to an independent election candidate; and

"other relevant donations" means—

(a) in relation to a donation made by a company that is not a subsidiary, any other donations made by that company or by any of its subsidiaries;

(b) in relation to a donation made by a company that is a subsidiary, any other donations made by that company, by any holding company of that company or by any other subsidiary of any such holding company.

(3) If or to the extent that a donation is exempt by virtue of this section from the requirement of authorisation under this Part, it shall be disregarded in determining what donations are authorised by any resolution passed for the purposes of this Part.

Supplementary provisions

379 Minor definitions

(1) In this Part—

"director" includes shadow director; and

"organisation" includes any body corporate or unincorporated association and any combination of persons.

(2) Except as otherwise provided, any reference in this Part to the time at which a donation is made or expenditure is incurred is, in a case where the donation is made or expenditure incurred in pursuance of a contract, any earlier time at which that contract is entered into by the company.

PART 15

ACCOUNTS AND REPORTS

CHAPTER 1

INTRODUCTION

General

380 Scheme of this Part

(1) The requirements of this Part as to accounts and reports apply in relation to each financial year of a company.

(2) In certain respects different provisions apply to different kinds of company.

(3) The main distinctions for this purpose are—

(a) between companies subject to the small companies regime (see section 381) and companies that are not subject to that regime; and

(b) between quoted companies (see section 385) and companies that are not quoted.

(4) In this Part, where provisions do not apply to all kinds of company—

(a) provisions applying to companies subject to the small companies regime appear before the provisions applying to other companies,

(b) provisions applying to private companies appear before the provisions applying to public companies, and

(c) provisions applying to quoted companies appear after the provisions applying to other companies.

Companies subject to the small companies regime

381 Companies subject to the small companies regime

The small companies regime for accounts and reports applies to a company for a financial year in relation to which the company—

(a) qualifies as small (see sections 382 and 383), and

(b) is not excluded from the regime (see section 384).

382 Companies qualifying as small: general

(1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year.

(2) A company qualifies as small in relation to a subsequent financial year—

(a) if the qualifying conditions are met in that year and the preceding financial year;

(b) if the qualifying conditions are met in that year and the company qualified as small in relation to the preceding financial year;

(c) if the qualifying conditions were met in the preceding financial year and the company qualified as small in relation to that year.

(3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

1. Turnover	Not more than £5.6 million
2. Balance sheet total	Not more than £2.8 million
3. Number of employees	Not more than 50

(4) For a period that is a company's financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted.

(5) The balance sheet total means the aggregate of the amounts shown as assets in the company's balance sheet.

(6) The number of employees means the average number of persons employed by the company in the year, determined as follows—

(a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),

(b) add together the monthly totals, and

(c) divide by the number of months in the financial year.

(7) This section is subject to section 383 (companies qualifying as small: parent companies).

383 Companies qualifying as small: parent companies

(1) A parent company qualifies as a small company in relation to a financial year only if the group headed by it qualifies as a small group.

(2) A group qualifies as small in relation to the parent company's first financial year if the qualifying conditions are met in that year.

(3) A group qualifies as small in relation to a subsequent financial year of the parent company—

(a) if the qualifying conditions are met in that year and the preceding financial year;

(b) if the qualifying conditions are met in that year and the group qualified as small in relation to the preceding financial year;

(c) if the qualifying conditions were met in the preceding financial year and the group qualified as small in relation to that year.

(4) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements—

1. Aggregate turnover	Not more than £5.6 million net (or £6.72 million gross)
2. Aggregate balance sheet total	Not more than £2.8 million net (or £3.36 million gross)
3. Aggregate number of employees	Not more than 50

(5) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 382 for each member of the group.

(6) In relation to the aggregate figures for turnover and balance sheet total—

"net" means after any set-offs and other adjustments made to eliminate group transactions—

(a) in the case of Companies Act accounts, in accordance with regulations under section 404,

(b) in the case of IAS accounts, in accordance with international accounting standards; and

"gross" means without those set-offs and other adjustments.

A company may satisfy any relevant requirement on the basis of either the net or the gross figure.

(7) The figures for each subsidiary undertaking shall be those included in its individual accounts for the relevant financial year, that is—

(a) if its financial year ends with that of the parent company, that financial year, and

(b) if not, its financial year ending last before the end of the financial year of the parent company.

If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

384 Companies excluded from the small companies regime

(1) The small companies regime does not apply to a company that is, or was at any time within the financial year to which the accounts relate—

(a) a public company,

(b) a company that—

(i) is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or

(ii) carries on insurance market activity, or

(c) a member of an ineligible group.

(2) A group is ineligible if any of its members is—

(a) a public company,

(b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA State,

(c) a person (other than a small company) who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity,

(d) a small company that is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or

(e) a person who carries on insurance market activity.

(3) A company is a small company for the purposes of subsection (2) if it qualified as small in relation to its last financial year ending on or before the end of the financial year to which the accounts relate.

Quoted and unquoted companies

385 Quoted and unquoted companies

(1) For the purposes of this Part a company is a quoted company in relation to a financial year if it is a quoted company immediately before the end of the accounting reference period by reference to which that financial year was determined.

(2) A "quoted company" means a company whose equity share capital—

(a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8), or

(b) is officially listed in an EEA State, or

(c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

In paragraph (a) "the official list" has the meaning given by section 103(1) of the Financial Services and Markets Act 2000.

(3) An "unquoted company" means a company that is not a quoted company.

(4) The Secretary of State may by regulations amend or replace the provisions of subsections (1) to (2) so as to limit or extend the application of some or all of the provisions of this Part that are expressed to apply to quoted companies.

(5) Regulations under this section extending the application of any such provision of this Part are subject to affirmative resolution procedure.

(6) Any other regulations under this section are subject to negative resolution procedure.

CHAPTER 2

ACCOUNTING RECORDS

386 Duty to keep accounting records

(1) Every company must keep adequate accounting records.

(2) Adequate accounting records means records that are sufficient—

(a) to show and explain the company's transactions,

(b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

(3) Accounting records must, in particular, contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and

(b) a record of the assets and liabilities of the company.

(4) If the company's business involves dealing in goods, the accounting records must contain—

(a) statements of stock held by the company at the end of each financial year of the company,

(b) all statements of stocktakings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

(5) A parent company that has a subsidiary undertaking in relation to which the above requirements do not apply must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

387 Duty to keep accounting records: offence

(1) If a company fails to comply with any provision of section 386 (duty to keep accounting records), an offence is committed by every officer of the company who is in default.

(2) It is a defence for a person charged with such an offence to show that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(3) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

388 Where and for how long records to be kept

(1) A company's accounting records—

(a) must be kept at its registered office or such other place as the directors think fit, and

(b) must at all times be open to inspection by the company's officers.

(2) If accounting records are kept at a place outside the United Kingdom, accounts and returns with respect to the business dealt with in the accounting records so kept must be sent to, and kept at, a place in the United Kingdom, and must at all times be open to such inspection.

(3) The accounts and returns to be sent to the United Kingdom must be such as to—

(a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and

(b) enable the directors to ensure that the accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

(4) Accounting records that a company is required by section 386 to keep must be preserved by it—

(a) in the case of a private company, for three years from the date on which they are made;

(b) in the case of a public company, for six years from the date on which they are made.

(5) Subsection (4) is subject to any provision contained in rules made under section 411 of the Insolvency Act 1986 (c. 45) (company insolvency rules) or Article 359 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

389 Where and for how long records to be kept: offences

(1) If a company fails to comply with any provision of subsections (1) to (3) of section 388 (requirements as to keeping of accounting records), an offence is committed by every officer of the company who is in default.

(2) It is a defence for a person charged with such an offence to show that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(3) An officer of a company commits an offence if he—

(a) fails to take all reasonable steps for securing compliance by the company with subsection (4) of that section (period for which records to be preserved), or

(b) intentionally causes any default by the company under that subsection.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

CHAPTER 3

A COMPANY'S FINANCIAL YEAR

390 A company's financial year

(1) A company's financial year is determined as follows.

(2) Its first financial year—

(a) begins with the first day of its first accounting reference period, and
(b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(3) Subsequent financial years—
(a) begin with the day immediately following the end of the company's previous financial year, and
(b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(4) In relation to an undertaking that is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.

(5) The directors of a parent company must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

391 Accounting reference periods and accounting reference date

(1) A company's accounting reference periods are determined according to its accounting reference date in each calendar year.

(2) The accounting reference date of a company incorporated in Great Britain before 1st April 1996 is—
(a) the date specified by notice to the registrar in accordance with section 224(2) of the Companies Act 1985 (c. 6) (notice specifying accounting reference date given within nine months of incorporation), or
(b) failing such notice—
(i) in the case of a company incorporated before 1st April 1990, 31st March, and
(ii) in the case of a company incorporated on or after 1st April 1990, the last day of the month in which the anniversary of its incorporation falls.

(3) The accounting reference date of a company incorporated in Northern Ireland before 22nd August 1997 is—
(a) the date specified by notice to the registrar in accordance with article 232(2) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (notice specifying accounting reference date given within nine months of incorporation), or
(b) failing such notice—
(i) in the case of a company incorporated before the coming into operation of Article 5 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)), 31st March, and
(ii) in the case of a company incorporated after the coming into operation of that Article, the last day of the month in which the anniversary of its incorporation falls.

(4) The accounting reference date of a company incorporated—
(a) in Great Britain on or after 1st April 1996 and before the commencement of this Act,

(b) in Northern Ireland on or after 22nd August 1997 and before the commencement of this Act, or

(c) after the commencement of this Act,

is the last day of the month in which the anniversary of its incorporation falls.

(5) A company's first accounting reference period is the period of more than six months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date.

(6) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

(7) This section has effect subject to the provisions of section 392 (alteration of accounting reference date).

392 Alteration of accounting reference date

(1) A company may by notice given to the registrar specify a new accounting reference date having effect in relation to—

(a) the company's current accounting reference period and subsequent periods, or

(b) the company's previous accounting reference period and subsequent periods.

A company's "previous accounting reference period" means the one immediately preceding its current accounting reference period.

(2) The notice must state whether the current or previous accounting reference period—

(a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or

(b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

(3) A notice extending a company's current or previous accounting reference period is not effective if given less than five years after the end of an earlier accounting reference period of the company that was extended under this section.

This does not apply—

(a) to a notice given by a company that is a subsidiary undertaking or parent undertaking of another EEA undertaking if the new accounting reference date coincides with that of the other EEA undertaking or, where that undertaking is not a company, with the last day of its financial year, or

(b) where the company is in administration under Part 2 of the Insolvency Act 1986 (c. 45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(c) where the Secretary of State directs that it should not apply, which he may do with respect to a notice that has been given or that may be given.

(4) A notice under this section may not be given in respect of a previous accounting reference period if the period for filing accounts and reports for the

financial year determined by reference to that accounting reference period has already expired.

(5) An accounting reference period may not be extended so as to exceed 18 months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

This does not apply where the company is in administration under Part 2 of the Insolvency Act 1986 (c. 45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

(6) In this section "EEA undertaking" means an undertaking established under the law of any part of the United Kingdom or the law of any other EEA State.

CHAPTER 4

ANNUAL ACCOUNTS

General

393 Accounts to give true and fair view

(1) The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss—

(a) in the case of the company's individual accounts, of the company;

(b) in the case of the company's group accounts, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(2) The auditor of a company in carrying out his functions under this Act in relation to the company's annual accounts must have regard to the directors' duty under subsection (1).

Individual accounts

394 Duty to prepare individual accounts

The directors of every company must prepare accounts for the company for each of its financial years.

Those accounts are referred to as the company's "individual accounts".

395 Individual accounts: applicable accounting framework

(1) A company's individual accounts may be prepared—

(a) in accordance with section 396 ("Companies Act individual accounts"), or

(b) in accordance with international accounting standards ("IAS individual accounts").

This is subject to the following provisions of this section and to section 407 (consistency of financial reporting within group).

(2) The individual accounts of a company that is a charity must be Companies Act individual accounts.

(3) After the first financial year in which the directors of a company prepare IAS individual accounts ("the first IAS year"), all subsequent individual accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.

(4) There is a relevant change of circumstance if, at any time during or after the first IAS year—

(a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS individual accounts,

(b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA State, or

(c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA State.

(5) If, having changed to preparing Companies Act individual accounts following a relevant change of circumstance, the directors again prepare IAS individual accounts for the company, subsections (3) and (4) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

396 Companies Act individual accounts

(1) Companies Act individual accounts must comprise—

(a) a balance sheet as at the last day of the financial year, and

(b) a profit and loss account.

(2) The accounts must—

(a) in the case of the balance sheet, give a true and fair view of the state of affairs of the company as at the end of the financial year, and

(b) in the case of the profit and loss account, give a true and fair view of the profit or loss of the company for the financial year.

(3) The accounts must comply with provision made by the Secretary of State by regulations as to—

(a) the form and content of the balance sheet and profit and loss account, and

(b) additional information to be provided by way of notes to the accounts.

(4) If compliance with the regulations, and any other provision made by or under this Act as to the matters to be included in a company's individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.

(5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

397 IAS individual accounts

Where the directors of a company prepare IAS individual accounts, they must state in the notes to the accounts that the accounts have been prepared in accordance with international accounting standards.

Group accounts: small companies

398 Option to prepare group accounts

If at the end of a financial year a company subject to the small companies regime is a parent company the directors, as well as preparing individual accounts for the year, may prepare group accounts for the year.

Group accounts: other companies

399 Duty to prepare group accounts

(1) This section applies to companies that are not subject to the small companies regime.

(2) If at the end of a financial year the company is a parent company the directors, as well as preparing individual accounts for the year, must prepare group accounts for the year unless the company is exempt from that requirement.

(3) There are exemptions under-

section 400 (company included in EEA accounts of larger group),

section 401 (company included in non-EEA accounts of larger group), and

section 402 (company none of whose subsidiary undertakings need be included in the consolidation).

(4) A company to which this section applies but which is exempt from the requirement to prepare group accounts, may do so.

400 Exemption for company included in EEA group accounts of larger group

(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its immediate parent undertaking is established under the law of an EEA State, in the following cases—

(a) where the company is a wholly-owned subsidiary of that parent undertaking;

(b) where that parent undertaking holds more than 50% of the allotted shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate—

(i) more than half of the remaining allotted shares in the company, or

(ii) 5% of the total allotted shares in the company.

Such notice must be served not later than six months after the end of the financial year before that to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions—

(a) the company must be included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of an EEA State;

(b) those accounts must be drawn up and audited, and that parent undertaking's annual report must be drawn up, according to that law—

(i) in accordance with the provisions of the Seventh Directive (83/349/EEC) (as modified, where relevant, by the provisions of the Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC)), or

(ii) in accordance with international accounting standards;

(c) the company must disclose in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;

(d) the company must state in its individual accounts the name of the parent undertaking that draws up the group accounts referred to above and—

(i) if it is incorporated outside the United Kingdom, the country in which it is incorporated, or

(ii) if it is unincorporated, the address of its principal place of business;

(e) the company must deliver to the registrar, within the period for filing its accounts and reports for the financial year in question, copies of—

(i) those group accounts, and

(ii) the parent undertaking's annual report,

together with the auditor's report on them;

(f) any requirement of Part 35 of this Act as to the delivery to the registrar of a certified translation into English must be met in relation to any document comprised in the accounts and reports delivered in accordance with paragraph (e).

(3) For the purposes of subsection (1)(b) shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking.

(4) The exemption does not apply to a company any of whose securities are admitted to trading on a regulated market in an EEA State.

(5) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of this section whether the company is a wholly-owned subsidiary.

(6) In subsection (4) "securities" includes—

(a) shares and stock,

(b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,

(c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and

(d) certificates or other instruments that confer—

(i) property rights in respect of a security falling within paragraph (a), (b) or (c),

(ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or

(iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

401 Exemption for company included in non-EEA group accounts of larger group

(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its parent undertaking is not established under the law of an EEA State, in the following cases—

(a) where the company is a wholly-owned subsidiary of that parent undertaking;

(b) where that parent undertaking holds more than 50% of the allotted shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate—

(i) more than half of the remaining allotted shares in the company, or

(ii) 5% of the total allotted shares in the company.

Such notice must be served not later than six months after the end of the financial year before that to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions—

(a) the company and all of its subsidiary undertakings must be included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking;

(b) those accounts and, where appropriate, the group's annual report, must be drawn up—

(i) in accordance with the provisions of the Seventh Directive (83/349/EEC) (as modified, where relevant, by the provisions of the Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC)), or

(ii) in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up;

(c) the group accounts must be audited by one or more persons authorised to audit accounts under the law under which the parent undertaking which draws them up is established;

(d) the company must disclose in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;

(e) the company must state in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and—

(i) if it is incorporated outside the United Kingdom, the country in which it is incorporated, or

(ii) if it is unincorporated, the address of its principal place of business;

(f) the company must deliver to the registrar, within the period for filing its accounts and reports for the financial year in question, copies of—

(i) the group accounts, and

(ii) where appropriate, the consolidated annual report,

together with the auditor's report on them;

(g) any requirement of Part 35 of this Act as to the delivery to the registrar of a certified translation into English must be met in relation to any document comprised in the accounts and reports delivered in accordance with paragraph (f).

(3) For the purposes of subsection (1)(b), shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, are attributed to the parent undertaking.

(4) The exemption does not apply to a company any of whose securities are admitted to trading on a regulated market in an EEA State.

(5) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of this section whether the company is a wholly-owned subsidiary.

(6) In subsection (4) "securities" includes—

(a) shares and stock,

(b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,

(c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and

(d) certificates or other instruments that confer—

(i) property rights in respect of a security falling within paragraph (a), (b) or (c),

(ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or

(iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

402 Exemption if no subsidiary undertakings need be included in the consolidation

A parent company is exempt from the requirement to prepare group accounts if under section 405 all of its subsidiary undertakings could be excluded from consolidation in Companies Act group accounts.

Group accounts: general

403 Group accounts: applicable accounting framework

(1) The group accounts of certain parent companies are required by Article 4 of the IAS Regulation to be prepared in accordance with international accounting standards ("IAS group accounts").

(2) The group accounts of other companies may be prepared—

(a) in accordance with section 404 ("Companies Act group accounts"), or

(b) in accordance with international accounting standards ("IAS group accounts").

This is subject to the following provisions of this section.

(3) The group accounts of a parent company that is a charity must be Companies Act group accounts.

(4) After the first financial year in which the directors of a parent company prepare IAS group accounts ("the first IAS year"), all subsequent group accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.

(5) There is a relevant change of circumstance if, at any time during or after the first IAS year—

(a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS group accounts,

(b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA State, or

(c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA State.

(6) If, having changed to preparing Companies Act group accounts following a relevant change of circumstance, the directors again prepare IAS group accounts for the company, subsections (4) and (5) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

404 Companies Act group accounts

(1) Companies Act group accounts must comprise—

(a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and

(b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.

(2) The accounts must give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(3) The accounts must comply with provision made by the Secretary of State by regulations as to—

(a) the form and content of the consolidated balance sheet and consolidated profit and loss account, and

(b) additional information to be provided by way of notes to the accounts.

(4) If compliance with the regulations, and any other provision made by or under this Act as to the matters to be included in a company's group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.

(5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

405 Companies Act group accounts: subsidiary undertakings included in the consolidation

(1) Where a parent company prepares Companies Act group accounts, all the subsidiary undertakings of the company must be included in the consolidation, subject to the following exceptions.

(2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view (but two or more undertakings may be excluded only if they are not material taken together).

(3) A subsidiary undertaking may be excluded from consolidation where—

(a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or

(b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or

(c) the interest of the parent company is held exclusively with a view to subsequent resale.

(4) The reference in subsection (3)(a) to the rights of the parent company and the reference in subsection (3)(c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of the definition of "parent undertaking" (see section 1162) in the absence of which it would not be the parent company.

406 IAS group accounts

Where the directors of a company prepare IAS group accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards.

407 Consistency of financial reporting within group

(1) The directors of a parent company must secure that the individual accounts of—

(a) the parent company, and

(b) each of its subsidiary undertakings,

are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.

(2) Subsection (1) does not apply if the directors do not prepare group accounts for the parent company.

(3) Subsection (1) only applies to accounts of subsidiary undertakings that are required to be prepared under this Part.

(4) Subsection (1) does not require accounts of undertakings that are charities to be prepared using the same financial reporting framework as accounts of undertakings which are not charities.

(5) Subsection (1)(a) does not apply where the directors of a parent company prepare IAS group accounts and IAS individual accounts.

408 Individual profit and loss account where group accounts prepared

(1) This section applies where—

(a) a company prepares group accounts in accordance with this Act, and

(b) the notes to the company's individual balance sheet show the company's profit or loss for the financial year determined in accordance with this Act.

(2) The profit and loss account need not contain the information specified in section 411 (information about employee numbers and costs).

(3) The company's individual profit and loss account must be approved in accordance with section 414(1) (approval by directors) but may be omitted from the company's annual accounts for the purposes of the other provisions of the Companies Acts.

(4) The exemption conferred by this section is conditional upon its being disclosed in the company's annual accounts that the exemption applies.

Information to be given in notes to the accounts

409 Information about related undertakings

(1) The Secretary of State may make provision by regulations requiring information about related undertakings to be given in notes to a company's annual accounts.

(2) The regulations—

(a) may make different provision according to whether or not the company prepares group accounts, and

(b) may specify the descriptions of undertaking in relation to which they apply, and make different provision in relation to different descriptions of related undertaking.

(3) The regulations may provide that information need not be disclosed with respect to an undertaking that—

(a) is established under the law of a country outside the United Kingdom, or

(b) carries on business outside the United Kingdom,

if the following conditions are met.

(4) The conditions are—

(a) that in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of—

(i) that undertaking,

(ii) the company,

(iii) any of the company's subsidiary undertakings, or

(iv) any other undertaking which is included in the consolidation;

(b) that the Secretary of State agrees that the information need not be disclosed.

(5) Where advantage is taken of any such exemption, that fact must be stated in a note to the company's annual accounts.

410 Information about related undertakings: alternative compliance

(1) This section applies where the directors of a company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of regulations under section 409 (related undertakings) is such that compliance with that provision would result in information of excessive length being given in notes to the company's annual accounts.

(2) The information need only be given in respect of—

(a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts, and

(b) where the company prepares group accounts, undertakings excluded from consolidation under section 405(3) (undertakings excluded on grounds other than materiality).

(3) If advantage is taken of subsection (2)—

(a) there must be included in the notes to the company's annual accounts a statement that the information is given only with respect to such undertakings as are mentioned in that subsection, and

(b) the full information (both that which is disclosed in the notes to the accounts and that which is not) must be annexed to the company's next annual return.

For this purpose the "next annual return" means that next delivered to the registrar after the accounts in question have been approved under section 414.

(4) If a company fails to comply with subsection (3)(b), an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

411 Information about employee numbers and costs

(1) In the case of a company not subject to the small companies regime, the following information with respect to the employees of the company must be given in notes to the company's annual accounts—

(a) the average number of persons employed by the company in the financial year, and

(b) the average number of persons so employed within each category of persons employed by the company.

(2) The categories by reference to which the number required to be disclosed by subsection (1)(b) is to be determined must be such as the directors may select having regard to the manner in which the company's activities are organised.

(3) The average number required by subsection (1)(a) or (b) is determined by dividing the relevant annual number by the number of months in the financial year.

(4) The relevant annual number is determined by ascertaining for each month in the financial year—

(a) for the purposes of subsection (1)(a), the number of persons employed under contracts of service by the company in that month (whether throughout the month or not);

(b) for the purposes of subsection (1)(b), the number of persons in the category in question of persons so employed;

and adding together all the monthly numbers.

(5) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of subsection (1)(a) there must also be stated the aggregate amounts respectively of—

(a) wages and salaries paid or payable in respect of that year to those persons;

(b) social security costs incurred by the company on their behalf; and

(c) other pension costs so incurred.

This does not apply in so far as those amounts, or any of them, are stated elsewhere in the company's accounts.

(6) In subsection (5)—

"pension costs" includes any costs incurred by the company in respect of—

(a) any pension scheme established for the purpose of providing pensions for persons currently or formerly employed by the company,

(b) any sums set aside for the future payment of pensions directly by the company to current or former employees, and

(c) any pensions paid directly to such persons without having first been set aside;

"social security costs" means any contributions by the company to any state social security or pension scheme, fund or arrangement.

(7) Where the company prepares group accounts, this section applies as if the undertakings included in the consolidation were a single company.

412 Information about directors' benefits: remuneration

(1) The Secretary of State may make provision by regulations requiring information to be given in notes to a company's annual accounts about directors' remuneration.

(2) The matters about which information may be required include—

(a) gains made by directors on the exercise of share options;

(b) benefits received or receivable by directors under long-term incentive schemes;

(c) payments for loss of office (as defined in section 215);

(d) benefits receivable, and contributions for the purpose of providing benefits, in respect of past services of a person as director or in any other capacity while director;

(e) consideration paid to or receivable by third parties for making available the services of a person as director or in any other capacity while director.

(3) Without prejudice to the generality of subsection (1), regulations under this section may make any such provision as was made immediately before the commencement of this Part by Part 1 of Schedule 6 to the Companies Act 1985 (c. 6).

(4) For the purposes of this section, and regulations made under it, amounts paid to or receivable by—

(a) a person connected with a director, or

(b) a body corporate controlled by a director,

are treated as paid to or receivable by the director.

The expressions "connected with" and "controlled by" in this subsection have the same meaning as in Part 10 (company directors).

(5) It is the duty of—

(a) any director of a company, and

(b) any person who is or has at any time in the preceding five years been a director of the company,

to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.

(6) A person who makes default in complying with subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

413 Information about directors' benefits: advances, credit and guarantees

(1) In the case of a company that does not prepare group accounts, details of—

(a) advances and credits granted by the company to its directors, and

(b) guarantees of any kind entered into by the company on behalf of its directors,

must be shown in the notes to its individual accounts.

(2) In the case of a parent company that prepares group accounts, details of—

(a) advances and credits granted to the directors of the parent company, by that company or by any of its subsidiary undertakings, and

(b) guarantees of any kind entered into on behalf of the directors of the parent company, by that company or by any of its subsidiary undertakings,

must be shown in the notes to the group accounts.

(3) The details required of an advance or credit are—

(a) its amount,

(b) an indication of the interest rate,

(c) its main conditions, and

(d) any amounts repaid.

(4) The details required of a guarantee are—

(a) its main terms,

(b) the amount of the maximum liability that may be incurred by the company (or its subsidiary), and

(c) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee (including any loss incurred by reason of enforcement of the guarantee).

(5) There must also be stated in the notes to the accounts the totals—
(a) of amounts stated under subsection (3)(a),
(b) of amounts stated under subsection (3)(d),
(c) of amounts stated under subsection (4)(b), and
(d) of amounts stated under subsection (4)(c).

(6) References in this section to the directors of a company are to the persons who were a director at any time in the financial year to which the accounts relate.

(7) The requirements of this section apply in relation to every advance, credit or guarantee subsisting at any time in the financial year to which the accounts relate—
(a) whenever it was entered into,
(b) whether or not the person concerned was a director of the company in question at the time it was entered into, and
(c) in the case of an advance, credit or guarantee involving a subsidiary undertaking of that company, whether or not that undertaking was such a subsidiary undertaking at the time it was entered into.

(8) Banking companies and the holding companies of credit institutions need only state the details required by subsections (3)(a) and (4)(b).

Approval and signing of accounts

414 Approval and signing of accounts

(1) A company's annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.

(2) The signature must be on the company's balance sheet.

(3) If the accounts are prepared in accordance with the provisions applicable to companies subject to the small companies regime, the balance sheet must contain a statement to that effect in a prominent position above the signature.

(4) If annual accounts are approved that do not comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation), every director of the company who—
(a) knew that they did not comply, or was reckless as to whether they complied, and
(b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,
commits an offence.

(5) A person guilty of an offence under this section is liable—
(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum.

CHAPTER 5

DIRECTORS' REPORT

Directors' report

415 Duty to prepare directors' report

(1) The directors of a company must prepare a directors' report for each financial year of the company.

(2) For a financial year in which—

(a) the company is a parent company, and

(b) the directors of the company prepare group accounts,

the directors' report must be a consolidated report (a "group directors' report") relating to the undertakings included in the consolidation.

(3) A group directors' report may, where appropriate, give greater emphasis to the matters that are significant to the undertakings included in the consolidation, taken as a whole.

(4) In the case of failure to comply with the requirement to prepare a directors' report, an offence is committed by every person who—

(a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and

(b) failed to take all reasonable steps for securing compliance with that requirement.

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

416 Contents of directors' report: general

(1) The directors' report for a financial year must state—

(a) the names of the persons who, at any time during the financial year, were directors of the company, and

(b) the principal activities of the company in the course of the year.

(2) In relation to a group directors' report subsection (1)(b) has effect as if the reference to the company was to the undertakings included in the consolidation.

(3) Except in the case of a company subject to the small companies regime, the report must state the amount (if any) that the directors recommend should be paid by way of dividend.

(4) The Secretary of State may make provision by regulations as to other matters that must be disclosed in a directors' report.

Without prejudice to the generality of this power, the regulations may make any such provision as was formerly made by Schedule 7 to the Companies Act 1985.

417 Contents of directors' report: business review

(1) Unless the company is subject to the small companies' regime, the directors' report must contain a business review.

(2) The purpose of the business review is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company).

(3) The business review must contain—

(a) a fair review of the company's business, and

(b) a description of the principal risks and uncertainties facing the company.

(4) The review required is a balanced and comprehensive analysis of—

(a) the development and performance of the company's business during the financial year, and

(b) the position of the company's business at the end of that year,

consistent with the size and complexity of the business.

(5) In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include—

(a) the main trends and factors likely to affect the future development, performance and position of the company's business; and

(b) information about—

(i) environmental matters (including the impact of the company's business on the environment),

(ii) the company's employees, and

(iii) social and community issues,

including information about any policies of the company in relation to those matters and the effectiveness of those policies; and

(c) subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

If the review does not contain information of each kind mentioned in paragraphs (b)(i), (ii) and (iii) and (c), it must state which of those kinds of information it does not contain.

(6) The review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include—

(a) analysis using financial key performance indicators, and

(b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

"Key performance indicators" means factors by reference to which the development, performance or position of the company's business can be measured effectively.

(7) Where a company qualifies as medium-sized in relation to a financial year (see sections 465 to 467), the directors' report for the year need not comply with the requirements of subsection (6) so far as they relate to non-financial information.

(8) The review must, where appropriate, include references to, and additional explanations of, amounts included in the company's annual accounts.

(9) In relation to a group directors' report this section has effect as if the references to the company were references to the undertakings included in the consolidation.

(10) Nothing in this section requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

(11) Nothing in subsection (5)(c) requires the disclosure of information about a person if the disclosure would, in the opinion of the directors, be seriously prejudicial to that person and contrary to the public interest.

418 Contents of directors' report: statement as to disclosure to auditors

(1) This section applies to a company unless—

(a) it is exempt for the financial year in question from the requirements of Part 16 as to audit of accounts, and

(b) the directors take advantage of that exemption.

(2) The directors' report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved—

(a) so far as the director is aware, there is no relevant audit information of which the company's auditor is unaware, and

(b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information.

(3) "Relevant audit information" means information needed by the company's auditor in connection with preparing his report.

(4) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things mentioned in subsection (2)(b) if he has—

(a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and

(b) taken such other steps (if any) for that purpose,

as are required by his duty as a director of the company to exercise reasonable care, skill and diligence.

(5) Where a directors' report containing the statement required by this section is approved but the statement is false, every director of the company who—

(a) knew that the statement was false, or was reckless as to whether it was false, and

(b) failed to take reasonable steps to prevent the report from being approved,

commits an offence.

(6) A person guilty of an offence under subsection (5) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

419 Approval and signing of directors' report

(1) The directors' report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(2) If the report is prepared in accordance with the small companies regime, it must contain a statement to that effect in a prominent position above the signature.

(3) If a directors' report is approved that does not comply with the requirements of this Act, every director of the company who—

(a) knew that it did not comply, or was reckless as to whether it complied, and

(b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

CHAPTER 6

QUOTED COMPANIES: DIRECTORS' REMUNERATION REPORT

420 Duty to prepare directors' remuneration report

(1) The directors of a quoted company must prepare a directors' remuneration report for each financial year of the company.

(2) In the case of failure to comply with the requirement to prepare a directors' remuneration report, every person who—

(a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and

(b) failed to take all reasonable steps for securing compliance with that requirement,

commits an offence.

(3) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.