



Companies Act 1989

1989 CHAPTER 40

PART V

OTHER AMENDMENTS OF COMPANY LAW

Miscellaneous

128 Form of articles for partnership company

In Chapter I of Part I of the Companies Act 1985 (company formation), after section 8 (Tables A, C, D and E) insert—

“8A Table G

- (1) The Secretary of State may by regulations prescribe a Table G containing articles of association appropriate for a partnership company, that is, a company limited by shares whose shares are intended to be held to a substantial extent by or on behalf of its employees.
- (2) A company limited by shares may for its articles adopt the whole or any part of that Table.
- (3) If in consequence of regulations under this section Table G is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

129 Membership of holding company

- (1) In Chapter I of Part I of the Companies Act 1985 (company formation), for section 23 (membership of holding company) substitute—

Status: This is the original version (as it was originally enacted).

“23 Membership of holding company

- (1) Except as mentioned in this section, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business which includes the lending of money;
 - (b) any such interest as is mentioned in Part I of Schedule 2.
- (3) The prohibition does not apply where the subsidiary is concerned only as a market maker.

For this purpose a person is a market maker if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him, and
 - (b) he is recognised as so doing by that investment exchange.
- (4) Where a body corporate became a holder of shares in a company—
 - (a) before 1st July 1948, or
 - (b) on or after that date and before the commencement of section 129 of the Companies Act 1989, in circumstances in which this section as it then had effect did not apply,

but at any time after the commencement of that section falls within the prohibition in subsection (1) above in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

- (5) Where a body corporate becomes a holder of shares in a company after the commencement of that section in circumstances in which the prohibition in subsection (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.
- (6) Where a body corporate is permitted to continue as a member of a company by virtue of subsection (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in subsection (1) would apply, apart from subsection (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

- (7) The provisions of this section apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.
 - (8) In relation to a company other than a company limited by shares, the references in this section to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.”.
- (2) In Schedule 2 to the Companies Act 1985 (interpretation of references to “beneficial interest”), in paragraphs 1(1), 3(1) and 4(2) for “as respects section 23(4)” substitute “as this paragraph applies for the purposes of section 23(2)”

130 Company contracts and execution of documents by companies

- (1) In Chapter III of Part I of the Companies Act 1985 (a company’s capacity; the formalities of carrying on business), for section 36 (form of company contracts) substitute—

“36 Company contracts: England and Wales

Under the law of England and Wales a contract may be made—

- (a) by a company, by writing under its common seal, or
- (b) on behalf of a company, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.”.

- (2) After that section insert—

“36A Execution of documents: England and Wales

- (1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.
- (2) A document is executed by a company by the affixing of its common seal.
- (3) A company need not have a common seal, however, and the following subsections apply whether it does or not.
- (4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.
- (6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

Status: This is the original version (as it was originally enacted).

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.”.

(3) After the section inserted by subsection (2) insert—

“36B Execution of documents: Scotland

- (1) Under the law of Scotland the following provisions have effect with respect to the execution of documents by a company.
- (2) A document—
 - (a) is signed by a company if it is signed on its behalf by a director, or by the secretary, of the company or by a person authorised to sign the document on its behalf, and
 - (b) is subscribed by a company if it is subscribed on its behalf by being signed in accordance with the provisions of paragraph (a) at the end of the last page.
- (3) A document shall be presumed, unless the contrary is shown, to have been subscribed by a company in accordance with subsection (2) if—
 - (a) it bears to have been subscribed on behalf of the company by a director, or by the secretary, of the company or by a person bearing to have been authorised to subscribe the document on its behalf; and
 - (b) it bears—
 - (i) to have been signed by a person as a witness of the subscription of the director, secretary or other person subscribing on behalf of the company; or
 - (ii) (if the subscription is not so witnessed) to have been sealed with the common seal of the company.
- (4) A presumption under subsection (3) as to subscription of a document does not include a presumption—
 - (a) that a person bearing to subscribe the document as a director or the secretary of the company was such director or secretary; or
 - (b) that a person subscribing the document on behalf of the company bearing to have been authorised to do so was authorised to do so.
- (5) Notwithstanding subsection (3)(b)(ii), a company need not have a common seal.
- (6) Any reference in any enactment (including an enactment contained in a subordinate instrument) to a probative document shall, in relation to a document executed by a company after the commencement of section 130 of the Companies Act 1989, be construed as a reference to a document which is presumed under subsection (3) above to be subscribed by the company.
- (7) Subsections (1) to (4) above do not apply where an enactment (including an enactment contained in a subordinate instrument) provides otherwise.”.

(4) After the section inserted by subsection (3) insert—

Status: This is the original version (as it was originally enacted).

“36C Pre-incorporation contracts, deeds and obligations

- (1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.
- (2) Subsection (1) applies—
 - (a) to the making of a deed under the law of England and Wales, and
 - (b) to the undertaking of an obligation under the law of Scotland, as it applies to the making of a contract.”.
- (5) In Schedule 22 of the Companies Act 1985 (provisions applying to unregistered companies), at the appropriate place insert—

“Section 36	Company contracts.	Subject to section 718(3).
Sections 36A and 36B	Execution of documents.	Subject to section 718(3).
Section 36C	Pre-incorporation contracts, deeds and obligations.	Subject to section 718(3).”.

- (6) The Secretary of State may make provision by regulations applying sections 36 to 36C of the Companies Act 1985 (company contracts; execution of documents; pre-incorporation contracts, deeds and obligations) to companies incorporated outside Great Britain, subject to such exceptions, adaptations or modifications as may be specified in the regulations.

Regulations under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Schedule 17 contains further minor and consequential amendments relating to company contracts, the execution of documents by companies and related matters.

131 Members' rights to damages, &c

- (1) In Part IV of the Companies Act 1985 (allotment of shares and debentures), before section 112 and after the heading “*Other matters arising out of allotment &c.*”, insert—

“111A Right to damages, &c. not affected

- A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company’s register in respect of shares.”.
- (2) In section 116 of the Companies Act 1985 (extended operation of certain provisions applying to public companies) for “and 110 to 115” substitute “, 110, 111 and 112 to 115”.

Status: This is the original version (as it was originally enacted).

132 Financial assistance for purposes of employees' share scheme

In Chapter VI of Part V of the Companies Act 1985 (financial assistance by company for purchase of its own shares), in section 153 (transactions not prohibited), for subsection (4)(b) (provision of money in accordance with employees' share scheme) substitute—

“(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme.”.

133 Issue of redeemable shares

(1) In Part V of the Companies Act 1985 (share capital, its increase, maintenance and reduction), Chapter III (redeemable shares, purchase by a company of its own shares) is amended as follows.

(2) After section 159 (power to issue redeemable shares) insert—

“159A Terms and manner of redemption

- (1) Redeemable shares may not be issued unless the following conditions are satisfied as regards the terms and manner of redemption.
- (2) The date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's articles or, if the articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued.
- (3) Any other circumstances in which the shares are to be or may be redeemed must be specified in the company's articles.
- (4) The amount payable on redemption must be specified in, or determined in accordance with, the company's articles, and in the latter case the articles must not provide for the amount to be determined by reference to any person's discretion or opinion.
- (5) Any other terms and conditions of redemption shall be specified in the company's articles.
- (6) Nothing in this section shall be construed as requiring a company to provide in its articles for any matter for which provision is made by this Act.”.

(3) In section 160 (financing, &c. of redemption)—

- (a) omit subsection (3) (which is superseded by the new section 159A), and
- (b) in subsection (4) (cancellation of shares on redemption) for “redeemed under this section” substitute “redeemed under this Chapter”.

(4) In section 162 (power of company to purchase own shares), for subsection (2) (application of provisions relating to redeemable shares) substitute—

“(2) Sections 159, 160 and 161 apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares.”.

134 Disclosure of interests in shares

(1) Part VI of the Companies Act 1985 (disclosure of interests in shares) is amended as follows.

(2) In section 199(2) (notifiable interests), for the words from “the percentage” to the end substitute “3 per cent. of the nominal value of that share capital”.

The order bringing the above amendment into force may make such provision as appears to the Secretary of State appropriate as to the obligations of a person whose interest in a company’s shares becomes notifiable by virtue of the amendment coming into force.

(3) In sections 202(1) and (4) and 206(8) (which require notification of certain matters within a specified period) for “5 days” substitute “2 days”.

(4) In section 202 (particulars to be contained in notification), for subsection (3) substitute—

“(3) A notification (other than one stating that a person no longer has a notifiable interest) shall include the following particulars, so far as known to the person making the notification at the date when it is made—

(a) the identity of each registered holder of shares to which the notification relates and the number of such shares held by each of them, and

(b) the number of such shares in which the interest of the person giving the notification is such an interest as is mentioned in section 208(5).”.

(5) After section 210 insert—

“210A Power to make further provision by regulations

(1) The Secretary of State may by regulations amend—

(a) the definition of “relevant share capital” (section 198(2)),

(b) the percentage giving rise to a “notifiable interest” (section 199(2)),
(c) the periods within which an obligation of disclosure must be fulfilled or a notice must be given (sections 202(1) and (4) and 206(8)),

(d) the provisions as to what is taken to be an interest in shares (section 208) and what interests are to be disregarded (section 209), and

(e) the provisions as to company investigations (section 212);

and the regulations may amend, replace or repeal the provisions referred to above and make such other consequential amendments or repeals of provisions of this Part as appear to the Secretary of State to be appropriate.

(2) The regulations may in any case make different provision for different descriptions of company; and regulations under subsection (1)(b), (c) or (d) may make different provision for different descriptions of person, interest or share capital.

(3) The regulations may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate, and may in particular make provision as to the obligations of a person whose

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interest in a company's shares becomes or ceases to be notifiable by virtue of the regulations.

- (4) Regulations under this section shall be made by statutory instrument.
- (5) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.”.
- (6) Any regulations made under section 209(1)(j) which are in force immediately before the repeal of that paragraph by this Act shall have effect as if made under section 210A(1)(d) as inserted by subsection (5) above.

135 Orders imposing restrictions on shares

- (1) The Secretary of State may by regulations made by statutory instrument make such amendments of the provisions of the Companies Act 1985 relating to orders imposing restrictions on shares as appear to him necessary or expedient—
 - (a) for enabling orders to be made in a form protecting the rights of third parties;
 - (b) with respect to the circumstances in which restrictions may be relaxed or removed;
 - (c) with respect to the making of interim orders by a court.
- (2) The provisions referred to in subsection (1) are section 210(5), section 216(1) and (2), section 445 and Part XV of the Companies Act 1985.
- (3) The regulations may make different provision for different cases and may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.
- (4) Regulations under this section shall not be made unless a draft of the regulations has been laid before Parliament and approved by resolution of each House of Parliament.

136 A company's registered office

For section 287 of the Companies Act 1985 (registered office) substitute—

“287 Registered office

- (1) A company shall at all times have a registered office to which all communications and notices may be addressed.
- (2) On incorporation the situation of the company's registered office is that specified in the statement sent to the registrar under section 10.
- (3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.
- (4) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.
- (5) For the purposes of any duty of a company—

- (a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
 - (b) to mention the address of its registered office in any document,
- a company which has given notice to the registrar of a change in the situation of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.
- (6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but—
- (a) resumes performance of that duty at other premises as soon as practicable, and
 - (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,
- it shall not be treated as having failed to comply with that duty.
- (7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason of the matters referred to in that subsection or subsection (6) no offence was committed.”.

137 Effecting of insurance for officers and auditors of company

- (1) In section 310 of the Companies Act 1985 (provisions exempting officers and auditors from liability), for subsection (3) (permitted provisions) substitute—
- “(3) This section does not prevent a company—
- (a) from purchasing and maintaining for any such officer or auditor insurance against any such liability, or
 - (b) from indemnifying any such officer or auditor against any liability incurred by him—
 - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or
 - (ii) in connection with any application under section 144(3) or (4) (acquisition of shares by innocent nominee) or section 727 (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.”.
- (2) In Part I of Schedule 7 to the Companies Act 1985 (general matters to be dealt with in directors' report), after paragraph 5 insert—
- “5A Where in the financial year the company has purchased or maintained any such insurance as is mentioned in section 310(3)(a) (insurance of officers or auditors against liabilities in relation to the company), that fact shall be stated in the report.”

138 Increase of limits on certain exemptions

Part X of the Companies Act 1985 (enforcement of fair dealing by directors) is amended as follows—

Status: This is the original version (as it was originally enacted).

- (a) in section 332(1)(b) (short-term quasi-loans) for “£1,000” substitute “£5,000”;
- (b) in section 334 (loans of small amounts) for “£2,500” substitute “£5,000”;
- (c) in section 338(4) and (6) (loans or quasi-loans by money-lending company) for “£50,000” substitute “£100,000”.

139 Annual returns

- (1) In Part XI of the Companies Act 1985 (company administration and procedure), for Chapter III (annual return) substitute—

“CHAPTER III

ANNUAL RETURN

363 Duty to deliver annual returns

- (1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company’s “return date”, that is—
- (a) the anniversary of the company’s incorporation, or
 - (b) if the company’s last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.
- (2) Each return shall—
- (a) be in the prescribed form,
 - (b) contain the information required by or under the following provisions of this Chapter, and
 - (c) be signed by a director or the secretary of the company;
- and it shall be delivered to the registrar within 28 days after the date to which it is made up.
- (3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.
- The contravention continues until such time as an annual return made up to that return date and complying with the requirements of subsection (2) (except as to date of delivery) is delivered by the company to the registrar.
- (4) Where a company is guilty of an offence under subsection (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.
- (5) The references in this section to a return being delivered “in accordance with this Chapter” are—
- (a) in relation to a return made after the commencement of section 139 of the Companies Act 1989, to a return with respect to which all the requirements of subsection (2) are complied with;

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- (b) in relation to a return made before that commencement, to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

364 Contents of annual return: general

- (1) Every annual return shall state the date to which it is made up and shall contain the following information—
 - (a) the address of the company’s registered office;
 - (b) the type of company it is and its principal business activities;
 - (c) the name and address of the company secretary;
 - (d) the name and address of every director of the company;
 - (e) in the case of each individual director—
 - (i) his nationality, date of birth and business occupation, and
 - (ii) such particulars of other directorships and former names as are required to be contained in the company’s register of directors;
 - (f) in the case of any corporate director, such particulars of other directorships as would be required to be contained in that register in the case of an individual;
 - (g) if the register of members is not kept at the company’s registered office, the address of the place where it is kept;
 - (h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company’s registered office, the address of the place where it is kept;
 - (i) if the company has elected—
 - (i) to dispense under section 252 with the laying of accounts and reports before the company in general meeting, or
 - (ii) to dispense under section 366A with the holding of annual general meetings,a statement to that effect.
- (2) The information as to the company’s type shall be given by reference to the classification scheme prescribed for the purposes of this section.
- (3) The information as to the company’s principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.
- (4) A person’s “name” and “address” mean, respectively—
 - (a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name and its registered or principal office.
- (5) In the case of a peer, or 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.

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- (6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.

364A Contents of annual return: particulars of share capital and shareholders

- (1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.
- (2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.
- (3) The return shall state with respect to each class of shares in the company—
- the nature of the class, and
 - the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.
- (4) The return shall contain a list of the names and addresses of every person who—
- is a member of the company on the date to which the return is made up, or
 - has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);
- and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.
- (5) The return shall also state—
- the number of shares of each class held by each member of the company at the date to which the return is made up, and
 - the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.
- (6) The return may, if either of the two immediately preceding returns has given the full particulars required by subsections (4) and (5), give only such 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.
- (7) Subsections (4) and (5) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.
- Those particulars shall be included in the company's next annual return after they are received.
- (8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

365 Supplementary provisions: regulations and interpretation

- (1) The Secretary of State may by regulations make further provision as to the information to be given in a company's annual return, which may amend or repeal the provisions of sections 364 and 364A.
- (2) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) For the purposes of this Chapter, except section 363(2)(c) (signature of annual return), a shadow director shall be deemed to be a director.”.
- (2) Where a company was, immediately before the commencement of this section, in default with respect to the delivery of one or more annual returns, this section does not affect its obligation to make such a return (in accordance with Chapter III of Part XI of the Companies Act 1985 as it then had effect) or any liability arising from failure to do so.
- (3) In Schedule 24 to the Companies Act 1985 (punishment of offences) in the entry relating to section 363(7), in the first column for “363(7)” substitute “363(3)”.
- (4) In Schedule 1 to the Company Directors Disqualification Act 1986 (matters relevant to determining unfitness of directors), in paragraph 4 (failure of company to comply with certain provisions), for sub-paragraphs (f) and (g) substitute—
“(f) section 363 (duty of company to make annual returns);”.
- (5) In section 565(6) of the Income and Corporation Taxes Act 1988 (conditions for exemption from provisions relating to sub-contractors in construction industry: compliance with requirements of Companies Act 1985), in paragraph (d) for “sections 363, 364 and 365” substitute “sections 363 to 365”.

140 Floating charges (Scotland)

- (1) In section 463 of the Companies Act 1985 (effect of floating charge on winding up), in subsection (1) for the words “On the commencement of the winding up of a company,” there shall be substituted the words “Where a company goes into liquidation within the meaning of section 247(2) of the Insolvency Act 1986,”.
- (2) Section 464 of the Companies Act 1985 (ranking of floating charges) is amended as follows.
- (3) In subsection (1)(b) at the beginning there shall be inserted the words “with the consent of the holder of any subsisting floating charge or fixed security which would be adversely affected,”.
- (4) After subsection (1) there shall be inserted the following subsection—
“(1A) Where an instrument creating a floating charge contains any such provision as is mentioned in subsection (1)(a), that provision shall be effective to confer priority on the floating charge over any fixed security or floating charge created after the date of the instrument.”.
- (5) For subsection (3) there shall be substituted—

Status: This is the original version (as it was originally enacted).

- “(3) The order of ranking of the floating charge with any other subsisting or future floating charges or fixed securities over all or any part of the company’s property is determined in accordance with the provisions of subsections (4) and (5) except where it is determined in accordance with any provision such as is mentioned in paragraph (a) or (b) of subsection (1).”.
- (6) In subsection (5) at the end there shall be added the following paragraph—
- “; and
- (e) (in the case of a floating charge to secure a contingent liability other than a liability arising under any further advances made from time to time) the maximum sum to which that contingent liability is capable of amounting whether or not it is contractually limited.”.
- (7) In subsection (6) after the words “subject to” there shall be inserted the words “Part XII and to”.
- (8) In section 466 of the Companies Act 1985 (alteration of floating charges), subsections (4) and (5) and in subsection (6) the words “falling under subsection (4) of this section” shall cease to have effect.

141 Application to declare dissolution of company void

- (1) Section 651 of the Companies Act 1985 (power of court to declare dissolution of company void) is amended as follows.
- (2) In subsection (1) omit the words “at any time within 2 years of the date of the dissolution”.
- (3) After subsection (3) add—
- “(4) Subject to the following provisions, an application under this section may not be made after the end of the period of two years from the date of the dissolution of the company.
- (5) An application for the purpose of bringing proceedings against the company—
- (a) for damages in respect of personal injuries (including any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (funeral expenses)), or
- (b) for damages under the Fatal Accidents Act 1976 or the Damages (Scotland) Act 1976,
- may be made at any time; but no order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.
- (6) Nothing in subsection (5) affects the power of the court on making an order under this section to direct that the period between the dissolution of the company and the making of the order shall not count for the purposes of any such enactment.
- (7) In subsection (5)(a) “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.”.
- (4) An application may be made under section 651(5) of the Companies Act 1985 as inserted by subsection (3) above (proceedings for damages for personal injury,

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&c.) in relation to a company dissolved before the commencement of this section notwithstanding that the time within which the dissolution might formerly have been declared void under that section had expired before commencement.

But no such application shall be made in relation to a company dissolved more than twenty years before the commencement of this section.

- (5) Except as provided by subsection (4), the amendments made by this section do not apply in relation to a company which was dissolved more than two years before the commencement of this section.

142 Abolition of doctrine of deemed notice

- (1) In Part XXIV of the Companies Act 1985 (the registrar of companies, his functions and offices), after section 711 insert—

“711A Exclusion of deemed notice

- (1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document kept by the registrar of companies (and thus available for inspection) or made available by the company for inspection.
- (2) This does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such inquiries as ought reasonably to be made.
- (3) In this section “document” includes any material which contains information.
- (4) Nothing in this section affects the operation of—
- (a) section 416 of this Act (under which a person taking a charge over a company’s property is deemed to have notice of matters disclosed on the companies charges register), or
 - (b) section 198 of the Law of Property Act 1925 as it applies by virtue of section 3(7) of the Land Charges Act 1972 (under which the registration of certain land charges under Part XII, or Chapter III of Part XXIII, of this Act is deemed to constitute actual notice for all purposes connected with the land affected).”.

- (2) In Schedule 22 to the Companies Act 1985 (unregistered companies), in the entry for Part XXIV at the appropriate place insert—

“Section 711A	Abolition of doctrine of deemed notice.	Subject to section 718(3).”.
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143 Rights of inspection and related matters

- (1) In Part XXV of the Companies Act 1985 (miscellaneous and supplementary provisions), after section 723 insert—

“723A Obligations of company as to inspection of registers, &c

- (1) The Secretary of State may make provision by regulations as to the obligations of a company which is required by any provision of this Act—

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- (a) to make available for inspection any register, index or document, or
 - (b) to provide copies of any such register, index or document, or part of it;
 - and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.
- (2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.
 - (3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.
 - (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
 - (5) Regulations under this section may make different provision for different classes of case.
 - (6) Nothing in any provision of this Act or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.
 - (7) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (2) In section 169(5) of the Companies Act 1985 (contract for purchase by company of its own shares), omit the words from “, during business hours” to “for inspection”.
 - (3) In section 175(6) of the Companies Act 1985 (statutory declaration and auditors' report relating to payment out of capital), in paragraph (b) omit the words from “during business hours” to “period”.
 - (4) In section 191 of the Companies Act 1985 (register of debenture holders)—
 - (a) in subsection (1), omit the words from “(but” to “for inspection)” and for the words from “a fee of 5 pence” to the end substitute “such fee as may be prescribed”;
 - (b) in subsection (2) for the words from “10 pence” to the end substitute “such fee as may be prescribed”; and
 - (c) in subsection (3), after “on payment” insert “of such fee as may be prescribed” and omit paragraphs (a) and (b).
 - (5) In section 219 of the Companies Act 1985 (register of interests in shares, &c.)—
 - (a) in subsection (1), omit the words from “during” to “for inspection”;
 - (b) in subsection (2) for the words from “10 pence” to “required to be copied” substitute “such fee as may be prescribed”.
 - (6) In section 288 of the Companies Act 1985 (register of directors and secretaries), in subsection (3), omit the words from “during” to “for inspection)” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”.

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- (7) In section 318 of the Companies Act 1985 (directors' service contracts), in subsection (7) omit the words from “, during business hours” to “for inspection”).
- (8) In section 356 of the Companies Act 1985 (register and index of members' names)—
- (a) in subsection (1), omit “during business hours” and for “the appropriate charge” substitute “such fee as may be prescribed”;
 - (b) omit subsection (2);
 - (c) in subsection (3) for “the appropriate charge” substitute “such fee as may be prescribed”; and
 - (d) omit subsection (4).
- (9) In section 383 of the Companies Act 1985 (minutes of proceedings of general meetings)—
- (a) in subsection (1), omit “during business hours”;
 - (b) omit subsection (2); and
 - (c) in subsection (3), after “entitled” insert “on payment of such fee as may be prescribed” and omit the words from “at a charge” to the end.
- (10) In Part IV of Schedule 13 to the Companies Act 1985 (register of directors' interests)—
- (a) in paragraph 25, omit the words from “during” to “for inspection”)” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”; and
 - (b) in paragraph 26(1), for the words from “10 pence” to the end substitute “such fee as may be prescribed”.
- (11) In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entry relating to Part XXV at the appropriate place insert—

“Section 723A	Rights of inspection and related matters.	To apply only so far as this provision has effect in relation to provisions applying by virtue of the foregoing provisions of this Schedule.”
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144 “Subsidiary”, “holding company” and “wholly-owned subsidiary”

- (1) In Part XXVI of the Companies Act 1985 (general interpretation provisions), for section 736 substitute—

“736 “Subsidiary”, “holding company” and “wholly-owned subsidiary”

- (1) A company is a “subsidiary” of another company, its “holding company”, if that other company—
- (a) holds a majority of the voting rights in it, or
 - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
 - (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,
- or if it is a subsidiary of a company which is itself a subsidiary of that other company.

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- (2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
- (3) In this section “company” includes any body corporate.

736A Provisions supplementing s. 736

- (1) The provisions of this section explain expressions used in section 736 and otherwise supplement that section.
- (2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.
- (3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—
 - (a) a company shall be treated as having the right to appoint to a directorship if—
 - (i) a person’s appointment to it follows necessarily from his appointment as director of the company, or
 - (ii) the directorship is held by the company itself; and
 - (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (4) Rights which are exercisable only in certain circumstances shall be taken into account only—
 - (a) when the circumstances have arisen, and for so long as they continue to obtain, or
 - (b) when the circumstances are within the control of the person having the rights;
 and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.
- (5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- (6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
- (7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—
 - (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise

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them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

- (8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in subsection (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.
 - (9) For the purposes of subsection (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—
 - (a) any subsidiary or holding company of that company, or
 - (b) any subsidiary of a holding company of that company.
 - (10) The voting rights in a company shall be reduced by any rights held by the company itself.
 - (11) References in any provision of subsections (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those subsections but not rights which by virtue of any such provision are to be treated as not held by him.
 - (12) In this section “company” includes any body corporate.”.
- (2) Any reference in any enactment (including any enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978) to a “subsidiary” or “holding company” within the meaning of section 736 of the Companies Act 1985 shall, subject to any express amendment or saving made by or under this Act, be read as referring to a subsidiary or holding company as defined in section 736 as substituted by subsection (1) above.

This applies whether the reference is specific or general, or express or implied.

- (3) In Part XXVI of the Companies Act 1985 (general interpretation provisions), after section 736A insert—

“736B Power to amend ss. 736 and 736A

- (1) The Secretary of State may by regulations amend sections 736 and 736A so as to alter the meaning of the expressions “holding company”, “subsidiary” or “wholly-owned subsidiary”.
- (2) The regulations may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.

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- (5) So much of section 23(3) of the Interpretation Act 1978 as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents other than enactments shall not apply in relation to any repeal and re-enactment effected by regulations made under this section.”.
- (4) Schedule 18 contains amendments and savings consequential on the amendments made by this section; and the Secretary of State may by regulations make such further amendments or savings as appear to him to be necessary or expedient.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) So much of section 23(3) of the Interpretation Act 1978 as applies section 17(2)(a) of that Act (presumption as to meaning of references to enactments repealed and re-enacted) to deeds or other instruments or documents does not apply in relation to the repeal and re-enactment by this section of section 736 of the Companies Act 1985.

145 Minor amendments

The Companies Act 1985 has effect with the further amendments specified in Schedule 19.