

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY

#### ***Schedule 3: Amendments of remaining provisions of the Companies Act 1985 relating to offences***

1440. **Section 1124** introduces Schedule 3, which contains amendments to certain provisions relating to offences which remain in Parts 14 and 15 of the 1985 Act.
1441. Many of these amendments are necessary due to the repeal by the Act of Schedule 24 to the 1985 Act. Schedule 24 set out the level of punishment for offences under the 1985 Act. The provisions in Parts 14 and 15 are amended so that the applicable punishments are now included alongside the description of the offence instead of in Schedule 24.
1442. **Schedule 3** also makes amendments to the offences provisions remaining in Parts 14 and 15 of the 1985 Act to reflect the (non-textual) changes made to that Act by the Criminal Justice Act 2003. Section 282 of the Criminal Justice Act increases from 6 months to 12 months the maximum term of imprisonment to which a person is liable on summary conviction of an offence triable either way, and section 154(1) of that Act gives power to magistrates to impose a 12 month term of imprisonment. The increased penalties only apply in England and Wales; in Scotland and Northern Ireland the maximum term of imprisonment that may be imposed on summary conviction remains 6 months. When the Act received Royal Assent, neither section 282 nor section 154(1) of the Criminal Justice Act 2003 had come into force (which is the reason for the transitory provision in section 1131).
1443. A number of the amendments make reference to “the statutory maximum fine”. This was set at £5,000 at the time the Act received Royal Assent.
1444. **Schedule 3** makes only one substantive change to the offence provisions in Parts 14 and 15. This is to include a daily default fine, of one-fiftieth of the statutory maximum, for continued contravention of section 444(3) (failure to provide information about interests in shares).

#### ***Section 1125: Meaning of “daily default fine”***

1445. This section defines “daily default fine”. It replaces provision currently in section 730(4) of the 1985 Act.

#### ***Section 1126: Consents required for certain prosecutions***

1446. This section provides that certain proceedings can only be brought with the consent of specified persons. It replaces section 732(1) and (2) of the 1985 Act.

#### ***Section 1127: Summary proceedings: venue***

1447. This section restates section 731(1) of the 1985 Act. It specifies the possible venues for summary proceedings for any breach of Companies Acts requirements. For a body

corporate the venue may be any place at which the body corporate has a place of business, and for any other person, it may be at any place that the person is.

***Section 1128: Summary proceedings: time limit for proceedings***

1448. This section restates section 731(2) to (4) of the 1985 Act. It sets out time limits for summary proceedings. The prosecution must be commenced within three years of the offence being committed, and within one year of the prosecuting authorities receiving sufficient evidence to justify the prosecution.

***Section 1129: Legal professional privilege***

1449. This section restates section 732(3) of the 1985 Act and applies its provisions to all offences prosecuted under the Companies Acts, rather than just those instituted by the Director of Public Prosecutions or the Secretary of State. It provides that the Companies Acts provisions on offences are not to be read as requiring any person to disclose information that is protected by legal professional privilege.

***Section 1130: Proceedings against unincorporated bodies***

1450. This section restates section 734(1) to (4) of the 1985 Act. It provides for proceedings for offences under the Companies Acts committed by unincorporated bodies to be brought against such bodies as if they were corporate bodies.

***Section 1131: Imprisonment on summary conviction in England and Wales: transitory provision***

1451. This section provides for the period before the commencement of section 154(1) of the Criminal Justice Act 2003, which makes new provision about the powers of magistrates' courts in England and Wales to impose sentences of imprisonment on summary conviction. For offences committed before section 154(1) is brought into force, the maximum term of imprisonment in England and Wales for a person guilty of an offence on summary conviction under the Companies Acts is to be 6 months (as it is at present) instead of 12 months.

***Section 1132: Production and inspection of documents where offence suspected***

1452. This section restates section 721 of the 1985. It makes provision about orders for the production of documents where there is reasonable cause to believe that an offence has been committed.

***Section 1133: Transitional provision***

1453. This section provides that this Part of the Act (with the exception of section 1132) does not apply to offences committed before the commencement of the provision relevant to the offence.

**Part 37: Companies: Supplementary Provisions**

***Sections 1134 and 1135: Company records***

1454. These sections replace sections 722(1) and 723(1) and (2) of the 1985 Act and enable a company to use electronic storage or paper for its records provided that there can be paper printouts of electronic records. Section 1135(1) also enables the contents to be arranged as the directors see fit provided that it is adequately recorded. Section 1138 (duty to take precautions against falsification) also applies if the records are not kept in bound books.

***Section 1136: Regulations about where certain company records to be kept available for inspection***

1455. This section is a new provision. It provides power for the Secretary of State to make regulations to provide an alternative to the company's registered office as the location for inspection of specified records. The regulations are subject to negative resolution procedure.

***Section 1137: Regulations about inspection of records and provision of copies***

1456. This section replaces section 723A of the 1985 Act. It allows the Secretary of State to make regulations about the inspection and provision of copies of company records.

***Section 1138: Duty to take precautions against falsification***

1457. This section replaces section 722(2) and (3) of the 1985 Act. It makes it an offence not to take measures that protect records from falsification or help trace any falsification. This provision applies to records that are not kept in bound books, whether or not they are kept electronically, but does not apply either to companies' copies of the directors' service contracts or to copies of any qualifying third party indemnity provisions benefiting a director.

***Section 1139: Service of documents on company***

1458. This section replaces section 725 of the 1985 Act. It ensures that there is a place at which a document may be served on companies registered under the Act. It also applies to overseas companies registered in accordance with regulations made under section 1046. *Subsection (4)* enables court service on a company registered in Scotland or Northern Ireland at the company's principal place of business in England and Wales. (Since this is a provision about court service, the rules on companies registered in England and Wales carrying on business elsewhere in the UK will be found in the relevant legislation in those parts of the UK.) *Subsection (5)* makes clear that this section is supplemented by the "company communications provisions" referenced by section 1143.

***Section 1140: Service of documents on directors, secretaries and others***

1459. This section is a new provision. It ensures that the address on the public record for any director or secretary is effective for the service of documents on that person. *Subsection (3)* provides that the address is effective even if the document has no bearing on the person's responsibilities as director or secretary. This provision also applies to the address on the public record of various other persons for whom the Act requires an address on the public record. *Subsection (7)* similarly makes clear that this section is supplemented by the "company communications provisions" referenced by section 1143.

***Section 1141: Service addresses***

1460. This section defines "service address" for the purposes of the Companies Acts as an address at which documents may be effectively served and provides a power for regulations to specify conditions with which a service address must comply.

***Section 1142: Requirement to give service address***

1461. This section is a new provision. It qualifies requirements elsewhere to give an "address". Unless the requirement is for a particular kind of address (say, the usual residential address), the section makes clear that a service address (as defined in the previous Section) is what is required.

***Section 1143: The company communications provisions***

1462. **Section 1143** introduces sections 1144 to 1148 and Schedules 4 and 5. These make new provision for communications with or from companies, typically with their members but also with debenture-holders and others.
1463. The Companies Act 1985 (Electronic Communications) Order 2000 facilitated the use of electronic and website communications in certain contexts, but there has been uncertainty as to whether other provisions under the 1985 Act for information to be communicated ‘in writing’ required the use of paper or could be satisfied by electronic communications. The Act makes new general provision about communications, including electronic and website communications for the Companies Acts as a whole.
1464. The general principle behind the company communications provisions is that companies should be able to use hard copy or electronic communications in all cases. However, these provisions are subject to anything in or under any other enactment, and, as regards communications between companies and Companies House, they are also subject to the provisions of Part 35 of the Act.

***Section 1144: Sending or supplying documents or information***

1465. This section introduces two Schedules, which apply irrespective of the company’s articles:
- Schedule 4 deals with documents and information sent or supplied to a company;
  - Schedule 5 deals with communications by a company and between companies
1466. **Sections 1146** (requirement of authentication), 1148 (interpretation of company communications provisions) and 1168 (hard copy and electronic form and related expressions) contain provisions necessary for the interpretation of Schedules 4 and 5.