



Companies Act 1985

1985 CHAPTER 6

PART XI

COMPANY ADMINISTRATION AND PROCEDURE

CHAPTER I

COMPANY IDENTIFICATION

348 Company name to appear outside place of business

- (1) Every company shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.
- (2) If a company does not paint or affix its name as required above, the company and every officer of it who is in default is liable to a fine; and if a company does not keep its name painted or affixed as so required, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

349 Company's name to appear in its correspondence, etc.

- (1) Every company shall have its name mentioned in legible characters—
 - (a) in all business letters of the company,
 - (b) in all its notices and other official publications,
 - (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and
 - (d) in all its bills of parcels, invoices, receipts and letters of credit.
- (2) If a company fails to comply with subsection (1) it is liable to a fine.
- (3) If an officer of a company or a person on its behalf—

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- (a) issues or authorises the issue of any business letter of the company, or any notice or other official publication of the company, in which the company's name is not mentioned as required by subsection (1), or
- (b) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company in which its name is not so mentioned,

he is liable to a fine.

- (4) If an officer of a company or a person on its behalf signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned as required by subsection (1), he is liable to a fine; and he is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

350 Company seal

- (1) Every company shall have its name engraved in legible characters on its seal; and if a company fails to comply with this subsection, it is liable to a fine.
- (2) If an officer of a company or a person on its behalf uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved as required by subsection (1), he is liable to a fine.

351 Particulars in correspondence etc.

- (1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company, that is to say—
 - (a) the company's place of registration and the number with which it is registered,
 - (b) the address of its registered office,
 - (c) in the case of an investment company (as defined in section 266), the fact that it is such a company, and
 - (d) in the case of a limited company exempt from the obligation to use the word " limited " as part of its name, the fact that it is a limited company.
- (2) If in the case of a company having a share capital there is on the stationery used for any such letters, or on the company's order forms, a reference to the amount of share capital, the reference must be to paid-up share capital.
- (3) Where the name of a public company includes, as its last part, the equivalent in Welsh of the words " public limited company " (" cwmni cyfyngedig cyhoeddus "), the fact that the company is a public limited company shall be stated in English and in legible characters—
 - (a) in all prospectuses, bill-heads, letter paper, notices and other official publications of the company, and
 - (b) in a notice conspicuously displayed in every place in which the company's business is carried on.
- (4) Where the name of a limited company has " cyfyngedig " as the last word, the fact that the company is a limited company shall be stated in English and in legible characters—
 - (a) in all prospectuses, bill-heads, letter paper, notices and other official publications of the company, and

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- (b) in a notice conspicuously displayed in every place in which the company's business is carried on.
- (5) As to contraventions of this section, the following applies—
- (a) if a company fails to comply with subsection (1) or (2), it is liable to a fine,
 - (b) if an officer of a company or a person on its behalf issues or authorises the issue of any business letter or order form not complying with those subsections, he is liable to a fine, and
 - (c) if subsection (3) or (4) is contravened, the company and every officer of it who is in default is liable to a fine and, in the case of subsection (3), to a daily default fine for continued contravention.

CHAPTER II

REGISTER OF MEMBERS

352 Obligation to keep and enter up register

- (1) Every company shall keep a register of its members and enter in it the particulars required by this section.
- (2) There shall be entered in the register—
 - (a) the names and addresses of the members;
 - (b) the date on which each person was registered as a member; and
 - (c) the date at which any person ceased to be a member.
- (3) The following applies in the case of a company having a share capital—
 - (a) with the names and addresses of the members there shall be entered a statement—
 - (i) of the shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class, and
 - (ii) of the amount paid or agreed to be considered as paid on the shares of each member;
 - (b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in paragraph (a).
- (4) in the case of a company which does not have a share capital but has more than one class of members, there shall be entered in the register, with the names and addresses of the members, the class to which each member belongs.
- (5) If a company makes default in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) An entry relating to a former member of the company may be removed from the register after the expiration of 20 years from the date on which he ceased to be a member.

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- (7) Liability incurred by a company from the making or deletion of an entry in its register of members, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred. This is without prejudice to any lesser period of limitation.

353 Location of register

- (1) A company's register of members shall be kept at its registered office, except that—
- (a) if the work of making it up is done at another office of the company, it may be kept there; and
 - (b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other, it may be kept at the office of the other at which the work is done ;
- but it must not be kept, in the case of a company registered in England and Wales, at any place elsewhere than in England and Wales or, in the case of a company registered in Scotland, at any place elsewhere than in Scotland.
- (2) Subject as follows, every company shall send notice in the prescribed form to the registrar of companies of the place where its register of members is kept, and of any change in that place.
- (3) The notice need not be sent if the register has, at all times since it came into existence (or, in the case of a register in existence on 1st July 1948, at all times since then) been kept at the company's registered office.
- (4) If a company makes default for 14 days in complying with subsection (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

354 Index of members

- (1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.
- (2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.
- (3) The index shall be at all times kept at the same place as the register of members.
- (4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

355 Entries in register in relation to share warrants

- (1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered in it as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—

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- (a) the fact of the issue of the warrant;
 - (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number ; and
 - (c) the date of the issue of the warrant.
- (2) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.
- (3) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares specified in it without the warrant being surrendered and cancelled.
- (4) Until the warrant is surrendered, the particulars specified in subsection (1) are deemed to be those required by this Act to be entered in the register of members ; and, on the surrender, the date of the surrender must be entered.
- (5) Except as provided by section 291(2) (director's share qualification), the bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

356 Inspection of register and index

- (1) Except when the register of members is closed under the provisions of this Act, the register and the index of members' names shall during business hours be open to the inspection of any member of the company without charge, and of any other person on payment of the appropriate charge.
- (2) The reference to business hours is subject to such reasonable restrictions as the company in general meeting may impose, but so that not less than 2 hours in each day is to be allowed for inspection.
- (3) Any member of the company or other person may require a copy of the register, or of any part of it, on payment of the appropriate charge; and the company shall cause any copy so required by a person to be sent to him within 10 days beginning with the day next following that on which the requirement is received by the company.
- (4) The appropriate charge is—
 - (a) under subsection (1), 5 pence or such less sum as the company may prescribe, for each inspection; and
 - (b) under subsection (3), 10 pence or such less sum as the company may prescribe, for every 100 words (or fraction of 100 words) required to be copied.
- (5) If an inspection required under this section is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default is liable in respect of each offence to a fine.
- (6) In the case of such refusal or default, the court may by order compel an immediate inspection of the register and index, or direct that the copies required be sent to the persons requiring them.

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357 Non-compliance with ss. 353, 354, 356; agent's default

Where under section 353(1)(b), the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

- section 353(2) (notice to registrar),
- section 354(3) (index to be kept with register), or
- section 356 (inspection),

or with any requirement of this Act as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under section 356(6) extends to the making of orders against that other and his officers and servants.

358 Power to close register

A company may, on giving notice by advertisement in a newspaper circulating in the district in which the company's registered office is situated, close the register of members for any time or times not exceeding in the whole 30 days in each year.

359 Power of court to rectify register

- (1) If—
 - (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or
 - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
- (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
- (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.
- (4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

360 Trusts not to be entered on register in England and Wales

No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England and Wales.

361 Register to be evidence

The register of members is prima facie evidence of any matters which are by this Act directed or authorised to be inserted in it.

362 Overseas branch registers

- (1) A company having a share capital whose objects comprise the transaction of business in any of the countries or territories specified in Part I of Schedule 14 to this Act may cause to be kept in any such country or territory in which it transacts business a branch register of members resident in that country or territory.
- (2) Such a branch register is to be known as an " overseas branch register " ; and—
 - (a) any dominion register kept by a company under section 119 of the Companies Act 1948 is to become known as an overseas branch register of the company ;
 - (b) where any Act or instrument (including in particular a company's articles) refers to a company's dominion register, that reference is to be read (unless the context otherwise requires) as being to an overseas branch register kept under this section ; and
 - (c) references to a colonial register occurring in articles registered before 1st November 1929 are to be read as referring to an overseas branch register.
- (3) Part II of Schedule 14 has effect with respect to overseas branch registers kept under this section; and Part III of the Schedule enables corresponding facilities in Great Britain to be accorded to companies incorporated in other parts of the world.
- (4) The Foreign Jurisdiction Act 1890 has effect as if subsection (1) of this section, and Part II of Schedule 14, were included among the enactments which by virtue of section 5 of that Act may be applied by Order in Council to foreign countries in which for the time being Her Majesty has jurisdiction.
- (5) Her Majesty may by Order in Council direct that subsection (1) above and Part II of Schedule 14 shall extend, with such exceptions, modifications or adaptations (if any) as may be specified in the Order, to any territories under Her Majesty's protection to which those provisions cannot be extended under the Foreign Jurisdiction Act 1890.

CHAPTER III

ANNUAL RETURN

363 Annual return (company having a share capital)

- (1) Subject to the provisions of this section, every company having a share capital shall, at least once in every year, make a return containing with respect to the company's registered office, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Schedule 15.
- (2) The annual return shall be in the prescribed form.
- (3) A company need not make a return under subsection (1) either in the year of its incorporation or, if it is not required by this Act to hold an annual general meeting during the following year, in that year.

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- (4) Where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list referred to in paragraph 5 of Schedule 15 must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph.
- (5) The return may, in any year, if the return for either of the two immediately preceding years has given (as at the date of that return) the full particulars required by that paragraph of the Schedule, give only such of those particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.
- (6) The following applies to a company keeping an overseas branch register—
 - (a) references in subsection (5) to the particulars required by paragraph 5 are to be taken as not including any such particulars contained in the overseas branch register, in so far as copies of the entries containing those particulars are not received at the company's registered office before the date when the return in question is made;
 - (b) if an annual return is made between the date when entries are made in the overseas branch register and the date when copies of those entries are received at the company's registered office, the particulars contained in those entries (so far as relevant to an annual return) shall be included in the next or a subsequent annual return, as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.
- (7) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (8) For purposes of this section and Schedule 15, a shadow director is deemed a director and officer.

364 Annual return (company not having a share capital)

- (1) Every company not having a share capital shall once at least in every calendar year make a return in the prescribed form stating—
 - (a) the address of the company's registered office;
 - (b) if the register of members is under provisions of this Act kept elsewhere than at that office, the address of the place where it is kept;
 - (c) if any register of holders of debentures of the company or any duplicate of any such register or part of it is under provisions of this Act kept elsewhere than at the company's registered office, the address of the place where it is kept;
 - (d) all such particulars with respect to the persons who at the date of the return are the directors of the company, and any person who at that date is its secretary, as are by this Act required to be contained (with respect to directors and the secretary respectively) in the company's register of directors and secretaries.
- (2) A company need not make a return under subsection (1) either in the year of its incorporation or, if it is not required by this Act to hold an annual general meeting during the following year, in that year.
- (3) There shall be included in the return a statement containing particulars of the total amount of the company's indebtedness in respect of all mortgages and charges

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(whenever created) of any description specified in section 396(1) or, in the case of a company registered in Scotland, section 410(4).

- (4) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (5) For purposes of this section, a shadow director is deemed a director and officer.

365 Time for completion of annual return

- (1) A company's annual return must be completed within 42 days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting of the company in that year.
- (2) The company must forthwith forward to the registrar of companies a copy of the return signed both by a director and by the secretary of the company.
- (3) If a company fails to comply with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine; and for this purpose a shadow director is deemed an officer.

CHAPTER IV

MEETINGS AND RESOLUTIONS

Meetings

366 Annual general meeting

- (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.
- (2) However, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
- (3) Not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next
- (4) If default is made in holding a meeting in accordance with this section, the company and every officer of it who is in default is liable to a fine.

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

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

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- (2) The directions that may be given under subsection (1) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (3) If default is made in complying with directions of the Secretary of State under subsection (1), the company and every officer of it who is in default is liable to a fine.
- (4) A general meeting held under this section shall, subject to any directions of the Secretary of State, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it be so treated.
- (5) Where a company so resolves, a copy of the resolution shall, within 15 days after its passing, be forwarded to the registrar of companies and recorded by him; and if default is made in complying with this subsection, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

368 Extraordinary general meeting on members' requisition

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

This applies notwithstanding anything in the company's articles.

- (2) A members' requisition is a requisition of—
 - (a) members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting at general meetings of the company; or
 - (b) in the case of a company not having a share capital, members of it representing not less than one-tenth of the total voting rights of all the members having at the date of deposit of the requisition a right to vote at general meetings.
- (3) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.
- (4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.
- (5) A meeting convened under this section by requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

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

369 Length of notice for calling meetings

- (1) A provision of a company's articles is void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—
- (a) in the case of the annual general meeting, 21 days' notice in writing; and
 - (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—
 - (i) 7 days' notice in writing in the case of an unlimited company, and
 - (ii) otherwise, 14 days' notice in writing.
- (2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)), a meeting of the company (other than an adjourned meeting) may be called—
- (a) in the case of the annual general meeting, by 21 days' notice in writing; and
 - (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—
 - (i) by 7 days' notice in writing in the case of an unlimited company, and
 - (ii) otherwise, 14 days' notice in writing.
- (3) Notwithstanding that a meeting is called by shorter notice than that specified in subsection (2) or in the company's articles (as the case may be), it is deemed to have been duly called if it is so agreed—
- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote at it; and
 - (b) otherwise, by the requisite majority.
- (4) The requisite majority for this purpose is a majority in number of the members having a right to attend and vote at the meeting, being a majority—
- (a) together holding not less than 95 per cent, in nominal value of the shares giving a right to attend and vote at the meeting; or
 - (b) in the case of a company not having a share capital, together representing not less than 95 per cent, of the total voting rights at that meeting of all the members.

370 General provisions as to meetings and votes

- (1) The following provisions have effect in so far as the articles of the company do not make other provision in that behalf.
- (2) Notice of the meeting of a company shall be served on every member of it in the manner in which notices are required to be served by Table A (as for the time being in force).
- (3) Two or more members holding not less than one-tenth of the issued share capital or, if the company does not have a share capital, not less than 5 per cent, in number of the members of the company may call a meeting.
- (4) Two members personally present are a quorum.

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- (5) Any member elected by the members present at a meeting may be chairman of it
- (6) In the case of a company originally having a share capital, every member has one vote in respect of each share or each £10 of stock held by him; and in any other case every member has one vote.

371 Power of court to order meeting

- (1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application—
 - (a) of any director of the company, or
 - (b) of any member of the company who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in any manner the court thinks fit.
- (2) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.
- (3) A meeting called, held and conducted in accordance with an order under subsection (1) is deemed for all purposes a meeting of the company duly called, held and conducted.

372 Proxies

- (1) Any member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him; and in the case of a private company a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at the meeting.
- (2) But, unless the articles otherwise provide—
 - (a) subsection (1) does not apply in the case of a company not having a share capital; and
 - (b) a member of a private company is not entitled to appoint more than one proxy to attend on the same occasion; and
 - (c) a proxy is not entitled to vote except on a poll.
- (3) In the case of a company having a share capital, in every notice calling a meeting of the company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member.
- (4) If default is made in complying with subsection (3) as respects any meeting, every officer of the company who is in default is liable to a fine.
- (5) A provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective.

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

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

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

373 Right to demand a poll

- (1) A provision contained in a company's articles is void in so far as it would have the effect either—
- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
 - (b) of making ineffective a demand for a poll on any such question which is made either—
 - (i) by not less than 5 members having the right to vote at the meeting; or
 - (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
 - (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.
- (2) The instrument appointing a proxy to vote at a meeting of a company is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of subsection (1) a demand by a person as proxy for a member is the same as a demand by the member.

374 Voting on a poll

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

375 Representation of corporations at meetings

- (1) A corporation, whether or not a company within the meaning of this Act, may—
- (a) if it is a member of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

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- (b) if it is a creditor (including a holder of debentures) of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of creditors of the company held in pursuance of this Act or of rules made under it, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.
- (2) A person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or debenture-holder of the other company.

Resolutions

376 Circulation of members' resolutions

- (1) Subject to the section next following, it is the duty of a company, on the requisition in writing of such number of members as is specified below and (unless the company otherwise resolves) at the expense of the requisitionists—
- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting ;
 - (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.
- (2) The number of members necessary for a requisition under subsection (1) is—
- (a) any number representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
 - (b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than £100.
- (3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting.
- (4) Notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.
- (5) For compliance with subsections (3) and (4), the copy must be served, or notice of the effect of the resolution be given (as the case may be), in the same manner and (so far as practicable) at the same time as notice of the meeting; and, where it is not practicable for it to be served or given at the same time, it must be served or given as soon as practicable thereafter.
- (6) The business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section ; and for purposes of this subsection notice is deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members. This has effect notwithstanding anything in the company's articles.

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

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

- (1) A company is not bound under section 376 to give notice of a resolution or to circulate a statement unless—
- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—
 - (i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting, and
 - (ii) otherwise, not less than one week before the meeting; and
 - (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to it.
- (2) But if, after a copy of a requisition requiring notice of a resolution has been deposited at the company's registered office, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy (though not deposited within the time required by subsection (1)) is deemed properly deposited for the purposes of that subsection.
- (3) The company is also not bound under section 376 to circulate a statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by that section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

378 Extraordinary and special resolutions

- (1) A resolution is an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.
- (2) A resolution is a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.
- (3) If it is so agreed by a majority in number of the members having the right to attend and vote at such a meeting, being a majority—
- (a) together holding not less than 95 per cent, in nominal value of the shares giving that right; or
 - (b) in the case of a company not having a share capital, together representing not less than 95 per cent, of the total voting rights at that meeting of all the members,
- a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

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- (4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration by the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (5) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference is to be had to the number of votes cast for and against the resolution.
- (6) For purposes of this section, notice of a meeting is deemed duly given, and the meeting duly held, when the notice is given and the meeting held in the manner provided by this Act or the company's articles.

379 Resolution requiring special notice

- (1) Where by any provision of this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.
- (2) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the company's articles, at least 21 days before the meeting.
- (3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed properly given, though not given within the time required.

380 Registration, etc. of resolutions and agreements

- (1) A copy of every resolution or agreement to which this section applies shall, within 15 days after it is passed or made, be forwarded to the registrar of companies and recorded by him; and it must be either a printed copy or else a copy in some other form approved by the registrar.
- (2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.
- (3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of 5 pence or such less sum as the company may direct.
- (4) This section applies to—
 - (a) special resolutions;
 - (b) extraordinary resolutions;
 - (c) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless (as the case may be) they had been passed as special resolutions or as extraordinary resolutions ;
 - (d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not

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

- (e) a resolution passed by the directors of a company in compliance with a direction under section 31(2) (change of name on Secretary of State's direction);
 - (f) a resolution of a company to give, vary, revoke or renew an authority to the directors for the purposes of section 80 (allotment of relevant securities);
 - (g) a resolution of the directors passed under section 147(2) (alteration of memorandum on company ceasing to be a public company, following acquisition of its own shares);
 - (h) a resolution conferring, varying, revoking or renewing authority under section 166 (market purchase of company's own shares);
 - (j) a resolution for voluntary winding up, passed under section 572(1)(a);
 - (k) a resolution passed by the directors of an old public company, under section 2(1) of the Consequential Provisions Act, that the company should be re-registered as a public company.
- (5) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) If a company fails to comply with subsection (2) or (3), the company and every officer of it who is in default is liable to a fine.
- (7) For purposes of subsections (5) and (6), a liquidator of a company is deemed an officer of it.

381 Resolution passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company:

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

Records of proceedings

382 Minutes of meetings

- (1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.
- (2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, is evidence of the proceedings.
- (3) Where a shadow director by means of a notice required by section 317(8) declares an interest in a contract or proposed contract, this section applies—

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- (a) if it is a specific notice under paragraph (a) of that subsection, as if the declaration had been made at the meeting there referred to, and
- (b) otherwise, as if it had been made at the meeting of the directors next following the giving of the notice :

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

- (4) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings had at the meeting to have been duly had ; and all appointments of directors, managers or liquidators are deemed valid.
- (5) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

383 Inspection of minute books

- (1) The books containing the minutes of proceedings of any general meeting of a company held on or after 1st November 1929 shall be kept at the company's registered office, and shall during business hours be open to the inspection of any member without charge.
- (2) The reference to business hours is subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than 2 hours in each day be allowed for inspection.
- (3) Any member shall be entitled to be furnished, within 7 days after he has made a request in that behalf to the company, with a copy of any such minutes as are referred to above, at a charge of not more than 2\ pence for every 100 words.
- (4) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company and every officer of it who is in default is liable in respect of each offence to a fine.
- (5) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required be sent to the persons requiring them.

CHAPTER V

AUDITORS

384 Annual appointment of auditors

- (1) Every company shall, at each general meeting of the company at which accounts are laid in accordance with section 241, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which the requirements of section 241 are complied with.

This is subject to section 252 (exemption for dormant companies).

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- (2) The first auditors of a company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid ; and auditors so appointed shall hold office until the conclusion of that meeting.
- (3) If the directors fail to exercise their powers under subsection (2), those powers may be exercised by the company in general meeting.
- (4) The directors, or the company in general meeting, may fill any casual vacancy in the office of auditor; but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.
- (5) If at any general meeting of a company at which accounts are laid as required by section 241 no auditors are appointed or reappointed, the Secretary of State may appoint a person to fill the vacancy; and the company shall, within one week of that power of the Secretary of State becoming exercisable, give to him notice of that fact.

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

385 Remuneration of auditors

- (1) The remuneration of a company's auditors shall be fixed by the company in general meeting, or in such manner as the company in general meeting may determine.
- (2) This does not apply in the case of auditors appointed by the directors or by the Secretary of State ; and in that case their remuneration may be fixed by the directors or by the Secretary of State (as the case may be).
- (3) For the purpose of this section, " remuneration " includes any sums paid by the company in respect of the auditor's expenses.

386 Removal of auditors

- (1) A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.
- (2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar of companies.

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

- (3) Nothing in this section is to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

387 Auditors' right to attend company meetings

- (1) A company's auditors are entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive, and to be heard at any general

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meeting which they attend on any part of the business of the meeting which concerns them as auditors.

- (2) An auditor of a company who has been removed is entitled to attend—
- (a) the general meeting at which his term of office would otherwise have expired, and
 - (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

388 Supplementary provisions as to auditors

- (1) Special notice is required for a resolution at a general meeting of a company—
- (a) appointing as auditor a person other than a retiring auditor; or
 - (b) filling a casual vacancy in the office of auditor; or
 - (c) reappointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
 - (d) removing an auditor before the expiration of his term of office.
- (2) On receipt of notice of such an intended resolution as is mentioned above the company shall forthwith send a copy of it—
- (a) to the person proposed to be appointed or removed, as the case may be;
 - (b) in a case within subsection (1)(a), to the retiring auditor; and
 - (c) where, in a case within subsection (1)(b) or (c), the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.
- (3) Where notice is given of such a resolution as is mentioned in subsection (1) (a) or (d), and the retiring auditor or (as the case may be) the auditor proposed to be removed makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)—
- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made, and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (4) If a copy of any such representations is not sent out as required by subsection (3) because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

389 Qualification for appointment as auditor

- (1) Subject to the next subsection, a person is not qualified for appointment as auditor of a company unless either—
- (a) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Secretary of State; or
 - (b) he is for the time being authorised by the Secretary of State to be so appointed, as having similar qualifications obtained outside the United Kingdom or else he retains an authorisation formerly granted by the Board of Trade or the Secretary of State under section 161(1)(b) of the Companies Act 1948 (adequate knowledge and experience, or pre-1947 practice).
- (2) Subject to subsections (6) to (8) below, a person is qualified for appointment as auditor of an unquoted company if he retains an authorisation granted by the Board of Trade or the Secretary of State under section 13(1) of the Companies Act 1967.

In this subsection—

- (a) " unquoted company" means a company in the case of which, at the time of the person's appointment, the following condition is satisfied, namely, that no shares or debentures of the company, or of a body corporate of which it is the subsidiary, have been quoted on a stock exchange (whether in Great Britain or elsewhere) to the public for subscription or purchase, and
 - (b) " company " does not include a company that carries on business as the promoter of a trading stamp scheme within the meaning of the Trading Stamps Act 1964.
- (3) Subject to the next subsection, the bodies of accountants recognised for the purposes of subsection (1)(a) are—
- (a) the Institute of Chartered Accountants in England and Wales,
 - (b) the Institute of Chartered Accountants of Scotland,
 - (c) the Chartered Association of Certified Accountants, and
 - (d) the Institute of Chartered Accountants in Ireland.
- (4) The Secretary of State may by regulations in a statutory instrument amend subsection (3) by adding or deleting any body, but shall not make regulations—
- (a) adding any body, or
 - (b) deleting any body which has not considered in writing to its deletion,
- unless he has published notice of his intention to do so in the London and Edinburgh Gazettes at least 4 months before making the regulations.
- (5) The Secretary of State may refuse an authorisation under subsection (1)(b) to a person as having qualifications obtained outside the United Kingdom if it appears to him that the country in which the qualifications were obtained does not confer on persons qualified in the United Kingdom privileges corresponding to those conferred by that subsection.
- (6) None of the following persons is qualified for appointment as auditor of a company—
- (a) an officer or servant of the company;
 - (b) a person who is a partner of or in the employment of an officer or servant of the company;
 - (c) a body corporate;

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

- (7) A person is also not qualified for appointment as auditor of a company if he is, under subsection (6), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.
- (8) Notwithstanding subsections (1), (6) and (7), a Scottish firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of it
- (9) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office; and if an auditor of a company to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.
- (10) A person who acts as auditor in contravention of subsection (9), or fails without reasonable excuse to give notice of vacating his office as required by that subsection, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

390 Resignation of auditors

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office; and any such notice operates to bring his term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.
- (2) An auditor's notice of resignation is not effective unless it contains either—
 - (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or
 - (b) a statement of any such circumstances as are mentioned above.
- (3) Where a notice under this section is deposited at a company's registered office, the company shall within 14 days send a copy of the notice—
 - (a) to the registrar of companies; and
 - (b) if the notice contained a statement under subsection (2)(b), to every person who under section 240 is entitled to be sent copies of the accounts.
- (4) The company or any person claiming to be aggrieved may, within 14 days of the receipt by the company of a notice containing a statement under subsection (2)(b), apply to the court for an order under the next subsection.
- (5) If on such an application the court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may by order direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (6) The company shall, within 14 days of the court's decision, send to the persons mentioned in subsection (3)—

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- (a) if the court makes an order under subsection (5), a statement setting out the effect of the order;
 - (b) if not, a copy of the notice containing the statement under subsection (2)(6).
- (7) If default is made in complying with subsection (3) or (6), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

391 Right of resigning auditor to requisition company meeting

- (1) Where an auditor's notice of resignation contains a statement under section 390(2) (b) there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
- (2) Where an auditor's notice of resignation contains such a statement, the auditor may request the company to circulate to its members—
- (a) before the general meeting at which his term of office would otherwise have expired; or
 - (b) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition,
- a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (3) The company shall in that case (unless the statement is received by it too late for it to comply)—
- (a) in any notice of the meeting given to members of the company state the fact of the statement having been made, and
 - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent
- (4) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.
- (5) If a copy of the statement mentioned in subsection (2) is not sent out as required by subsection (3) because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.
- (6) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (7) An auditor who has resigned his office is entitled to attend any such meeting as is mentioned in subsection (2)(a) or (b) and to receive all notices of, and other communications relating to, any such meeting which any member of the company is

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entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

392 Powers of auditors in relation to subsidiaries

- (1) Where a company (" the holding company ") has a subsidiary, then—
 - (a) if the subsidiary is a body corporate incorporated in Great Britain, it is the duty of the subsidiary and its auditors to give to the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;
 - (b) in any other case, it is the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as are mentioned above.
- (2) If a subsidiary or holding company fails to comply with subsection (1), the subsidiary or holding company and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with paragraph (a) of the subsection, he is guilty of an offence and so liable.

393 False statements to auditors

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

- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company, and
- (b) is misleading, false or deceptive in a material particular.

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

394 Auditors of trade unions

- (1) Subject as follows, this section applies to every body which is both a company and a trade union or an employers' association to which section 11 of the Trade Union and Labour Relations Act 1974 applies.
- (2) Section 11(3) of the Act of 1974 and paragraphs 6 to 15 of Schedule 2 to that Act (qualifications, appointment and removal of auditors) do not have effect in relation to bodies to which this section applies.
- (3) The rights and powers conferred, and the duties imposed, by paragraphs 16 to 21 of that Schedule on the auditors of a body to which this section applies belong to the auditors from time to time appointed by or on behalf of that body under section 384 of this Act.