



Companies Act 1989

1989 CHAPTER 40

PART V

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

108 A company's capacity and the power of the directors to bind it

- (1) In Chapter III of Part I of the Companies Act 1985 (a company's capacity; formalities of carrying on business), for section 35 substitute—

“35 A company's capacity not limited by its memorandum

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.
- (2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for subsection (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

- (4) The operation of this section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain

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transactions to which directors or their associates are parties) has effect notwithstanding this section.

35A Power of directors to bind the company

- (1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.
- (2) For this purpose—
 - (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party;
 - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—
 - (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) Nor does that subsection affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) The operation of this section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

35B No duty to enquire as to capacity of company or authority of directors

A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.”

- (2) In Schedule 21 to the Companies Act 1985 (effect of registration of companies not formed under that Act), in paragraph 6 (general application of provisions of Act), after sub-paragraph (5) insert—
 - “(6) Where by virtue of sub-paragraph (4) or (5) a company does not have power to alter a provision, it does not have power to ratify acts of the directors in contravention of the provision.”

- (3) In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part I, in the first column for “section 35” substitute “sections 35 to 35B”.

109 Invalidity of certain transactions involving directors

- (1) In Part X of the Companies Act 1985 (enforcement of fair dealing by directors), after section 322 insert—

“322A Invalidity of certain transactions involving directors, etc

- (1) This section applies where a company enters into a transaction to which the parties include—
- (a) a director of the company or of its holding company, or
 - (b) a person connected with such a director or a company with whom such a director is associated,
- and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company’s constitution.
- (2) The transaction is voidable at the instance of the company.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b), and any director of the company who authorised the transaction, is liable—
- (a) to account to the company for any gain which he has made directly or indirectly by the transaction, and
 - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.
- (5) The transaction ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
 - (b) the company is indemnified for any loss or damage resulting from the transaction, or
 - (c) rights acquired bona fide for value and without actual notice of the directors’ exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
 - (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.
- (6) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (7) This section does not affect the operation of section 35A in relation to any party to the transaction not within subsection (1)(a) or (b).

But where a transaction is voidable by virtue of this section and valid by virtue of that section in favour of such a person, the court may, on the application of

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that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) In this section “transaction” includes any act; and the reference in subsection (1) to limitations under the company’s constitution includes limitations deriving—

- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
- (b) from any agreement between the members of the company or of any class of shareholders.”.

(2) In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part X, insert—

“section 322A	Invalidity of certain transactions involving directors, etc.	Subject to section 718(3).”
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110 Statement of company’s objects

In Chapter I of Part I of the Companies Act 1985 (company formation), after section 3 (forms of memorandum) insert—

“3A Statement of company’s objects: general commercial company

Where the company’s memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.”.

(2) In the same Chapter, for section 4 (resolution to alter objects) substitute—

“4 Resolution to alter objects

- (1) A company may by special resolution alter its memorandum with respect to the statement of the company’s objects.
- (2) If an application is made under the following section, an alteration does not have effect except in so far as it is confirmed by the court.”.

111 Charitable companies

(1) In the Charities Act 1960, for section 30 (charitable companies) substitute—

“30 Charitable companies: winding up

Where a charity may be wound up by the High Court under the Insolvency Act 1986, a petition for it to be wound up under that Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.

30A Charitable companies: alteration of objects clause

- (1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—
 - (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
 - (b) any property representing income which has accrued before the alteration is made, or
 - (c) the income from any such property as aforesaid.
- (2) Where a charity is a company, any alteration by it of the objects clause in its memorandum of association is ineffective without the prior written consent of the Commissioners; and it shall deliver a copy of that consent to the registrar of companies under section 6(1)(a) or (b) of the Companies Act 1985 along with the printed copy of the memorandum as altered.
- (3) Section 6(3) of that Act (offences) applies in relation to a default in complying with subsection (2) as regards the delivery of a copy of the Commissioners' consent.

30B Charitable companies: invalidity of certain transactions

- (1) Sections 35 and 35A of the Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—
 - (a) gives full consideration in money or money's worth in relation to the act in question, and
 - (b) does not know that the act is not permitted by the company's memorandum or, as the case may be, is beyond the powers of the directors,or who does not know at the time the act is done that the company is a charity.
- (2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (3) In any proceedings arising out of subsection (1) the burden of proving—
 - (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or
 - (b) that a person knew that the company was a charity,lies on the person making that allegation.
- (4) Where a company is a charity, the ratification of an act under section 35(3) of the Companies Act 1985, or the ratification of a transaction to which

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section 322A of that Act applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Commissioners.

30C Charitable companies: status to appear on correspondence, etc

- (1) Where a company is a charity and its name does not include the word “charity” or the word “charitable”, the fact that the company is a charity shall be stated in English 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,
 - (d) in all conveyances purporting to be executed by the company, and
 - (e) in all its bills of parcels, invoices, receipts and letters of credit.
- (2) In subsection (1)(d) “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.
- (3) Section 349(2) to (4) of the Companies Act 1985 (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of subsection (1) above.”.

- (2) In section 46 of the Charities Act 1960 (definitions), at the appropriate place insert—

““company” means a company formed and registered under the Companies Act 1985, or to which the provisions of that Act apply as they apply to such a company;”

112 Charitable companies (Scotland)

- (1) In the following provisions (which extend to Scotland only)—
 - (a) “company” means a company formed and registered under the Companies Act 1985, or to which the provisions of that Act apply as they apply to such a company; and
 - (b) “charity” means a body established for charitable purposes only (that expression having the same meaning as in the Income Tax Acts).
- (2) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—
 - (a) any property acquired by virtue of any transfer, contract or obligation previously effected otherwise than for full consideration in money or money’s worth, or any property representing property so acquired,
 - (b) any property representing income which has accrued before the alteration is made, or
 - (c) the income from any such property as aforesaid.
- (3) Sections 35 and 35A of the Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—

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- (a) gives full consideration in money or money's worth in relation to the act in question, and
 - (b) does not know that the act is not permitted by the company's memorandum or, as the case may be, is beyond the powers of the directors,
- or who does not know at the time the act is done that the company is a charity.
- (4) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (5) In any proceedings arising out of subsection (3) the burden of proving—
- (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or
 - (b) that a person knew that the company was a charity,
- lies on the person making that allegation.
- (6) Where a company is a charity and its name does not include the word "charity" or the word "charitable", the fact that the company is a charity shall be stated in English 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,
 - (d) in all conveyances purporting to be executed by the company, and
 - (e) in all its bills of parcels, invoices, receipts and letters of credit.
- (7) In subsection (6)(d) "conveyance" means any document for the creation, transfer, variation or extinction of an interest in land.
- (8) Section 349(2) to (4) of the Companies Act 1985 (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of subsection (6) above.

De-regulation of private companies

113 Written resolutions of private companies

- (1) Chapter IV of Part XI of the Companies Act 1985 (meetings and resolutions) is amended as follows.
- (2) After section 381 insert—

“Written resolutions of private companies

381A Written resolutions of private companies

- (1) Anything which in the case of a private company may be done—
 - (a) by resolution of the company in general meeting, or

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- (b) by resolution of a meeting of any class of members of the company, may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting.
- (2) The signatures need not be on a single document provided each is on a document which accurately states the terms of the resolution.
- (3) The date of the resolution means when the resolution is signed by or on behalf of the last member to sign.
- (4) A resolution agreed to in accordance with this section has effect as if passed—
- (a) by the company in general meeting, or
 - (b) by a meeting of the relevant class of members of the company,
- as the case may be; and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.
- (5) Any reference in any enactment to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this section, a reference to the date of the resolution, unless section 381B(4) applies in which case it shall be construed as a reference to the date from which the resolution has effect.
- (6) A resolution may be agreed to in accordance with this section which would otherwise be required to be passed as a special, extraordinary or elective resolution; and any reference in any enactment to a special, extraordinary or elective resolution includes such a resolution.
- (7) This section has effect subject to the exceptions specified in Part I of Schedule 15A; and in relation to certain descriptions of resolution under this section the procedural requirements of this Act have effect with the adaptations specified in Part II of that Schedule.

381B Rights of auditors in relation to written resolution

- (1) A copy of any written resolution proposed to be agreed to in accordance with section 381A shall be sent to the company's auditors.
- (2) If the resolution concerns the auditors as auditors, they may within seven days from the day on which they receive the copy give notice to the company stating their opinion that the resolution should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company.
- (3) A written resolution shall not have effect unless—
- (a) the auditors notify the company that in their opinion the resolution—
 - (i) does not concern them as auditors, or
 - (ii) does so concern them but need not be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company, or
 - (b) the period for giving a notice under subsection (2) expires without any notice having been given in accordance with that subsection.

- (4) A written resolution previously agreed to in accordance with section 381A shall not have effect until that notification is given or, as the case may be, that period expires.

381C Written resolutions: supplementary provisions

- (1) Sections 381A and 381B have effect notwithstanding any provision of the company’s memorandum or articles.
- (2) Nothing in those sections affects any enactment or rule of law as to—
- (a) things done otherwise than by passing a resolution, or
 - (b) cases in which a resolution is treated as having been passed, or a person is precluded from alleging that a resolution has not been duly passed.”.
- (3) After section 382 insert—

“382A Recording of written resolutions

- (1) Where a written resolution is agreed to in accordance with section 381A which has effect as if agreed by the company in general meeting, the company shall cause a record of the resolution (and of the signatures) to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.
- (2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution; and where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to be complied with.
- (3) Section 382(5) (penalties) applies in relation to a failure to comply with subsection (1) above as it applies in relation to a failure to comply with subsection (1) of that section; and section 383 (inspection of minute books) applies in relation to a record made in accordance with this section as it applies in relation to the minutes of a general meeting.”.

114 Written resolutions: supplementary provisions

- (1) In the Companies Act 1985 the following Schedule is inserted after Schedule 15—

“SCHEDULE 15A

WRITTEN RESOLUTIONS OF PRIVATE COMPANIES

PART I

EXCEPTIONS

- 1 Section 381A does not apply to—
- (a) a resolution under section 303 removing a director before the expiration of his period of office, or

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- (b) a resolution under section 391 removing an auditor before the expiration of his term of office.

PART II

ADAPTATION OF PROCEDURAL REQUIREMENTS

Introductory

- 2 (1) In this Part of this Schedule (which adapts certain requirements of this Act in relation to proceedings under section 381A)—
- (a) a “written resolution” means a resolution agreed to, or proposed to be agreed to, in accordance with that section, and
- (b) a “relevant member” means a member by whom, or on whose behalf, the resolution is required to be signed in accordance with that section.
- (2) A written resolution is not effective if any of the requirements of this Part of this Schedule is not complied with.

Section 95 (disapplication of pre-emption rights)

- 3 (1) The following adaptations have effect in relation to a written resolution under section 95(2) (disapplication of pre-emption rights), or renewing a resolution under that provision.
- (2) So much of section 95(5) as requires the circulation of a written statement by the directors with a notice of meeting does not apply, but such a statement must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.
- (3) Section 95(6) (offences) applies in relation to the inclusion in any such statement of matter which is misleading, false or deceptive in a material particular.

Section 155 (financial assistance for purchase of company's own shares or those of holding company)

- 4 In relation to a written resolution giving approval under section 155(4) or (5) (financial assistance for purchase of company's own shares or those of holding company), section 157(4)(a) (documents to be available at meeting) does not apply, but the documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Sections 164, 165 and 167 (authority for off-market purchase or contingent purchase contract of company's own shares)

- 5 (1) The following adaptations have effect in relation to a written resolution—
- (a) conferring authority to make an off-market purchase of the company's own shares under section 164(2),

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- (b) conferring authority to vary a contract for an off-market purchase of the company's own shares under section 164(7), or
 - (c) varying, revoking or renewing any such authority under section 164(3).
- (2) Section 164(5) (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply; but for the purposes of section 381A(1) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote.
- (3) Section 164(6) (documents to be available at company's registered office and at meeting) does not apply, but the documents referred to in that provision and, where that provision applies by virtue of section 164(7), the further documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.
- (4) The above adaptations also have effect in relation to a written resolution in relation to which the provisions of section 164(3) to (7) apply by virtue of—
- (a) section 165(2) (authority for contingent purchase contract), or
 - (b) section 167(2) (approval of release of rights under contract approved under section 164 or 165).

Section 173 (approval for payment out of capital)

- 6
- (1) The following adaptations have effect in relation to a written resolution giving approval under section 173(2) (redemption or purchase of company's own shares out of capital).
 - (2) Section 174(2) (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply; but for the purposes of section 381A(1) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote.
 - (3) Section 174(4) (documents to be available at meeting) does not apply, but the documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Section 319 (approval of director's service contract)

- 7
- In relation to a written resolution approving any such term as is mentioned in section 319(1) (director's contract of employment for more than five years), section 319(5) (documents to be available at company's registered office and at meeting) does not apply, but the documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

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Section 337 (funding of director's expenditure in performing his duties)

8 In relation to a written resolution giving approval under section 337(3) (a) (funding a director's expenditure in performing his duties), the requirement of that provision that certain matters be disclosed at the meeting at which the resolution is passed does not apply, but those matters must be disclosed to each relevant member at or before the time at which the resolution is supplied to him for signature.”.

- (2) The Schedule inserted after Schedule 15 to the Companies Act 1985 by the Companies (Mergers and Divisions) Regulations 1987 is renumbered “15B”; and accordingly, in section 427A of that Act (also inserted by those regulations), in subsections (1) and (8) for “15A” substitute “15B”.

115 Election by private company to dispense with certain requirements

- (1) In Part IV of the Companies Act 1985 (allotment of shares and debentures), in section 80(1) (authority of company required for certain allotments) after “this section” insert “or section 80A”; and after that section insert—

“80A Election by private company as to duration of authority

- (1) A private company may elect (by elective resolution in accordance with section 379A) that the provisions of this section shall apply, instead of the provisions of section 80(4) and (5), in relation to the giving or renewal, after the election, of an authority under that section.
- (2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—
- (a) for an indefinite period, or
 - (b) for a fixed period, in which case it must state the date on which it will expire.
- (3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.
- (4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.
- (5) A resolution renewing an authority—
- (a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and
 - (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.
- (6) The references in this section to the maximum amount of relevant securities that may be allotted shall be construed in accordance with section 80(6).
- (7) If an election under this section ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—

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- (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and
 - (b) otherwise, shall have effect as if it had been given for a fixed period of five years.”.
- (2) In Chapter IV of Part XI of the Companies Act 1985 (meetings and resolutions), after section 366 (annual general meeting) insert—

“366A Election by private company to dispense with annual general meetings

- (1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the holding of annual general meetings.
 - (2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.
 - (3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.
 - (4) If such a notice is given, the provisions of section 366(1) and (4) apply with respect to the calling of the meeting and the consequences of default.
 - (5) If the election ceases to have effect, the company is not obliged under section 366 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.
- This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (3).”.
- (3) In the same Chapter, in sections 369(4) and 378(3) (majority required to sanction short notice of meeting) insert—

“A private company may elect (by elective resolution in accordance with section 379A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent., as may be specified in the resolution or subsequently determined by the company in general meeting.”.

116 Elective resolution of private company

- (1) Chapter IV of Part XI of the Companies Act 1985 (meetings and resolutions) is amended as follows.
- (2) After section 379 insert—

“379A Elective resolution of private company

- (1) An election by a private company for the purposes of—
 - (a) section 80A (election as to duration of authority to allot shares),

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- (b) section 252 (election to dispense with laying of accounts and reports before general meeting),
- (c) section 366A (election to dispense with holding of annual general meeting),
- (d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or
- (e) section 386 (election to dispense with appointment of auditors annually),

shall be made by resolution of the company in general meeting in accordance with this section.

Such a resolution is referred to in this Act as an “elective resolution”.

- (2) An elective resolution is not effective unless—
 - (a) at least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and
 - (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

(3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(4) An elective resolution shall cease to have effect if the company is re-registered as a public company.

(5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provision in the company's articles of association.”.

(3) In section 380 (registration of resolutions), in subsection (4) (resolutions to which the section applies), after paragraph (b) insert—

“(bb) an elective resolution or a resolution revoking such a resolution;”.

117 Power to make further provision by regulations

(1) The Secretary of State may by regulations make provision enabling private companies to elect, by elective resolution in accordance with section 379A of the Companies Act 1985, to dispense with compliance with such requirements of that Act as may be specified in the regulations, being requirements which appear to the Secretary of State to relate primarily to the internal administration and procedure of companies.

(2) The regulations may add to, amend or repeal provisions of that Act; and may provide for any such provision to have effect, where an election is made, subject to such adaptations and modifications as appear to the Secretary of State to be appropriate.

(3) The regulations may make different provision for different cases and may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be appropriate.

(4) Regulations under this section shall be made by statutory instrument.

- (5) No regulations under this section shall be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.

Appointment and removal of auditors and related matters

118 Introduction

- (1) The following sections amend the provisions of the Companies Act 1985 relating to auditors by inserting new provisions in Chapter V of Part XI of that Act.
- (2) The new provisions, together with the amendment made by section 124, replace the present provisions of that Chapter except section 389 (qualification for appointment as auditor) which is replaced by provisions in Part II of this Act.

119 Appointment of auditors

- (1) The following sections are inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

“Appointment of auditors

384 Duty to appoint auditors

- (1) Every company shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to section 388A (dormant company exempt from obligation to appoint auditors).

- (2) Auditors shall be appointed in accordance with section 385 (appointment at general meeting at which accounts are laid), except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with section 385A.
- (3) References in this Chapter to the end of the time for appointing auditors are to the end of the time within which an appointment must be made under section 385(2) or 385A(2), according to whichever of those sections applies.
- (4) Sections 385 and 385A have effect subject to section 386 under which a private company may elect to dispense with the obligation to appoint auditors annually.

385 Appointment at general meeting at which accounts laid

- (1) This section applies to every public company and to a private company which has not elected to dispense with the laying of accounts.
- (2) The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.

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

- (3) The first auditors of the 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.
- (4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

385A Appointment by private company which is not obliged to lay accounts

- (1) This section applies to a private company which has elected in accordance with section 252 to dispense with the laying of accounts before the company in general meeting.
- (2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the previous financial year are sent to members under section 238 or, if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

- (3) The first auditors of the company may be appointed by the directors at any time before—
 - (a) the end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under section 238, or
 - (b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

- (4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.
- (5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.

386 Election by private company to dispense with annual appointment

- (1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the obligation to appoint auditors annually.

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

- (2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless—
 - (a) a resolution has been passed under section 250 by virtue of which the company is exempt from the obligation to appoint auditors, or
 - (b) a resolution has been passed under section 393 to the effect that their appointment should be brought to an end.
- (3) If the election ceases to be in force, the auditors then holding office shall continue to hold office—
 - (a) where section 385 then applies, until the conclusion of the next general meeting of the company at which accounts are laid;
 - (b) where section 385A then applies, until the end of the time for appointing auditors for the next financial year under that section.
- (4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

387 Appointment by Secretary of State in default of appointment by company

- (1) If in any case no auditors are appointed, re-appointed or deemed to be re-appointed before the end of the time for appointing auditors, the Secretary of State may appoint a person to fill the vacancy.
- (2) In such a case the company shall within one week of the end of the time for appointing auditors give notice to the Secretary of State of his power having become exercisable.

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.

388 Filling of casual vacancies

- (1) The directors, or the company in general meeting, may fill a casual vacancy in the office of auditor.
- (2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.
 - (3) Special notice is required for a resolution at a general meeting of a company—
 - (a) filling a casual vacancy in the office of auditor, or
 - (b) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy.
- (4) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it—
 - (a) to the person proposed to be appointed, and

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

- (b) if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

388A Dormant company exempt from obligation to appoint auditors

- (1) A company which by virtue of section 250 (dormant companies: exemption from provisions as to audit of accounts) is exempt from the provisions of Part VII relating to the audit of accounts is also exempt from the obligation to appoint auditors.
- (2) The following provisions apply if the exemption ceases.
- (3) Where section 385 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.
- (4) Where section 385A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—
- the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under section 238, or
 - if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;
- and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.
- (5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.”.

- (2) In Schedule 24 to the Companies Act 1985 (punishment of offences), at the appropriate place insert—

“387(2)	Company failing to give Secretary of State notice of non-appointment of auditors.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”.
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- (3) In section 46(2) of the Banking Act 1987 (duty of auditor of authorised institution to give notice to Bank of England of certain matters) for “appointed under section 384” substitute “appointed under Chapter V of Part XI”; and in section 46(4) (adaptation of references in relation to Northern Ireland) for “sections 384,” substitute “Chapter V of Part XI and sections”.

120 Rights of auditors

- (1) The following sections are inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

“Rights of auditors

389A Rights to information

- (1) The auditors of a company have a right of access at all times to the company’s books, accounts and vouchers, and are entitled to require from the company’s officers such information and explanations as they think necessary for the performance of their duties as auditors.
- (2) An officer of a company commits an offence if he knowingly or recklessly makes to the company’s auditors a statement (whether written or oral) which—
 - (a) conveys or purports to convey any information or explanations 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 subsection is liable to imprisonment or a fine, or both.

- (3) A subsidiary undertaking which is a body corporate incorporated in Great Britain, and the auditors of such an undertaking, shall give to the auditors of any parent company of the undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a subsidiary undertaking fails to comply with this subsection, the undertaking 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 this subsection he is guilty of an offence and liable to a fine.

- (4) A parent company having a subsidiary undertaking which is not a body corporate incorporated in Great Britain shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a parent company fails to comply with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

- (5) Section 734 (criminal proceedings against unincorporated bodies) applies to an offence under subsection (3).

390 Right to attend company meetings, &c

- (1) A company’s auditors are entitled—
 - (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;
 - (b) to attend any general meeting of the company; and
 - (c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

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

- (2) In relation to a written resolution proposed to be agreed to by a private company in accordance with section 381A, the company’s auditors are entitled—
- (a) to receive all such communications relating to the resolution as, by virtue of any provision of Schedule 15A, are required to be supplied to a member of the company,
 - (b) to give notice in accordance with section 381B of their opinion that the resolution concerns them as auditors and should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company,
 - (c) to attend any such meeting, and
 - (d) to be heard at any such meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (3) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.”.
- (2) In section 734 of the Companies Act 1985 (criminal proceedings against unincorporated bodies), in subsection (1) (offences in relation to which the provisions apply), after “under” insert “section 389A(3) or”.
- (3) In Schedule 24 to the Companies Act 1985 (punishment of offences) at the appropriate place insert—

“389A(2)	Officer of company making false, misleading or deceptive statement to auditors.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.
389A(3)	Subsidiary undertaking or its auditor failing to give information to auditors of parent company.	Summary.	One-fifth of the statutory maximum.
389A(4)	Parent company failing to obtain from subsidiary undertaking information for purposes of audit.	Summary.	One-fifth of the statutory maximum.”

- (4) In Schedule 4 to the Iron and Steel Act 1982 (constitution and proceedings of publicly-owned companies that are private companies), in paragraph 3(6) (entitlement of auditors to attend and be heard at general meetings, &c.) for “387(1)” substitute “390(1)”.

121 Remuneration of auditors

The following sections are inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

“Remuneration of auditors

390A Remuneration of auditors

- (1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
- (2) The remuneration of auditors appointed by the directors or the Secretary of State shall be fixed by the directors or the Secretary of State, as the case may be.
- (3) There shall be stated in a note to the company’s annual accounts the amount of the remuneration of the company’s auditors in their capacity as such.
- (4) For the purposes of this section “remuneration” includes sums paid in respect of expenses.
- (5) This section applies in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value.

The nature of any such benefit shall also be disclosed.

390B Remuneration of auditors or their associates for non-audit work

- (1) The Secretary of State may make provision by regulations for securing the disclosure of the amount of any remuneration received or receivable by a company’s auditors or their associates in respect of services other than those of auditors in their capacity as such.
- (2) The regulations may—
 - (a) provide that “remuneration” includes sums paid in respect of expenses,
 - (b) apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit require disclosure of its nature and its estimated money value,
 - (c) define “associate” in relation to an auditor,
 - (d) require the disclosure of remuneration in respect of services rendered to associated undertakings of the company, and
 - (e) define “associated undertaking” for that purpose.
- (3) The regulations may require the auditors to disclose the relevant information in their report or require the relevant information to be disclosed in a note to the company’s accounts and require the auditors to supply the directors of the company with such information as is necessary to enable that disclosure to be made.
- (4) The regulations may make different provision for different cases.

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

- (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.”.

122 Removal, resignation, &c. of auditors

- (1) The following sections are inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

“Removal, resignation, &c. of auditors

391 Removal of auditors

- (1) A company may by ordinary resolution at any time remove an auditor from 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.

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 shall 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.
- (4) An auditor of a company who has been removed has, notwithstanding his removal, the rights conferred by section 390 in relation to any general meeting of the company—
- (a) at which his term of office would otherwise have expired, or
 - (b) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

391A Rights of auditors who are removed or not re-appointed

- (1) Special notice is required for a resolution at a general meeting of a company—
- (a) removing an auditor before the expiration of his term of office, or
 - (b) appointing as auditor a person other than a retiring auditor.
- (2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.
- (3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

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

- (4) 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.
- (5) If a copy of any such representations is not sent out as required 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 be read out at the meeting.
- (6) Copies of the representations need not be sent out and the representations need not be read 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.

392 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.

The notice is not effective unless it is accompanied by the statement required by section 394.
- (2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.
- (3) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.

If default is made in complying with 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, a daily default fine.

392A Rights of resigning auditors

- (1) This section applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.
- (2) He may deposit with the notice a signed requisition 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.
- (3) He may request the company to circulate to its members—
 - (a) before the meeting convened on his requisition, or

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- (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,
a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (4) The company shall (unless the statement is received 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.
- (5) 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.
- (6) If a copy of the statement mentioned above is not sent out as required 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 be read out at the meeting.
- (7) 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.
- (8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 390 in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b).

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

393 Termination of appointment of auditors not appointed annually

- (1) When an election is in force under section 386 (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.
- No member may deposit more than one such notice in any financial year of the company.
- (2) If such a notice is deposited it is the duty of the directors—
- (a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and

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(b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company’s auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re-appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company’s annual accounts are sent to members of the company under section 238 and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a member 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 a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this section.”.

(2) In Schedule 24 to the Companies Act 1985 (punishment of offences), at the appropriate place insert—

“391(2)	Failing to give notice to registrar of removal of auditor.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
392(3)	Company failing to forward notice of auditor’s resignation to registrar.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
392A(5)	Directors failing to convene meeting	1. On indictment. 2. Summary.	A fine. The statutory maximum.”.	

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

requisitioned by
resigning auditor.

123 Statement by person ceasing to hold office as auditor

- (1) The following section is inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

“394 Statement by person ceasing to hold office as auditor

- (1) Where an auditor ceases for any reason to hold office, he shall deposit at the company’s registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.
- (2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—
 - (a) send a copy of it to every person who under section 238 is entitled to be sent copies of the accounts, or
 - (b) apply to the court.
- (4) The company shall if it applies to the court notify the auditor of the application.
- (5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.
- (6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—
 - (a) it shall direct that copies of the statement need not be sent out, and
 - (b) it 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;and the company shall within 14 days of the court’s decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.
- (7) If the court is not so satisfied, the company shall within 14 days of the court’s decision—
 - (a) send copies of the statement to the persons mentioned in subsection (3)(a), and
 - (b) notify the auditor of the court’s decision;

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

and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.

394A Offences of failing to comply with s.394

- (1) If a person ceasing to hold office as auditor fails to comply with section 394 he is guilty of an offence and liable to a fine.
 - (2) In proceedings for an offence under subsection (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
 - (3) Sections 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under subsection (1).
 - (4) If a company makes default in complying with section 394, 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.”.
- (2) In Schedule 24 to the Companies Act 1985 (punishment of offences), at the appropriate place insert—

“394A(1)	Person ceasing to hold office as auditor failing to deposit statement as to circumstances.	1. On indictment. A fine. 2. Summary. The statutory maximum.	
394A(4)	Company failing to comply with requirements as to statement of person ceasing to hold office as auditor.	1. On indictment. A fine. 2. Summary. The statutory maximum.	One-tenth of the statutory maximum.”

- (3) In section 733 of the Companies Act 1985 (liability of individuals for corporate default), in subsection (1) (offences in relation to which provisions apply) after “216(3)” insert “, 394A(1)”.
- (4) In section 734 of the Companies Act 1985 (criminal proceedings against unincorporated bodies), in subsection (1) (offences in relation to which the provisions apply), after “under” insert “section 394A(1) or”.
- (5) In Schedule 22 to the Companies Act 1985 (unregistered companies), in the entry for sections 384 to 393, for “393” substitute “394A”.

124 Auditors of trade unions and employers' associations

In section 11 of the Trade Union and Labour Relations Act 1974 (duties of trade unions and employers' associations as to auditors, &c.), after subsection (8) insert—

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

- “(9) Where a trade union or employers' association to which this section applies is a company within the meaning of the Companies Act 1985—
- (a) subsection (3) above, and the provisions of paragraphs 6 to 15 of Schedule 2 to this Act, do not apply, and
 - (b) the rights and powers conferred, and duties imposed, by paragraphs 16 to 21 of that Schedule belong to the auditors of the company appointed under Chapter V of Part XI of that Act.”.

Company records and related matters

125 Delivery of documents to the registrar

- (1) For section 706 of the Companies Act 1985 (size, durability, &c. of documents delivered to the registrar) substitute—

“706 Delivery to the registrar of documents in legible form

- (1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents in legible form.
- (2) The document must—
 - (a) state in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this section, and
 - (c) conform to such requirements as the registrar may specify for the purpose of enabling him to copy the document.
- (3) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (4) Where the registrar serves such a notice, then, unless a replacement document—
 - (a) is delivered to him within 14 days after the service of the notice, and
 - (b) complies with the requirements of this section (or section 707) or is not rejected by him for failure to comply with those requirements,
 the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.

- (5) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document.”.
- (2) For section 707 of the Companies Act 1985 (power of registrar to accept information on microfilm, &c.) substitute—

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

“707 Delivery to the registrar of documents otherwise than in legible form

- (1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents otherwise than in legible form.
- (2) Any requirement to deliver a document to the registrar, or to deliver a document in the prescribed form, is satisfied by the communication to the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by the registrar.
- (3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.
- (4) The document must—
 - (a) contain in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this section, and
 - (c) be furnished in such manner, and conform to such requirements, as the registrar may specify for the purpose of enabling him to read and copy the document.
- (5) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (6) Where the registrar serves such a notice, then, unless a replacement document—
 - (a) is delivered to him within 14 days after the service of the notice, and
 - (b) complies with the requirements of this section (or section 706) or is not rejected by him for failure to comply with those requirements,the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’s notice.
- (7) The Secretary of State may by regulations make further provision with respect to the application of this section in relation to instantaneous forms of communication.
- (8) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document and different forms of communication, and as respects delivery to the registrar for England and Wales and delivery to the registrar for Scotland.”

126 Keeping and inspection of company records

- (1) In Part XXIV of the Companies Act 1985 (the registrar of companies, his functions and offices), after the sections inserted by section 125 above, insert—

“707A The keeping of company records by the registrar

- (1) The information contained in a document delivered to the registrar under the Companies Acts may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in legible form.

This is sufficient compliance with any duty of his to keep, file or register the document.

- (2) The originals of documents delivered to the registrar in legible form shall be kept by him for ten years, after which they may be destroyed.
- (3) Where a company has been dissolved, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any records in his custody relating to the company may be removed to the Public Record Office; and records in respect of which such a direction is given shall be disposed of in accordance with the enactments relating to that Office and the rules made under them.

This subsection does not extend to Scotland.

- (4) In subsection (3) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.”.

- (2) For sections 709 and 710 of the Companies Act 1985 (inspection of documents kept by the registrar) substitute—

“709 Inspection, &c. of records kept by the registrar

- (1) Any person may inspect any records kept by the registrar for the purposes of the Companies Acts and may require—
- (a) a copy, in such form as the registrar considers appropriate, of any information contained in those records, or
 - (b) a certified copy of, or extract from, any such record.
- (2) The right of inspection extends to the originals of documents delivered to the registrar in legible form only where the record kept by the registrar of the contents of the document is illegible or unavailable.
- (3) A copy of or extract from a record kept at any of the offices for the registration of companies in England and Wales or Scotland, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of any document delivered to him under the Companies Acts, is in all legal proceedings admissible in evidence as of equal validity with the original document and as evidence of any fact stated therein of which direct oral evidence would be admissible.

In England and Wales this is subject to compliance with any applicable rules of court under section 5 of the Civil Evidence Act 1968 or section 69(2) of

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the Police and Criminal Evidence Act 1984 (which relate to evidence from computer records).

- (4) Copies of or extracts from records furnished by the registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.
- (5) No process for compelling the production of a record kept by the registrar shall issue from any court except with the leave of the court; and any such process shall bear on it a statement that it is issued with the leave of the court.

710 Certificate of incorporation

Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.

710A Provision and authentication by registrar of documents in non-legible form

- (1) Any requirement of the Companies Acts as to the supply by the registrar of a document may, if the registrar thinks fit, be satisfied by the communication by the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by him.
- (2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.”.

127 Supplementary provisions as to company records and related matters

- (1) In Part XXIV of the Companies Act 1985 (the registrar of companies, his functions and offices), after section 715 insert—

“715A Interpretation

- (1) In this Part—
 - “document” includes information recorded in any form; and
 - “legible”, in the context of documents in legible or non-legible form, means capable of being read with the naked eye.
- (2) References in this Part to delivering a document include sending, forwarding, producing or (in the case of a notice) giving it.”.
- (2) In section 708(1) of the Companies Act 1985 (fees)—
 - (a) in paragraph (a) for the words from “any notice or other document” to the end substitute “any document which under those Acts is required to be delivered to him”, and
 - (b) in paragraph (b) omit “or other material”.
- (3) Omit sections 712 and 715 of the Companies Act 1985 (removal and destruction of old records).

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- (4) In section 713(1) (enforcement of duty to make returns, &c.), for the words from “file with” to “or other document” substitute “deliver a document to the registrar of companies”.
- (5) In section 735A(2) of the Companies Act 1985 (provisions applying to Insolvency Act 1986 and Company Directors Disqualification Act 1986 as to the Companies Acts)—
- (a) after “707(1),” insert “707A(1),”
 - (b) after “708(1)(a) and (4),” insert “709(1) and (3),” and
 - (c) for “710(5)” substitute “710A”.
- (6) After section 735A of the Companies Act 1985 insert—

“735B Relationship of this Act to Parts IV and V of the Financial Services Act 1986

In sections 704(5), 706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3), 710A and 713(1) references to the Companies Acts include Parts IV and V of the Financial Services Act 1986.”.

- (7) In Schedule 22 to the Companies Act 1985 (unregistered companies), in the entry for Part XXIV for “sections 706, 708 to 710, 712 and 713” substitute “sections 706 to 710A, 713 and 715A”.

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—

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“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.

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- (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.

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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—

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“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”.

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.”.

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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

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—

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- (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—

- (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—
- (a) the nature of the class, and
 - (b) 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—
- (a) is a member of the company on the date to which the return is made up, or
 - (b) 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—
- (a) 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
 - (b) 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.

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

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—

- “(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.