

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

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 16: Audit

719. This Part brings together various provisions on the audit of companies from the 1985 Act. It also introduces a number of significant changes to the law on auditing. Much of the law in this area reflects EU Company Law Directives, including parts of the Fourth (78/660/EEC), Seventh (83/349/EEC) and Eighth (84/253/EEC) Company Law Directives, and of the new Audit Directive (2006/43/EC), which will replace the Eighth.

Chapter 1: Requirement for Audited Accounts

720. This Chapter restates the existing requirement for company accounts to be audited, currently in section 235 of the 1985 Act, and the existing exemptions (except for the special provisions about charities).
721. The only changes from the existing law in this Chapter are the removal of special rules for the audit of the accounts of small charitable companies (see note on section 1175), and new provisions disapplying the requirement for audit in relation to certain companies in the public sector audited by public sector auditors.

Section 475: Requirement for audited accounts

722. This section restates the basic requirement for accounts to be audited, unless they are exempt. The obligation is now expressed as a duty on the company to have its accounts audited, whereas section 235 of the 1985 Act expressed it as a duty on the auditor to audit the accounts.
723. Directors must state in the balance sheet if they are taking advantage of an exemption. Unless the company is subject to a public sector audit, the statement must say that the members have not required an audit, and that the directors take responsibility for producing compliant accounts.

Section 476: Right of members to require audit

724. This section restates the right of members to require an audit, even if the company qualifies for one of the audit exemptions.

Sections 477 to 479: Exemption from audit: small companies

725. These sections restate the exemption from audit for small companies. Section 477 provides that a company must not only meet the general small company criteria in section 382, but its turnover and balance sheet totals must also fall below £5.6 million and £2.8 million respectively.
726. [Section 478](#) excludes from the exemption various categories of company including public companies and some financial services companies. Section 479 sets out the

conditions for qualification for the small company exemption of a company which is in a group.

Sections 480 and 481: Exemption from audit: dormant companies

727. These two sections restate the exemption from audit available to dormant companies. “Dormant” is defined in section 1169. Certain financial services companies are excluded from using the exemption even if they are dormant.

Sections 482 and 483: Companies subject to public sector audit

728. These two sections, the only wholly new provisions in this Chapter, are intended to ensure that certain non-commercial, public sector bodies constituted as companies that are audited by a public sector auditor are not required to be audited under the Act.
729. [Section 482](#) exempts from Companies Act audit any non-departmental public body that is a company and is non-profit-making, if it is subject to public sector audit.
730. A UK body may be subject to public sector audit by virtue of an order under the Government Resources and Accounts Act 2000. The body in question will then be audited by the National Audit Office on behalf of the UK Comptroller and Auditor General. Under the Audit and Accountability (Northern Ireland) Order 2003, an order can make a body subject to audit by the Comptroller and Auditor General for Northern Ireland. Alternatively, a body may be subject to audit by the Auditor General for Wales under section 96 of the Government of Wales Act 1998, or an order under section 144 of that Act.
731. Some Scottish bodies are subject to public sector audit by the Auditor General for Scotland (AGS) under the Public Finance and Accountability (Scotland) Act 2000.
732. The companies exempted by this section are not subject to the Fourth Company Law Directive: the Directive is based on Article 44(2)(g) of the EC Treaty (formerly 54(3)(g) of the EEC Treaty), and Article 48 of the Treaty excludes from the scope of Article 44 undertakings that are non-profit-making. That is why *subsection (3)* gives “non-profit-making” the same meaning as in the Treaty.
733. *Subsection (2)* provides that a group company can benefit from this exemption only if every company in the group is non-profit-making. The effect of *subsection (4)* is that the exemption is not available unless the balance sheet contains a statement that the company is entitled to it.
734. [Section 483](#) confers a new power on Scottish Ministers to provide that a company should have its accounts audited by the Auditor General for Scotland (AGS). This is available for companies depending on their functions or their funding. The Scottish Ministers can designate a company under this power if its functions are public functions that are all covered by the Scottish Parliament’s responsibilities, or if the company receives all or most of its funding from a public body already audited by the AGS. In the latter case, the funding body may be audited by the AGS because it is covered by the Public Finance and Accountability (Scotland) Act 2000, or because it is itself a company that Scottish Ministers have made auditable by the AGS by a previous order under this section.
735. If an order is made under this section providing that a company should have a public sector audit by the AGS, and if that company is non-profit-making, then it will benefit from the exemption from audit in the preceding section.

Section 484: General power of amendment by regulations

736. This section provides a power for the Secretary of State to amend the provisions of this Chapter. Taken together with section 468, it broadly restates the power in section 257 of the 1985 Act. *Subsection (2)* enables the regulations to make consequential changes

to other legislation. The power is subject to affirmative resolution if it is extending the requirement for audit, or otherwise making requirements more onerous; and to negative resolution otherwise.

Chapter 2: Appointment of Auditors

737. This Chapter broadly restates the existing law in sections 384 to 388A of the 1985 Act on the way in which shareholders appoint a company's auditors, with some minor changes (as explained below). The provisions are reorganised to deal with private and public companies separately. The Chapter also restates the rules in sections 390A and 390B of the 1985 Act on auditors' remuneration and the disclosure required of services provided by auditors and introduces a new power for the Secretary of State to require disclosure of the terms of audit appointments.

Private companies

738. Sections 485 to 488 restate the law on appointment of auditors of private companies, providing that auditors are generally to be appointed by shareholders by ordinary resolution. For any financial year other than the first, this will generally be done within 28 days of the circulation to a company's shareholders of the accounts for the previous year.

739. There are two changes: firstly, an auditor's term of office will typically run from the end of the 28 day period following circulation of the accounts until the end of the corresponding period the following year. This will apply even if the auditor is appointed at a meeting where the company's accounts are laid. The second change is that an auditor is now deemed to be re-appointed unless the company decides otherwise.

Section 485: Appointment of auditors of private company: general

740. This section provides for a private company's obligation to appoint an auditor, unless it is taking advantage of an exemption from audit. The appointment is to be made by the shareholders by ordinary resolution, except that the directors can appoint the company's first auditor (or the first after a period of audit exemption), and can fill a casual vacancy.

Section 486: Appointment of auditors of private company: default power of Secretary of State

741. This section requires a company to inform the Secretary of State if it has failed to appoint an auditor within 28 days of circulation of its accounts. The Secretary of State has power to appoint an auditor in those circumstances.

Section 487: Term of office of auditors of private company

742. This section provides that the end of the term of office of the auditor of a private company is to be the end of the next period for appointing auditors. At the end of his term an auditor will automatically be deemed to be re-appointed except in five cases:

- if he was appointed by the directors;
- if the company's articles require actual re-appointment;
- if enough members have given notice to the company under section 488;
- if there has been a resolution that the auditor should not be reappointed; or
- if the directors decide that they do not need auditors for the following year.

743. When there is a change of auditor the term of office of the incoming auditor does not begin before the end of the previous auditor's term. This means that a new auditor's term will typically begin immediately after the end of the 28-day period for appointing auditors.

Section 488: Prevention by members of deemed re-appointment of auditor

744. This section enables members with at least 5% of the voting rights in a private company to prevent an auditor being automatically re-appointed by giving notice to the company. The company's articles can enable members to do this with less than 5% of the voting rights, but cannot increase the required percentage.
745. *Subsection (3)* provides that the deadline for a notice preventing the deemed reappointment of an auditor is the end of the financial year for the accounts he is auditing.

Public companies

746. **Sections 489 to 491** restate the law on appointment of auditors of public companies, providing that auditors are generally to be appointed by shareholders by ordinary resolution in the general meeting before which the company's accounts are laid.

Section 489: Appointment of auditors of public company: general

747. This section restates a public company's obligation to appoint auditors, unless it is taking advantage of exemption from audit. This is to be done by the shareholders by ordinary resolution, normally at the general meeting at which the accounts are laid. The directors can appoint the company's first auditors (or the first after a period of audit exemption), and can fill a casual vacancy.

Section 490: Appointment of auditors of public company: default power of Secretary of State

748. This section restates the obligation of a company to inform the Secretary of State if it has failed to appoint an auditor at the general meeting that considers the previous year's accounts. The Secretary of State has power to appoint an auditor in those circumstances.

Section 491: Term of office of auditors of public company

749. This section restates the rule that an auditor of a public company holds office until the end of the meeting at which the accounts are laid, unless re-appointed. Where there is a change of auditor, the term of office of the incoming auditor does not begin before the end of the previous auditor's term. This means that a new auditor's term will typically begin immediately after the end of the accounts meeting.

General provisions

750. These sections apply to both private and public companies.

Section 492: Fixing of auditor's remuneration

751. This section restates the rule that it is the members of a company, by ordinary resolution, who determine the auditor's remuneration, or decide the method by which it should be determined. If the auditor was appointed by someone other than the members, then it will be the directors or the Secretary of State as appropriate who will determine his remuneration.

Section 493: Disclosure of terms of audit appointment

752. This section creates a new power for the Secretary of State to require companies to disclose information about the terms on which they engage their auditors. *Subsection (2)* provides some examples of the detailed requirements that the Secretary of State could specify in regulations. *Subsection (3)* provides that regulations can require disclosure of changes in terms as well as the terms at the time of appointment. *Subsection (4)* specifies that the regulations are to be made by affirmative resolution procedure.

Section 494: Disclosure of services provided by auditor or associates and related remuneration

753. This section restates the existing power of the Secretary of State, in section 390B of the 1985 Act, to require disclosure of details of all the services supplied to a company by its auditor, and the remuneration involved. *Subsections (2) to (4)* give the detailed requirements that the Secretary of State can specify in regulations: subsection (2) relates to the level of disaggregation of different services and remunerations, and between the auditor and his associates; subsection (3) makes provision for some of the definitional issues that can be covered in regulations; and subsection (4) provides for where the information should be disclosed.
754. Under subsection (4), the regulations might require disclosure in a document compiled by the company rather than the auditor. *Subsection (5)* provides that, if so, the regulations can require the auditor to supply the directors with the information to be disclosed e.g. about the auditor's associates. *Subsection (6)* specifies that the regulations are to be made by negative resolution procedure.

Chapter 3: Functions of Auditors

Sections 495 to 497: Auditor's report

755. These sections restate, with modifications, the provisions of section 235 of the 1985 Act as to what the auditor should include in his report on the accounts.
756. **Section 495** imposes the basic duty to produce an audit report and requires that it should set out the way the auditor has approached the audit. Subsection (3) requires the auditor in his report to state his opinion on three matters: (i) whether the accounts provide a true and fair view, (ii) whether they comply with the appropriate reporting framework, and (iii) whether the accounts comply with the requirements in Part 15 of the Act (and, where applicable, with article 4 of the IAS Regulation (Regulation (EC) 1606/2002 on the application of international accounting standards)). *Subsection (4)* requires the audit report to be either qualified or unqualified, though it is open to the auditor to draw attention to aspects of his audit without qualifying the report.
757. **Sections 496** and **497** restate the law on what the auditor should include in relation to the directors' report and the directors' remuneration report.

Sections 498 to 502: Duties and rights of auditors

758. These sections bring together and restate the existing law on the auditor's duties (currently in section 237 of the 1985 Act) in investigating, forming an opinion, and making his report; and on the auditor's rights (sections 389A to 390 of that Act) to be provided with appropriate information.
759. **Section 498** lists areas where an auditor must investigate and report on any problems: the company's accounting records, and whether there is consistency between these and (i) the accounts and (ii) – where there is one – the appropriate part of the directors' remuneration report. The auditor is also to report if he has not been able to get all the information he needs. If possible, he is to make good any gaps in the information relating to payments to directors. And he is to report if he believes that the company is taking advantage of the small companies accounts regime without being entitled to do so.
760. **Section 499** restates the auditor's rights to obtain information and explanations from the company and its UK subsidiaries, and from appropriate associated individuals. Section 500 sets out the corresponding right to require the company to obtain information or explanations from any subsidiaries that are not incorporated in the UK.
761. **Section 501** sets out offences for those who supply inaccurate information to auditors or fail to respond to auditors' requests for information without delay.

762. **Section 502** requires a private company to send to its auditor all the information about any written resolutions that it sends to its shareholders. It also gives the auditor of any company – public or private – the right to attend any general meetings it may have, and to be allowed to speak on anything relevant to the audit. The auditor must also receive all communications relating to general meetings.

Section 503: Signature of auditor's report

763. This section specifies who must sign the audit report submitted to a company by its auditor. The report must state the name of the audit firm, or if an individual has been appointed as auditor, his name. This is as currently required by section 236 of the 1985 Act.
764. For cases where the auditor is a firm, the section makes a change from the 1985 Act by requiring the senior statutory auditor, as defined in section 504, to sign the report in his own name on behalf of the firm. This implements a requirement of the Audit Directive (2006/43/EC). If the auditor is an individual, he must sign as under the 1985 Act.

Section 504: Senior statutory auditor

765. This section defines a new term – “the senior statutory auditor” – for the individual who will be asked to sign his name to an audit report carried out by a firm. The firm will identify this individual according to standards to be issued by the European Commission, or if there are no standards, to guidance issued either by the Secretary of State or by a body appointed by him by order subject to negative resolution. *Subsection (2)* specifies that to be identified as a senior statutory auditor of a company, an individual must be eligible himself to be appointed as auditor of the company. *Subsection (3)* ensures that for an individual to be nominated as senior statutory auditor will not affect his exposure to liability in any way.

Section 505: Names to be stated in published copies of auditor's report

766. This section requires a company to ensure that the copies of its auditor's report it sends out include the name of the auditor and of the senior statutory auditor if there is one, or to say that it is taking advantage of the exemption in the following section. *Subsection (2)* provides that this includes copies circulated to shareholders, as well as any others that would be expected to be seen by members of the public. It does not, however, cover copies sent to the registrar: these are dealt with by sections 444(7), 445(6), 446(4) and 447(4). *Subsections (3) and (4)* restate the offence, currently in section 236 of the 1985 Act, of not including the auditor's name – and now also the senior statutory auditor's name – as required.

Section 506: Circumstances in which names may be omitted

767. This section provides an exemption from the requirements to include the names of the auditor in both the published and filed copies of the audit report. This is available if the company passes a resolution not to reveal the names because it considers on reasonable grounds that revealing them would lead to a serious risk of violence or intimidation. It is also a condition of using the exemption that the company must inform the Secretary of State, giving details of the name of the auditor, and of the senior statutory auditor if there is one.

Section 507: Offences in connection with auditors' report

768. This section creates a new criminal offence in relation to inaccurate auditors' reports. The offence consists of knowingly or recklessly causing a report to include anything that is misleading, false or deceptive, or omitting a required statement of a problem with the accounts or audit.

769. *Subsection (1)* sets out the offence of commission, and *subsection (2)* that of omission. The items whose omission can be an offence are listed in paragraphs (a) to (c) of *subsection (2)*: statements about accounting records not being properly reflected in the accounts, about the auditor having been unable to obtain all necessary information and explanations, and about the directors wrongly claiming the company is exempt from the requirement for group accounts.
770. *Subsection (3)* defines the individuals potentially caught by the offence as the auditor, if a sole practitioner, and his employees and agents; and the directors, members, employees and agents of an audit firm. But the offence only applies to such an individual if he is an accountant who would be qualified to act as auditor of the company in his own right. *Subsection (4)* sets out the maximum penalty as an unlimited fine.

Section 508: Guidance for regulatory and prosecuting authorities: England, Wales and Northern Ireland

771. This section enables the Secretary of State to issue guidance about handling matters where the same behaviour by an auditor could give rise both to disciplinary proceedings by a regulatory body, and to prosecution for the new offence. *Subsection (2)* requires the Secretary of State to obtain the Attorney's General agreement to any guidance. *Subsection (3)* lists the regulatory and prosecuting authorities the guidance would be intended to help. The list comprises the accountancy supervisory bodies, recipients of grants under section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (currently the Financial Reporting Council and its subsidiaries), the Director of the Serious Fraud Office and the Director of Public Prosecutions, as well as the Secretary of State himself. Under *subsection (4)*, the Secretary of State's guidance is limited to England, Wales and Northern Ireland.
772. It is likely that one of the most important aspects of the guidance would be to enable prosecutors to decide not to prosecute in a particular case that would be better handled through disciplinary proceedings.

Section 509: Guidance for regulatory authorities: Scotland

773. This section enables the Lord Advocate to issue guidance about handling matters in Scotland where the same auditor's report could give rise both to disciplinary proceedings by a regulatory body, and to prosecution for the new offence. *Subsection (2)* requires the Lord Advocate to consult the Secretary of State before issuing guidance. *Subsection (3)* lists the regulatory bodies the guidance is intended to help. The list comprises the accountancy supervisory bodies, recipients of grants under section 16 of the C(AICE) Act 2004 (currently the Financial Reporting Council and its subsidiaries) and the Secretary of State.

Chapter 4: Removal, Resignation, Etc of Auditors

774. This Chapter restates the law on the ways in which auditors can cease to hold office. The current provisions are in section 388 and sections 391 to 394A of the 1985 Act. There are some changes to the existing law resulting from the changes elsewhere in the Act relating to written resolutions of private companies. There are also changes in the requirements when auditors leave office: increasing the range of cases in which there is a requirement for a statement explaining why they are leaving, and for copies of any statement to be sent to shareholders and to appropriate regulators.

Section 510: Resolution removing auditor from office

775. This section restates the rule that the shareholders in a company always have the right to dismiss its auditor by ordinary resolution. As at present, to remove the auditor before the end of his term of office, even a private company will need to hold a general meeting to pass such a resolution.

776. *Subsection (2)* requires special notice of the resolution (see note on section 511). *Subsection (3)* provides that shareholders' right provided by this section does not prevent the auditor being entitled to being compensated for termination of his appointment. *Subsection (4)* specifies that the resolution described here is the only way in which an auditor can be removed before the end of his term of office.

Section 511: Special notice required for resolution removing auditor from office

777. This section restates the requirement that a resolution to dismiss an auditor needs special notice (i.e. 28 days before the general meeting, as provided in section 312). The company must send a copy to the auditor it is proposed to dismiss, and he has the right to make a statement of his case. The company then has to circulate his statement to the shareholders (or if time does not allow, the statement can be read out at the meeting).
778. *Subsection (6)* provides protection if the auditor it is proposed to dismiss is using the provision to have a statement circulated to secure needless publicity for defamatory material. It enables the company, or anyone else who is aggrieved by the statement, to apply to the court, and the court can then determine whether the auditor is using the provision in that way, in which case the company is not obliged to circulate the statement. The court can order the auditor to pay some or all of the costs of the proceedings.

Section 512: Notice to registrar of resolution removing auditor from office

779. This section restates the obligation on a company that has decided to dismiss its auditor to inform the registrar within 14 days.

Section 513: Rights of auditor who has been removed from office

780. This section restates the right of a dismissed auditor to attend certain meetings, namely, any meeting at which his term of office would have expired (i.e. a public company's accounts meeting) and any meeting at which it is proposed to replace him.

Section 514: Failure to re-appoint auditor: special procedure required for written resolution

781. This section sets out the procedure for changing auditor from one financial year to the next by written resolution (a procedure only available to private companies). This may be done (i) during the term of office of the outgoing auditor, or (ii) afterwards, if no replacement has been appointed. But case (ii) will arise only if there is no automatic deemed reappointment for one of the five reasons in section 487(2).
782. *Subsection (3)* provides that the company must send a copy of the proposed resolution both to the outgoing auditor and to his proposed replacement; and *subsection (4)* provides that the former then has 14 days to make a statement setting out his views. *Subsection (5)* then provides that the company must send, to its shareholders, the resolution together with any statement from the outgoing auditor. *Subsection (6)* specifies how the general rules on written resolutions are to apply in this case.
783. *Subsection (7)* provides protection if the outgoing auditor is using the provision to have a statement circulated to secure needless publicity for defamatory material. It enables the company, or anyone else who is aggrieved by the statement, to apply to the court, and the court can then determine whether the auditor is using the provision in that way, in which case the company is not obliged to circulate the auditor's representations. The court can order the auditor to pay some or all of the costs of the proceedings.
784. *Subsection (8)* provides that failure to comply with the rules in this section will make the resolution ineffective.

Section 515: Failure to re-appoint auditor: special notice required for resolution at general meeting

785. This section sets out the procedure for changing auditor between one financial year and the next at a general meeting. This may be done by resolution at the meeting, but special notice is required if no deadline for appointing auditors has passed since the outgoing auditor left, or if the deadline has passed when an auditor should have been appointed without one being appointed. So, for example, if a public company intends not to re-appoint an auditor at its accounts meeting, it would need to give special notice of the meeting to be able to appoint replacement auditors.
786. *Subsection (3)* provides that immediately it receives a proposed resolution for changing auditor, the company should send a copy of it both to the outgoing auditor and to his proposed replacement; and *subsection (4)* provides that the former may then send the company a written statement setting out his views. *Subsections (5) and (6)* provide that the company must send its shareholders any statement from the outgoing auditor, and that if it is received too late for this it should be read out at the meeting.
787. *Subsection (7)* provides protection if the outgoing auditor is using the provision to have a statement circulated to secure needless publicity for defamatory material. It enables the company, or anyone else who is aggrieved by the statement, to apply to the court, and the court can then determine whether the auditor is using the provision in that way, in which case the company is not obliged to circulate the auditor's representations, nor need they be read out at the meeting. The court can order the auditor to pay some or all of the costs of the proceedings.

Section 516: Resignation of auditor

788. This section restates the right of an auditor to resign by written notice to the company. His resignation is effective from the date it is delivered to the company's registered office, or from a later date specified in it. To be effective it must be accompanied by the statement required by section 519.

Section 517: Notice to registrar of resignation of auditor

789. This section restates the obligation on a company whose auditor resigns to inform the registrar. Default in complying is an offence.

Section 518: Rights of resigning auditor

790. This section restates the right of an auditor who resigns to require the directors to convene a general meeting of the company so that it can consider his explanation of the circumstances that led to his decision to resign. The auditor can ask the company to send out a written explanation either in advance of that meeting if he has requested one, or before the next appropriate general meeting. The directors have 21 days to send out a notice convening a meeting once a resigning auditor has asked for it, and it must then be held within 28 days of the notice.
791. *Subsection (9)* provides protection if the resigning auditor is using the provision to have a statement circulated to secure needless publicity for defamatory material. It enables the company, or anyone else who is aggrieved by the statement, to apply to the court, and the court can then determine whether the auditor is using the provision in that way, in which case the company is not obliged to circulate the statement. The court can order the auditor to pay some or all of the costs of the proceedings.

Section 519: Statement by auditor to be deposited with company

792. This section requires a departing auditor to make a statement when he stops being the auditor of a company and to deposit it with the company. For quoted companies, this statement should explain the circumstances surrounding his departure. For other

public companies and all private companies, it should explain the circumstances unless the auditor thinks that there is no need for them to be brought to the attention of the shareholders or creditors. In that case, the statement should state that there are no such circumstances.

793. This changes the position under section 394 of the 1985 Act, where auditors were only required to make a statement if they considered there were relevant circumstances: auditors leaving quoted companies will now always be required to make a statement of the circumstances; and auditors leaving other companies must make a statement unless they think that there are no relevant circumstances.
794. *Subsection (4)* sets out the deadline for depositing such a statement with the company, namely:
- if the auditor is resigning, the statement should accompany the resignation letter;
 - if the auditor is deciding not to seek re-appointment, the statement should be deposited at least 14 days before the end of the time allowed for appointing the next auditor; or
 - in any other case, no more than 14 days after the date on which he stops being the auditor.

Section 520: Company's duties in relation to statement

795. Unless the departing auditor's statement says that there are no circumstances to be brought to the attention of shareholders and creditors, this section obliges the company to circulate the statement to everyone to whom it needs to send the annual accounts. The company must do this within 14 days of receiving it.
796. If the company does not want to circulate the statement, it can apply to the court, and if the court decides that the departing auditor is trying to secure needless publicity for defamatory material, then the company need not circulate the statement, but instead must send an account of the court decision to those to whom it would have sent the statement. In the event of a successful application, the court can order the auditor to pay some or all of the costs. In the event of an unsuccessful application, the company must circulate the statement within 14 days of the end of the court proceedings.

Section 521: Copy of statement to be sent to registrar

797. This section provides that the departing auditor must send a copy of his statement to the registrar, unless within 21 days of depositing it he hears that the company has applied to the court. If he does not hear of an application to the court within that time, he must send the statement to the registrar within the next seven days; and if an application is made and the company lets him know that it was unsuccessful, he must send the statement to the registrar within seven days of being told.

Section 522: Duty of auditor to notify appropriate audit authority

798. This section introduces a new obligation on departing auditors to send copies of their leaving statements to an appropriate audit authority as defined in section 525. It contains different rules depending on whether the company the auditor is leaving is classified as a "major audit" as defined in section 525.
799. In relation to major audits, the departing auditor should always send a copy of his statement to the appropriate audit authority. He should do this at the same time as he deposits his statement with the company under section 519. In relation to other audits, the departing auditor is required to send his statement to the appropriate audit authority only if he is leaving before the end of his term of office, meaning only if he has resigned or has been dismissed; and he must do so at the time required by the authority.

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800. *Subsection (3)* provides that where the auditor's statement to the company said that there were no circumstances that needed to be brought to the attention of shareholders or creditors, that statement must have attached to it a statement of the auditor's reasons for leaving when sending it to the audit authority.
801. *Subsections (5) to (8)* set out the offence of failure to comply with these requirements, and the maximum penalties.

Section 523: Duty of company to notify appropriate audit authority

802. This section introduces a new duty on a company to notify the appropriate audit authority whenever an auditor leaves office before the end of his term, that is when he has resigned or is dismissed. The company has the choice of sending in the statement of circumstances made by the auditor under section 519, or of sending in its own statement of the reasons. *Subsection (3)* sets the deadline for notification as 14 days after the auditor has deposited his statement with the company. *Subsections (4) to (6)* set out the offence of failure to comply with this requirement, and the maximum penalties.

Section 524: Information to be given to accounting authorities

803. This section sets out the duty of the audit authorities to give the accounting authorities information about auditors' departure, and the power, if they think it right to do so, to pass on the statements which they receive from departing auditors under the section 522 or from companies under section 523. The accounting authorities are the Secretary of State and anyone the Secretary of State has authorised under Part 15 to apply to the court in respect of the revision of defective accounts. At present this is the Financial Reporting Review Panel, part of the Financial Reporting Council organisation.
804. *Subsection (3)* deals with the situation where the same body is both an audit authority and an accounting authority. If an accounting authority receives a statement that the court has determined need not be circulated to members, then *subsection (4)* provides that it must treat the statement as confidential, in the same way that authorities have to treat information obtained under compulsory powers under Part 15.

Section 525: Meaning of "appropriate audit authority" and "major audit"

805. This section defines two terms used in connection with the duty to inform the audit authority when an auditor leaves office, namely *appropriate audit authority* and *major audit*. The former means the Secretary of State, or the body to whom he has delegated functions in relation to the supervision of statutory auditors under Part 42, currently the Professional Oversight Board, part of the Financial Reporting Council organisation.
806. A major audit is defined as meaning the audit of a listed company, or of any other company where there is a major public interest. Whether there is a major public interest is to be determined by reference to guidance issued by any of the audit authorities. In practice, this will generally be guidance issued by the Financial Reporting Council.

Section 526: Effect of casual vacancies

807. This section applies when one out of two or more joint auditors ceases to be an auditor of the company. It enables the remaining auditors to continue in office. It restates section 388(2) of the 1985 Act.

Chapter 5: Quoted Companies: Right of Members to Raise Audit Concerns at Accounts Meeting

808. This Chapter introduces a new right for members of a quoted company to raise questions about the work of the auditors (all shareholders in a company limited by shares are members).

Section 527: Members' power to require website publication of audit concerns

809. This section creates a new right for members of a quoted company – if they have a large enough holding in the company, or there are enough of them – to ask the company to publish on a website a statement raising questions about the accounts, or about the departure of an auditor, that they propose to bring up at the next meeting where the accounts are to be discussed.
810. *Subsection (2)* specifies the thresholds the members have to meet, which are the same as for shareholders who want to ask a company to circulate a statement under section 314: they must either have 5% of the total voting rights, or there must be at least 100 of them, holding shares on which there has been paid up an average sum per member of at least £100. *Subsection (4)* sets out the mechanics of transmitting the request to the company: it may be in hard copy or electronic.
811. *Subsection (5)* protects the company if members abuse the new right, e.g. by requesting a defamatory statement to be published. It enables the company, or someone else such as the auditor or a director, to apply to the court, and the court can then determine whether the right is being abused, in which case the company is not obliged to publish the statement. *Subsection (6)* provides that the court can order the shareholders who requested publication to pay some or all of the costs of the proceedings.

Section 528: Requirements as to website availability

812. This section sets out the requirements which the company must meet in making the shareholders' statements available on a website, in the same way as section 353. *Subsection (4)* requires the company to get the statement onto a website within three days of receiving it, and to keep it available at least until after the meeting to which it relates.

Section 529: Website publication: company's supplementary duties

813. This section requires quoted companies to draw attention to the possibility of a website statement in the notice of the accounts meeting. It also specifies the costs of publication are to be borne by the company. *Subsection (3)* requires the company to forward the statement to the auditor at the same time as it puts it on a website. *Subsection (4)* provides that a statement under this chapter can be dealt with at the accounts meeting.

Section 530: Website publication: offences

814. This section provides for offences when a company fails to comply with either of the preceding two sections, with maximum penalties of an unlimited fine.

Section 531: Meaning of "quoted company"

815. This section defines the phrase "quoted company" for the purposes of Chapter 5 of Part 16 as being the same as the definition in section 385 in Part 15, and that the power in Part 15 to amend the definition also applies in this Chapter.

Chapter 6: Auditors' Liability

816. This Chapter makes it possible for auditors to limit their liability by agreement with a company, but the agreement will be effective only to the extent that it is fair and reasonable.
817. It achieves this by defining a "liability limitation agreement" – a contractual limitation of an auditor's liability to a company, requiring member agreement – as a new exception to the general prohibition, restated here, on a company indemnifying its auditor. The court will be able to substitute its own limitation if the agreement purports to limit liability to an amount that is not fair and reasonable in all the circumstances.

Section 532: Voidness of provisions protecting auditors from liability

818. This section restates the existing general prohibition, currently in section 310 of the 1985 Act, against a company indemnifying its auditor against claims by the company in the case of negligence or other default. Any such indemnities are void and unenforceable except where permitted by sections 533 to 536.

Section 533: Indemnity for costs of successfully defending proceedings

819. This section contains the current exception from the prohibition in section 532 allowing the company to indemnify the auditor against the costs of successfully defending himself against a claim, though it does not repeat the current exception that allows the company to buy insurance for its auditor.

Section 534: Liability limitation agreements

820. This section defines a “liability limitation agreement” as an agreement that seeks to limit the liability of an auditor to a company whose accounts he audits. The agreement can cover liability for negligence, default, breach of duty or breach of trust by the auditor.
821. *Subsection (2)* provides that such an agreement is excepted from the general voidness of such agreements under section 532, provided that the agreement complies with the rules in section 535, and that it has been authorised by the members of the company in the way specified in section 536. *Subsection (3)* provides that the agreement’s effect is limited by section 537, which contains the test of fairness and reasonableness, and that certain provisions of the Unfair Contracts Terms Act 1977 do not apply.

Section 535: Terms of liability limitation agreement

822. This section contains rules about the terms of a liability limitation agreement. An agreement must relate to the audit of a specified financial year, and the limitation may be expressed in any terms, not necessarily as a fixed financial amount or a formula.
823. *Subsection (2)* confers on the Secretary of State a power to make regulations (subject to negative resolution) prescribing or proscribing specified provisions or descriptions of provisions; and *subsection (3)* provides that the power may be used to prevent adverse effects on competition.

Section 536: Authorisation of agreement by members of the company

824. This section specifies the way in which members of a company are to give their approval to a liability limitation agreement, without which approval the agreement will not be effective. The members of a private company can pass a resolution waiving the need for approval. The members in a private or a public company can pass a resolution before an agreement is signed approving its principal terms, or can approve the agreement after it is signed. The resolution may be an ordinary resolution, unless a higher threshold is set in the company’s articles.
825. *Subsection (5)* specifies what the principal terms of a liability limitation agreement are for this purpose, namely the terms that specify, or enable one to determine, (i) the sorts of faults by the auditor that are covered, (ii) the financial year in relation to which those faults are covered, and (iii) the limit on the auditor’s liability.
826. *Subsection (6)* provides that members, by passing an ordinary resolution, can withdraw their approval of a liability limitation agreement at any time before the agreement is entered into. If the company has already entered into the agreement, approval can be withdrawn, by ordinary resolution, only before the start of the financial year to which the agreement relates.

Section 537: Effect of liability limitation agreement

827. This section provides that a liability limitation agreement will not be effective to limit an auditor's liability if the limitation would result in the company recovering an amount that was less than what was fair and reasonable, in all the circumstances of the case, having regard in particular to the auditor's responsibilities, the auditor's contractual obligations, and the standards expected of the auditor. If a court decides that a liability limitation agreement would limit the auditor's liability to an excessive degree, the agreement will have effect as if it limited liability to the amount that the court determines is fair and reasonable.
828. *Subsection (3)* provides that in assessing what is fair and reasonable, the court should not take into account circumstances arising after the loss or damage in question has been incurred. Nor should it take into account the chances of the company successfully claiming compensation from any other people responsible for the loss or damage.

Section 538: Disclosure of agreement by company

829. This section requires companies to disclose any liability limitation agreement they have made with their auditor in accordance with any regulations made by the Secretary of State subject to negative resolution. *Subsection (2)* provides that the regulations may require this disclosure to be in a company's annual accounts (or in any other manner in the case of group accounts), or in the directors' report.

Chapter 7: Supplementary Provisions

Section 539: Minor definitions

830. This section defines a number of terms used in this Part.