

Removal of directors

146. (1) A company may by ordinary resolution remove a director before the expiration of his or her period of office notwithstanding anything in its constitution or in any agreement between it and him or her.

(2) Subsection (1) shall not authorise the removal of a director holding office for life.

(3) In the case of a resolution to remove a director under this section or to appoint somebody instead of the director so removed at the meeting at which he or she is removed the following provisions shall apply—

(a) the company shall be given not less than 28 days' notice of the intention to move any such resolution except when the directors of the company have resolved to submit it;

(b) on receipt of notice of such an intended resolution, the company shall forthwith send a copy of it to the director concerned, and the director (whether or not he or she is a member of the company) shall be entitled to be heard on the resolution at the meeting; and

(c) the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of it, either by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated or in any other manner allowed by this Act or by the constitution, not less than 21 days before the date of the meeting.

(4) Any such resolution that is passed that does not comply with the foregoing provisions shall, subject to subsection (5), not be effective.

(5) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, though not given within the time required by subsection (3)(a), shall be deemed to have been properly given for the purposes of that provision.

(6) Subject to subsection (8), where notice is given of an intended resolution to remove a director under this section and the director concerned makes in relation to that resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to the members of the company, 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 sent (whether before or after receipt of the representations by the company).

(7) If a copy of the representations is not sent as mentioned in subsection (6) (either because they

were received too late or because of the company's default) the director concerned may, without prejudice to his or her right to be heard orally, require that the representations shall be read out at the meeting concerned.

(8) Copies of the representations need not be sent out, and the representations need not be read out at the meeting concerned, as mentioned in subsection (6) or (7), 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 orders that those things need not be done.

(9) The court may order the company's costs on such an application to be paid in whole or in part by the director concerned, notwithstanding that he or she is not a party to the application.

(10) A vacancy created by the removal of a director under this section may be filled at the meeting at which he or she is removed and, if not so filled, may be filled as a casual vacancy.

(11) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or she or any other director is to retire, as if he or she had become director on the day on which the person in whose place he or she is appointed was last appointed director.