

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

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### EXISTING LAW

#### *Scotland*

#### *Chapter 1: Derivative Claims in England and Wales Or Northern Ireland*

#### *Section 262: Application for permission to continue claim as a derivative claim*

496. This section addresses the possibility that, where a company has brought a claim and the cause of action on which the claim is based could be pursued by a member as a derivative action:
- the manner in which the company commenced or continued the claim may amount to an abuse of process (e.g. the company brought the claim with a view to preventing a member bringing a derivative claim);
  - the company may fail to prosecute the claim diligently; and
  - it may be appropriate for a member to continue the claim as a derivative claim;
497. The section provides that, in these circumstances, a member may apply to the court to continue the claim as a derivative action.