

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Sections 188 and 189: Service contracts

398. These sections replace section 319 of the 1985 Act and require member approval of long-term service contracts. In broad terms, these are contracts under which a director is guaranteed at least two years of employment with the company of which he is a director, or with any subsidiary of that company.
399. A director's "service contract" is defined in section 227 to include a contract of service, a contract for services and a letter of appointment as director.
400. Failure to obtain approval allows the company to terminate the service contract at any time by giving reasonable notice. The purpose of this section is to limit the duration of directors' service contracts, as a long-term contract can make it too expensive for the members to remove a director using the procedure in section 168 (ordinary resolution to remove director) while allowing the members to approve longer arrangements if they wish.
401. The length of service contract for which member approval is required has been reduced from those longer than five years to those longer than two years.

Sections 190 to 196: Substantial property transactions

402. These sections require member approval to substantial property transactions. These are transactions where the company buys or sells a non-cash asset (as defined in section 1163) to or from:
- a director of the company;
 - a director of its holding company;
 - a person connected with a director of the company; or
 - a person connected with a director of its holding company.

Approval is only required where the value of the asset exceeds £100,000 or 10% of the company's net assets (based on its last set of annual accounts or called-up share capital if it has not yet produced any accounts). No approval is required if the value of the asset is less than £5,000.

403. These sections replace sections 320 to 322 of the 1985 Act. The changes include:
- permitting a company to enter into a contract which is conditional on member approval (section 190(1)). This implements a recommendation of the Law Commissions. In cases where the approval of the members of the holding company is also required, the company may enter into arrangements conditional on approval being obtained from the members of the holding company (section 190(2)).

The company is not to be liable under the contract if member approval is not forthcoming (section 190(3));

- providing for the aggregation of non-cash assets forming part of an arrangement or series of arrangements for the purpose of determining whether the financial thresholds have been exceeded so that member approval is required (section 190(5));
- excluding payments under directors' service contracts and payments for loss of office from the requirements of these sections (section 190(6)). This implements a recommendation of the Law Commissions;
- raising the minimum value of what may be regarded as a substantial non-cash asset from £2,000 to £5,000 (section 191);
- expanding the exception for transactions with members to include the acquisition of assets from a person in his character as a member of the company (section 192(a));
- providing an exception for transactions made by companies in administration (section 193). This implements a recommendation of the Law Commissions;
- not requiring approval on the part of the members of a company that is in administration or is being wound up (unless it is a members' voluntary winding up) (section 193).

Sections 197 to 214: Loans, quasi-loans and credit transactions

404. In the case of a private company which is not associated with a public company, section 197 requires member approval for loans and related guarantees or security made by a company for:
- a director of the company; or
 - a director of its holding company.
405. In the case of a public company, or a private company associated with a public company, sections 197, 198, 200 and 201 require member approval for loans, quasi-loans (as defined in section 199), credit transactions (as defined in section 202) and related guarantees or security made by the company for:
- a director of the company; or
 - a director of its holding company;
 - a person connected with a director of the company; or
 - a person connected with a director of its holding company.
406. [Section 256](#) explains what is meant by references to associated companies. A holding company is associated with all its subsidiaries, and a subsidiary is associated with its holding company and all the other subsidiaries of its holding company.
407. Member approval is not required by these sections for:
- loans, quasi-loans, credit transactions and related guarantees or security to meet expenditure on company business. The total value of transactions under this exception made in respect of a director and any person connected to him must not exceed £50,000 (section 204);
 - money lent to fund a director's defence costs for legal proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company (section 205) or in connection with regulatory action or investigation under the same circumstances (section 206);

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

- small loans and quasi-loans, as long as the total value of such loans and quasi-loans made in respect of a director and any person connected to him does not exceed £10,000 (section 207(1));
- small credit transactions, as long as the total value of such credit transactions made in respect of a director and any person connected to him does not exceed £15,000 (section 207(2));
- credit transactions made in the ordinary course of the company's business (section 207(3));
- intra-group transactions (section 208); and
- loans and quasi-loans made by a money-lending company in the ordinary course of the company's business (as long as the requirements of section 209 are met).

408. These sections replace sections 330 to 341 of the 1985 Act. The changes include:

- abolishing the prohibition on loans, quasi-loans etc to directors and replacing it with a requirement for member approval. This implements a recommendation of the CLR;
- abolishing the criminal penalty for breach;
- replacing the concept of relevant company in section 331 of the 1985 Act with associated company, as defined in section 256;
- removing some of the requirements currently imposed by section 337 of the 1985 Act on the exception for expenditure on company business (section 204);
- widening the exception for expenditure on company business to include directors of the company's holding company and connected persons (section 204);
- creating a new exception specifically for expenditure in connection with regulatory action or investigations (section 206);
- restricting the exceptions for expenditure on defending legal or regulatory proceedings to proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company or an associated company (sections 205 and 206);
- widening the exception for small loans to include small quasi-loans (section 207(1)) in place of the current exception for short-term small quasi-loans in section 332 of the 1985 Act;
- widening the exception for small loans and quasi-loans to include transactions with connected persons (section 207(1));
- widening the exception for "home loans" to include those connected persons who are employees (section 209(3));
- raising the maximum amounts permitted under the exception for expenditure on company business (section 204), the exception for small loans and small quasi-loans (section 207(1)) and the exception for small credit transactions (section 207(2));
- widening the exceptions for intra-group transactions (section 208);
- abolishing the maximum amounts permitted under the exception for money-lending companies (section 209); and

- allowing affirmation of loans, quasi-loans and credit transactions entered into by the company in line with the provision in respect of substantial property transactions (section 214).

Sections 215 to 222: Payments for loss of office

409. These sections require member approval for payments for loss of office. These are payments made to a director (or former director) to compensate them for ceasing to be a director, or for losing any other office or employment with the company or with a subsidiary of the company. They also include payments made in connection with retirement. In the case of loss of employment or retirement from employment, the employment must relate to the management of the affairs of the company.
410. Member approval is required under section 217 if a company wishes to make a payment for loss of office to:
- one of its directors;
 - a director of its holding company.
411. Member approval is also required if any person (including the company or anyone else) wishes to make a payment for loss of office to a director of the company in connection with the transfer of the whole or any part of the undertaking or the property of the company or of a subsidiary of the company (section 218).
412. In the case of a payment for loss of office to a director in connection with the transfer of shares in the company or in a subsidiary of the company resulting from a takeover bid, approval is required of the holders of the shares to which the bid relates and of any other holders of shares of the same class (section 219).
413. These sections replace sections 312 to 316 of the 1985 Act. The changes include:
- extending the requirements to include payments to connected persons (section 215(3));
 - extending the requirements to include payments to directors in respect of the loss of any office, or employment in connection with the management of the affairs of the company, and not merely loss of office as a director as such (section 215). This implements a recommendation of the Law Commissions;
 - extending the requirements to include payments by a company to a director of its holding company (section 217(2));
 - extending the requirements in connection with the transfer of the undertaking or property of the company to include transfers of the undertaking or property of a subsidiary (section 218(2));
 - extending the requirements in connection with share transfers so as to include all transfers of shares in the company or in a subsidiary resulting from a takeover bid (section 219(1));
 - excluding the persons making the offer for shares in the company and any associate of them from voting on any resolution to approve a payment for loss of office in connection with a share transfer (section 219(4)). This implements a recommendation of the Law Commissions;
 - setting out the exception for payments in discharge of certain legal obligations (section 220);
 - creating a new exception for small payments (section 221);

- clarifying the civil consequences of breach of these sections (section 222(1) to (3)); and
- resolving conflicts between the remedies where more than one requirement of these sections is breached (section 222(4) and (5)). For example, if the payment contravenes both section 217 and section 219 because it was a payment by a company to one of its directors and it was a payment in connection with a takeover bid, and none of the required member approvals have been obtained, then the payment is held on trust for the persons who have sold their shares as a result of the offer and not on trust for the company making the payment.

Chapter 5: Directors' Service Contracts

Section 227: Directors' service contracts

414. This section is a new provision. It defines what is meant in this Part by references to a director's service contract. The term is used in sections 177, 182, 188 and 190 and in this Chapter. It includes contracts of employment with the company, or with a subsidiary of the company. It also includes contracts for services and letters of appointment to the office of director. The contract may relate to services as a director or to any other services that a director undertakes personally to perform for the company or a subsidiary.

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

415. This section requires a company to keep available for inspection copies of every director's service contract entered into by the company or by a subsidiary of the company. If the contract is not in writing, the company must keep available for inspection a written memorandum of its terms. This section, together with sections 229 and 230, replace section 318 of the 1985 Act.
416. *Subsection (3)* is new. It requires the service contracts to be retained and kept available for inspection by the company for at least one year after they have expired, but the subsection does not require the copies to be retained thereafter. As a result of the expanded definition of service contract in section 227, this section now applies to contracts for services and letters of appointment, as recommended by the Law Commissions.
417. As recommended by the Law Commissions, the exemption for contracts requiring a director to work outside the UK (section 318(5) of the 1985 Act) and the exemption for contracts with less than 12 months to run (section 318(11) of the 1985 Act) have not been retained.
418. Failure to comply with the requirements of this section is a criminal offence for which every officer of the company who is in default may be held liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000) or in cases of continued contravention a daily default fine not exceeding one-tenth of that. In a change from the current position under section 318 of the 1985 Act, the company will no longer be liable under the criminal offence.

Section 229: Right of member to inspect and request copy

419. This section gives members a right to inspect without charge the copies of service contracts held by the company in accordance with section 228. *Subsection (2)* creates a new right for members to request a copy of the service contracts on payment of a fee set by regulations under section 1137.

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

420. This section applies the requirements of this Chapter to service contracts with shadow directors.

Chapter 6: Contracts With Sole Members Who are Directors

Section 231: Contract with sole member who is also a director

421. Under this section, contracts entered into by a limited company with its only member must be recorded in writing if the sole member is also a director or shadow director of the company. This does not apply to contracts entered into in the ordinary course of the company's business. The purpose of this section is to ensure that records are kept in those cases where there is a high risk of the lines becoming blurred between where a person acts in his personal capacity and when he acts on behalf of the company. This may be of particular interest to a liquidator should the company become insolvent.
422. This section replaces section 322B of the 1985 Act, which implements article 5 of the 12th Company Law Directive (89/667/EEC). As the Act will permit public companies to have a single shareholder, this section applies to both private and public limited companies.
423. A failure to record the contract in writing will not affect the validity of the contract (*subsection (6)*) but other legislation or rules of law might (*subsection (7)*).
424. If there is a breach of this section, every officer of the company in default is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). In a change from the current position under section 322B of the 1985 Act, the company will no longer be liable under the criminal offence.

Chapter 7: Directors' Liabilities

425. The sections in this Chapter (sections 232 to 239) deal with two matters:
- they restate sections 309A to 309C of the 1985 Act (provisions relating to directors' liability). The only substantive changes to those sections are a new provision permitting companies to indemnify the directors of companies acting as trustees of occupational pension schemes (section 235), the creation of a right for members to request a copy of a qualifying third party indemnity provision (section 238(2)), the removal of criminal liability on the part of the company for failures to comply with the requirements of section 237 (copy of qualifying indemnity provision to be available for inspection), provision for regulations to specify places in addition to the registered office where inspection may take place (section 237(3)) and a requirement for all qualifying indemnity provisions to be retained by a company for at least one year after they have expired (section 237(4));
 - they introduce a substantive reform of the law on ratification of acts giving rise to liability on the part of a director (section 239).

Section 232: Provisions protecting directors from liability

426. This section prohibits a company from exempting a director from, or indemnifying him against, any liability in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company. *Subsection (2)* prohibits indemnification by an associated company as well as by his own company. "Associated company" is defined in section 256 as, in effect, a company in the same group.
427. Any provision, whether in the company's articles, in a contract or otherwise, attempting to exempt or indemnify a director in breach of this section is void. But this does not apply to lawful provisions in the articles for dealing with conflicts of interest.

Section 233: Provision of insurance

428. This section permits a company to purchase and maintain insurance for its directors, or the directors of an associated company, against any liability attaching to them in connection with any negligence, default, breach of duty or breach of trust by them in relation to the company of which they are a director.

Section 234: Qualifying third party indemnity provision

429. This section permits (but does not require) companies to indemnify directors in respect of proceedings brought by third parties (such as class actions in the US). It also permits (but does not require) companies to indemnify directors in respect of applications for relief from liability made under section 1157 (general power of the court to grant relief in case of honest and reasonable conduct) or under section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee).
430. The indemnity may cover liability incurred by the director to any person other than the company or an associated company. This may include both legal costs and the financial costs of an adverse judgement. But the indemnity must not cover liabilities to the company or to any associated company (*subsection (2)*).
431. Another condition is that the indemnity must not cover criminal fines, penalties imposed by regulatory bodies (such as the Financial Services Authority), the defence costs of criminal proceedings where the director is found guilty, the defence costs of civil proceedings successfully brought against the director by the company or an associated company and the costs of unsuccessful applications by the director for relief (*subsection (3)*).
432. *Subsections (4) and (5)* explain when legal proceedings will be considered to have concluded for the purpose of the conditions imposed by subsection (3).
433. An indemnity that complies with these conditions is described as a qualifying third party indemnity provision.

Section 235: Qualifying pension scheme indemnity provision

434. This section permits (but does not require) companies to indemnify a director of a company acting as a trustee of an occupational pension scheme against liability incurred in connection with the company's activities as trustee of the scheme. An indemnity that complies with the conditions set out in this section is described as a qualifying pension scheme indemnity provision.

Section 236: Qualifying indemnity provision to be disclosed in directors' report

435. If a qualifying indemnity provision is in force for the benefit of one or more directors or was in force during the previous year, this must be disclosed by the company in the directors' report (as to the directors' report, see Chapter 5 of Part 15). Where the director is of one company but the qualifying indemnity provision is provided by an associated company, then it must be disclosed in the directors' reports of both companies. Companies which choose not to indemnify directors will not have to make any disclosure.

Section 237: Copy of qualifying indemnity provision to be available for inspection

436. This section requires a company to keep available for inspection copies of all the qualifying indemnity provisions it has made for its own directors, and also copies of all those it has made for directors of associated companies.
437. *Subsection (4)* is a new provision. It requires all qualifying indemnity provisions to be retained and made available for inspection for a further year after they have expired

or terminated. But the company is not required by this section to retain copies of the indemnity provision thereafter.

438. *Subsection (6)* makes a failure to comply with the requirements of this section a criminal offence. The maximum penalty that can be imposed on summary conviction is a fine not exceeding level 3 on the standard scale (currently £1,000) or in cases of continued contravention a daily default fine not exceeding one-tenth of that. In a change from the current position under section 309C of the 1985 Act, the company will no longer be liable under the criminal offence.

Section 238: Right of member to inspect and request copy

439. This section gives members a right to inspect without charge the copies of the qualifying indemnity provisions (or where they are not in writing, the written memorandum of their terms) held by the company in accordance with section 237.
440. This section also creates a new right for members on payment of a fee to request a copy of the copy or memorandum held by the company. The fee will be set by regulations made under section 1137.

Section 239: Ratification of acts of directors

441. This section preserves the current law on ratification of acts of directors, but with one significant change. Any decision by a company to ratify conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company must be taken by the members, and without reliance on the votes in favour by the director or any connected person. Section 252 defines what is meant by a person being connected with a director. For the purposes of this section it may also include fellow directors (*subsection (5)(d)*).
442. If the ratification decision is taken by way of a written resolution (see Chapter 2 of Part 13) the director and his connected persons may not take part in the written resolution procedure (*subsection (3)*). This means that the company does not need to send them a copy of the written resolution, and they are not counted when determining the number of votes required for the written resolution to be passed.
443. If the ratification decision is taken at a meeting, those members whose votes are to be disregarded may still attend the meeting, take part in the meeting and count towards the quorum for the meeting (if their membership gives them the right to do so).
444. *Subsection (6)* makes clear that nothing in this section changes the law on unanimous consent, so the restrictions imposed by this section as to who may vote on a ratification resolution will not apply when every member votes (informally or otherwise) in favour of the resolution. The subsection also makes clear that nothing in this section removes any powers of the directors that they may have to manage the affairs of the company.
445. *Subsection (7)* explains that the requirements imposed by this section are in addition to any other limitations or restrictions imposed by the law as to what may or may not be ratified and when.

Chapter 8: Directors' Residential Addresses: Protection from Disclosure

446. Under the 1985 Act (and previous Companies Acts), the usual residential address of every director must be entered on the public record held by:
- the registrar; and
 - each company of which he is a director in its register of directors.

Access to the public record held by the registrar is made in a variety of ways, including daily bulk downloading by some subscribers. There is also a public right to inspect companies' registers of directors.

447. There is an exception for directors at serious risk of violence or intimidation, e.g. from political activists and terrorists. Under sections 723B – 723E of the 1985 Act, introduced by the Criminal Justice and Police Act 2001, they may apply for a “confidentiality order”. A director with a confidentiality order provides a single service address in addition to his usual residential address. The service address is entered on the public record; the usual residential address is kept on a secure register to which access is restricted to specified enforcement authorities. The historic record is not affected by the confidentiality order. By October 2006, nearly 11,000 Confidentiality Orders had been issued of which, it is estimated that nearly 7,000 were to directors (certain other individuals, eg partners in Limited Liability Partnerships, are also eligible).
448. The CLR considered it essential that directors’ residential addresses be filed with the central register, so that enforcement and regulatory bodies as well as liquidators and, in some circumstances, creditors and shareholders can discover the individual’s residential address. However they were concerned that unrestricted public access to directors’ residential addresses had been abused. They considered that there should not be any discretion as to whether particular addresses should or should not be placed on the public record. Therefore, while welcoming the introduction of the confidentiality order regime, they recommended **all** directors be given the option of:
- either, as now, providing their residential address for the public record;
 - or, providing both a service address and their residential address, with the service address being on the public record and the residential address being on a separate secure register to which access would be restricted. Access to the restricted register would be available to certain public authorities. Other parties, such as members and creditors, should have a right to apply to the court for access to a director’s residential address. (Final Report, paragraph 11.46)
449. This Chapter of the Act, together with the provisions on the register of directors’ residential addresses in Chapter 1 of this Part, is based on this recommendation. These provisions, which are all new, replace the confidentiality order regime.

Section 240: Protected information

450. This section sets out the information about directors’ usual residential addresses, recorded under Chapter 1 of this Part, that will be protected under the new provisions.

Section 241: Protected information: restriction on use or disclosure by company

451. This section provides for the protection that a company must give to the information covered by section 240. It prohibits the company from using or disclosing an individual director’s home address without his consent except for communicating with him, or to comply with an obligation to send information to the registrar or when required by a court.

Section 242: Protected information: restriction on use or disclosure by the registrar

452. This section provides for protection by the registrar of information that is covered by section 240. The registrar need only protect information where it is submitted on a form where directors’ usual residential addresses are required and entered in the appropriate place. The registrar is not obliged to check all documents submitted to her to ensure that an address has not been inadvertently disclosed. The protection is not retrospective: it does not apply to information on the public record when these provisions come into force. The Act makes separate provision, in section 1088, for removal of addresses from the register in circumstances specified by regulations.

Section 243: Permitted use or disclosure by the registrar

453. This section provides for certain kinds of permitted use or disclosure of protected information, ie directors' home addresses and whether a service address is a home address. *Subsection (1)* provides that the registrar may use the protected information for communicating with the director in question. *Subsection (2)* provides that the registrar may disclose protected information to a public authority or credit reference agency (the definition of the latter is drawn from the Consumer Credit Act 1974) but this should be read with *subsections (3) and (4)*. Subsection (3) confers power on the Secretary of State to make regulations specifying conditions that must be met before the registrar may disclose protected information. The regulations may also provide for fees to be paid by the authority or agency seeking the address. Subsection (4) provides power to make regulations specifying the circumstances in which an application can be made for a director's address not to be revealed to a credit reference agency.

Section 244: Disclosure under court order

454. This section provides for two circumstances in which the court may require the company to disclose protected information. The first circumstance is that the service address is not effective; the second is that the home address is needed for the enforcement of an order or decree of the court. If the company cannot provide the address, the court may require the registrar to reveal it. *Subsection (3)* provides that the application for the order may be made not only by a liquidator, creditor or member of the company but also by anyone with sufficient interest.

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

455. This section provides that if a service address is not effective, then the home address can be put on the public record. It provides for the registrar to send a warning notice, with a specified period for representations before the intended action, both to the director and to every company of which he is a director. The registrar must take account of any representations made within the specified period in deciding whether to proceed as provided by the next section.

Section 246: Putting the address on the public record

456. This section provides that, if the registrar is putting a director's home address on the public record under the previous section, then the registrar updates the public record as if she had been notified that the service address is the director's home address. She must also notify both the director and every company of which he/she is a director. The companies must each put the director's home address on its register of directors as his/her service address. And for the next five years, the director may not register a service address other than his usual residential address.

Chapter 9: Supplementary Provisions

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

457. This section confers a power on the directors to make provision for the benefit of employees (including former employees) of the company or its subsidiaries on the cessation or transfer of the whole or part of the undertaking of the company or the subsidiary (*subsection (1)*).
458. The directors may exercise this power, even if it will not promote the success of the company. The directors' general duty under section 172 to act in the way they consider would be most likely to promote the success of the company for the benefit of its members as a whole, does not apply when the directors exercise this power to make provision for employees (*subsection (2)*).

459. There are a number of conditions to the exercise of this power. It must be authorised by a resolution of the members or, if the articles of the company allow it, by the board of directors. The company's articles may also impose further conditions on its use (*subsection (6)*).
460. Any payments made by the directors using the power conferred by this section must be made before the commencement of the winding up of the company and can only be made out of profits available for dividend. Section 187 of the Insolvency Act 1986 confers power to make provision for employees once the company has commenced winding up.
461. This section replaces section 719 of the 1985 Act. In a change from that section, the directors can no longer use the power conferred by this section to make payments to themselves or to former directors or to shadow directors, unless the payments are authorised by the members. The CLR recommended that directors should be prevented from abusing the power by making excessive payments to themselves.

Section 248: Minutes of directors' meetings

462. This section, together with section 249, replaces the provisions of section 382 of the 1985 Act relating to records of meetings of directors. The requirements of section 382 of the 1985 Act relating to records of meetings of managers have not been retained. This section requires a company to record minutes of all meetings of its directors.
463. *Subsection (2)* is new. The minutes must be kept for at least ten years.
464. Failure to make and keep minutes as required by this section is a criminal offence, applying to every officer of the company who is in default. In a change from section 382 of the 1985 Act, liability for the offence will no longer fall on the company.
465. *Part 37* of the Act makes provision as to the form in which company records (including minutes) may be kept and imposes a duty to take precautions against falsification.

Section 249: Minutes as evidence

466. This section makes provision in respect of the evidential value of the minutes of directors' meetings.

Section 250: "Director"

467. This section restates the definition of "director" in section 741(1) of the 1985 Act.

Section 251: "Shadow director"

468. This section restates the definition of "shadow director" in section 741(2) of the 1985 Act.

Section 252: Persons connected with a director

469. This section sets out the definition of "connected person" which is used in many of the sections in this Part in relation to the regulation of directors. The persons who are "connected" for this purpose with a director include:
- certain family members (see section 253);
 - certain companies with which the director is connected (see section 254);
 - trustees of a trust under which the director or a relative mentioned in section 253 or a company with which the director is connected is a beneficiary (but not if the trust exists for the purposes of an employees' share scheme as defined in section 1166 or a pension scheme);

- certain partners; and
- certain firms with legal personality (such as a Scottish firm in which the director is a partner).

470. This section, together with sections 253 to 255, replaces section 346 of the 1985 Act.

Section 253: Members of a director's family

471. This section sets out those members of a director's family who fall within the definition of persons connected with the director. The list includes all those family members currently falling within the definition of connected person in section 346 of the 1985 Act, and in addition it covers:

- the director's parents;
- children or step-children of the director who are over 18 years old (those under 18 were already included under section 346 of the 1985 Act);
- persons with whom the director lives as partner in an enduring family relationship; and
- children or step-children of the director's unmarried partner if they live with the director and are under 18 years of age.

472. This implements the Law Commissions' recommendation that the definition of connected person be extended so as to include cohabitants, infant children of the cohabitant if they live with the director, adult children of the director and the director's parents. The recommendation that the definition be extended to siblings has not been implemented.

Section 254: Director "connected with" a body corporate

473. This section determines whether a company or other body corporate is a person connected with a director. Broadly speaking, the director, together with any other person connected with him, must be interested in 20% of the equity share capital, or control (directly or indirectly through another body corporate controlled by them) more than 20% of the voting power exercisable at any general meeting.

474. [Schedule 1](#) contains the rules for determining whether a person is "interested in shares" for this purpose.

Section 255: Director "controlling" a body corporate

475. This section defines the circumstances in which a director is deemed to control a body corporate for the purposes of section 254. These circumstances involve two cumulative hurdles. First, the director or any other person connected with him must be interested in the equity share capital or be entitled to control some part of the voting power exercisable at any general meeting. Secondly, the director, fellow directors and other persons connected with him must be interested in more than 50% of the equity share capital or be entitled to control more than 50% of the voting power exercisable at any general meeting.

476. [Schedule 1](#) contains the rules for determining whether a person is "interested in shares" for this purpose.

Section 256: Associated bodies corporate

477. This section is a new provision. It explains what is meant by references in this Part to associated bodies corporate and associated companies. A holding company is associated

with all its subsidiaries, and a subsidiary is associated with its holding company and all the other subsidiaries of its holding company.

Section 257: References to company's constitution

478. This section is new. It makes provision as to the meaning of references to a company's constitution in this Part.
479. The section is relevant to a number of provisions in this Part, including the duty to act within powers (section 171) and the duty to exercise independent judgment (section 173).

Section 258: Power to increase financial limits

480. This section confers power on the Secretary of State by order to increase financial limits in this Part of the Act. All the financial limits appear in Chapter 4 (provisions regulating transactions with directors requiring approval of members). This section restates section 345 of the 1985 Act.

Section 259: Transactions under foreign law

481. This section makes clear that the rules under this Part of the Act apply whether or not the proper law governing a transaction or arrangement is the law of the UK or a part of the UK.
482. This provision is necessary to prevent parties seeking to avoid the application of the rules relating to approval of long-term service contracts, substantial property transactions and loans and similar transactions by choosing a foreign law. This section restates section 347 of the 1985 Act.

Part 11: Derivative Claims and Proceedings by Members

483. **Section 170** provides that directors' general duties are owed to the company rather than to individual members (or third parties such as employees or pressure groups). It follows that, as now, only the company can enforce them. There are three main ways in which the company can take legal action against a director (or, more usually, a former director) for breach of duty:
- if the board of directors decides to commence proceedings;
 - if the liquidator or administrator following the commencement of a formal insolvency procedure such as liquidation or administration decides to commence proceedings;
 - through a derivative claim or action brought by one or more members to enforce a right which is vested not in himself but in the company.

This part of the Act is concerned with the third of these types of action.