



# Companies Act 1989

## 1989 CHAPTER 40

### PART I

#### COMPANY ACCOUNTS

##### *Introduction*

#### **1 Introduction**

The provisions of this Part amend Part VII of the Companies Act 1985 (accounts and audit) by—

- (a) inserting new provisions in place of sections 221 to 262 of that Act, and
- (b) amending or replacing Schedules 4 to 10 to that Act and inserting new Schedules.

##### *Provisions applying to companies generally*

#### **2 Accounting records**

The following sections are inserted in Part VII of the Companies Act 1985 at the beginning of Chapter I (provisions applying to companies generally)—

##### *“Accounting records*

#### **221 Duty to keep accounting records**

- (1) Every company shall keep accounting records which are sufficient to show and explain the company’s transactions and are such as to—
  - (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

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- (b) enable the directors to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Act.
- (2) The accounting records shall in particular contain—
  - (a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place, and
  - (b) a record of the assets and liabilities of the company.
- (3) If the company's business involves dealing in goods, the accounting records shall contain—
  - (a) statements of stock held by the company at the end of each financial year of the company,
  - (b) all statements of stocktakings from which any such statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and
  - (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.
- (4) A parent company which has a subsidiary undertaking in relation to which the above requirements do not apply shall take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Act.
- (5) If a company fails to comply with any provision of this section, every officer of the company who is in default is guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.
- (6) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

## **222 Where and for how long records to be kept**

- (1) A company's accounting records shall be kept at its registered office or such other place as the directors think fit, and shall at all times be open to inspection by the company's officers.
- (2) If accounting records are kept at a place outside Great Britain, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at, a place in Great Britain, and shall at all times be open to such inspection.
- (3) The accounts and returns to be sent to Great Britain shall be such as to—
  - (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and
  - (b) enable the directors to ensure that the company's balance sheet and profit and loss account comply with the requirements of this Act.
- (4) If a company fails to comply with any provision of subsections (1) to (3), every officer of the company who is in default is guilty of an offence, and liable to imprisonment or a fine or both, unless he shows that he acted honestly and

that in the circumstances in which the company's business was carried on the default was excusable.

- (5) Accounting records which a company is required by section 221 to keep shall be preserved by it—
- (a) in the case of a private company, for three years from the date on which they are made, and
  - (b) in the case of a public company, for six years from the date on which they are made.

This is subject to any provision contained in rules made under section 411 of the Insolvency Act 1986 (company insolvency rules).

- (6) An officer of a company is guilty of an offence, and liable to imprisonment or a fine or both, if he fails to take all reasonable steps for securing compliance by the company with subsection (5) or intentionally causes any default by the company under that subsection.”.

### **3 A company's financial year and accounting reference periods**

The following sections are inserted in Part VII of the Companies Act 1985—

#### **“223 A company's financial year and accounting reference periods A company's financial year**

- (1) A company's “financial year” is determined as follows.
- (2) Its first financial year begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
- (3) Subsequent financial years begin with the day immediately following the end of the company's previous financial year and end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
- (4) In relation to an undertaking which is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.
- (5) The directors of a parent company shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

#### **224 Accounting reference periods and accounting reference date**

- (1) A company's accounting reference periods are determined according to its accounting reference date.
- (2) A company may, at any time before the end of the period of nine months beginning with the date of its incorporation, by notice in the prescribed form given to the registrar specify its accounting reference date, that is, the date on which its accounting reference period ends in each calendar year.

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- (3) Failing such notice, a company's accounting reference date is—
- (a) in the case of a company incorporated before the commencement of section 3 of the Companies Act 1989, 31st March;
  - (b) in the case of a company incorporated after the commencement of that section, the last day of the month in which the anniversary of its incorporation falls.
- (4) A company's first accounting reference period is the period of more than six months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date.
- (5) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
- (6) This section has effect subject to the provisions of section 225 relating to the alteration of accounting reference dates and the consequences of such alteration.

### **225 Alteration of accounting reference date**

- (1) A company may by notice in the prescribed form given to the registrar specify a new accounting reference date having effect in relation to the company's current accounting reference period and subsequent periods.
- (2) A company may by notice in the prescribed form given to the registrar specify a new accounting reference date having effect in relation to the company's previous accounting reference period and subsequent periods if—
- (a) the company is a subsidiary undertaking or parent undertaking of another company and the new accounting reference date coincides with the accounting reference date of that other company, or
  - (b) an administration order under Part II of the Insolvency Act 1986 is in force.

A company's "previous accounting reference period" means that immediately preceding its current accounting reference period.

- (3) The notice shall state whether the current or previous accounting reference period—
- (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or
  - (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.
- (4) A notice under subsection (1) stating that the current accounting reference period is to be extended is ineffective, except as mentioned below, if given less than five years after the end of an earlier accounting reference period of the company which was extended by virtue of this section.

This subsection does not apply—

- (a) to a notice given by a company which is a subsidiary undertaking or parent undertaking of another company and the new accounting reference date coincides with that of the other company, or
- (b) where an administration order is in force under Part II of the Insolvency Act 1986,

or where the Secretary of State directs that it should not apply, which he may do with respect to a notice which has been given or which may be given.

- (5) A notice under subsection (2)(a) may not be given if the period allowed for laying and delivering accounts and reports in relation to the previous accounting reference period has already expired.
- (6) An accounting reference period may not in any case, unless an administration order is in force under Part II of the Insolvency Act 1986, be extended so as to exceed 18 months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.”.

#### **4 Individual company accounts**

- (1) The following section is inserted in Part VII of the Companies Act 1985—

*“Annual accounts*

##### **226 Duty to prepare individual company accounts**

- (1) The directors of every company shall prepare for each financial year of the company—
  - (a) a balance sheet as at the last day of the year, and
  - (b) a profit and loss account.

Those accounts are referred to in this Part as the company’s “individual accounts”.

- (2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the financial year.
- (3) A company’s individual accounts shall comply with the provisions of Schedule 4 as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.
- (4) Where compliance with the provisions of that Schedule, and the other provisions of this Act as to the matters to be included in a company’s individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.
- (5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors

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shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.”.

- (2) Schedule 4 to the Companies Act 1985 (form and content of company accounts) is amended in accordance with Schedule 1 to this Act.

## 5 Group accounts

- (1) The following section is inserted in Part VII of the Companies Act 1985—

### “227 Duty to prepare group accounts

- (1) If at the end of a financial year a company is a parent company the directors shall, as well as preparing individual accounts for the year, prepare group accounts.
- (2) Group accounts shall be consolidated accounts comprising—
- (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
  - (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.
- (3) The accounts shall give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.
- (4) A company’s group accounts shall comply with the provisions of Schedule 4A as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.
- (5) Where compliance with the provisions of that Schedule, and the other provisions of this Act, as to the matters to be included in a company’s group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.
- (6) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.”.

- (2) Schedule 2 to this Act (form and content of group accounts) is inserted after Schedule 4 to the Companies Act 1985, as Schedule 4A.

- (3) The following sections are inserted in Part VII of the Companies Act 1985—

### **“228 Exemption for parent companies included in accounts of larger group**

- (1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its immediate parent undertaking is established under the law of a member State of the European Economic Community, in the following cases—
- (a) where the company is a wholly-owned subsidiary of that parent undertaking;
  - (b) where that parent undertaking holds more than 50 per cent. of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate—
    - (i) more than half of the remaining shares in the company, or
    - (ii) 5 per cent. of the total shares in the company.
- Such notice must be served not later than six months after the end of the financial year before that to which it relates.
- (2) Exemption is conditional upon compliance with all of the following conditions—
- (a) that the company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of a member State of the European Economic Community;
  - (b) that those accounts are drawn up and audited, and that parent undertaking’s annual report is drawn up, according to that law, in accordance with the provisions of the Seventh Directive ([83/349/EEC](#));
  - (c) that the company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
  - (d) that the company states in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and—
    - (i) if it is incorporated outside Great Britain, the country in which it is incorporated,
    - (ii) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland, and
    - (iii) if it is unincorporated, the address of its principal place of business;
  - (e) that the company delivers to the registrar, within the period allowed for delivering its individual accounts, copies of those group accounts and of the parent undertaking’s annual report, together with the auditors’ report on them; and
  - (f) that if any document comprised in accounts and reports delivered in accordance with paragraph (e) is in a language other than English, there is annexed to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

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- (3) The exemption does not apply to a company any of whose securities are listed on a stock exchange in any member State of the European Economic Community.
- (4) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of subsection (1)(a) whether the company is a wholly-owned subsidiary.
- (5) For the purposes of subsection (1)(b) shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking.
- (6) In subsection (3) “securities” includes—
  - (a) shares and stock,
  - (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
  - (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and
  - (d) certificates or other instruments which confer—
    - (i) property rights in respect of a security falling within paragraph (a), (b) or (c),
    - (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or
    - (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

### **229 Subsidiary undertakings included in the consolidation**

- (1) Subject to the exceptions authorised or required by this section, all the subsidiary undertakings of the parent company shall be included in the consolidation.
- (2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view; but two or more undertakings may be excluded only if they are not material taken together.
- (3) In addition, a subsidiary undertaking may be excluded from consolidation where—
  - (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or
  - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or
  - (c) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not previously been



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included in consolidated group accounts prepared by the parent company.

The reference in paragraph (a) to the rights of the parent company and the reference in paragraph (c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of section 258 (definition of “parent undertaking”) in the absence of which it would not be the parent company.

- (4) Where the activities of one or more subsidiary undertakings are so different from those of other undertakings to be included in the consolidation that their inclusion would be incompatible with the obligation to give a true and fair view, those undertakings shall be excluded from consolidation.

This subsection does not apply merely because some of the undertakings are industrial, some commercial and some provide services, or because they carry on industrial or commercial activities involving different products or provide different services.

- (5) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no group accounts are required.”.

- (4) The following section is inserted in Part VII of the Companies Act 1985—

**“230 Treatment of individual profit and loss account where group accounts prepared**

- (1) The following provisions apply with respect to the individual profit and loss account of a parent company where—
- (a) the company is required to prepare and does prepare group accounts in accordance with this Act, and
  - (b) the notes to the company’s individual balance sheet show the company’s profit or loss for the financial year determined in accordance with this Act.
- (2) The profit and loss account need not contain the information specified in paragraphs 52 to 57 of Schedule 4 (information supplementing the profit and loss account).
- (3) The profit and loss account must be approved in accordance with section 233(1) (approval by board of directors) but may be omitted from the company’s annual accounts for the purposes of the other provisions below in this Chapter.
- (4) The exemption conferred by this section is conditional upon its being disclosed in the company’s annual accounts that the exemption applies.”.

**6 Additional disclosure required in notes to accounts**

- (1) The following section is inserted in Part VII of the Companies Act 1985—

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**“231 Disclosure required in notes to accounts: related undertakings**

- (1) The information specified in Schedule 5 shall be given in notes to a company’s annual accounts.
- (2) Where the company is not required to prepare group accounts, the information specified in Part I of that Schedule shall be given; and where the company is required to prepare group accounts, the information specified in Part II of that Schedule shall be given.
- (3) The information required by Schedule 5 need not be disclosed with respect to an undertaking which—
  - (a) is established under the law of a country outside the United Kingdom, or
  - (b) carries on business outside the United Kingdom,

if in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of that undertaking, or to the business of the company or any of its subsidiary undertakings, and the Secretary of State agrees that the information need not be disclosed.

This subsection does not apply in relation to the information required under paragraph 5(2), 6 or 20 of that Schedule.

- (4) Where advantage is taken of subsection (3), that fact shall be stated in a note to the company’s annual accounts.
- (5) If the directors of the company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of Schedule 5 to this Act is such that compliance with that provision would result in information of excessive length being given, the information need only be given in respect of—
  - (a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company’s annual accounts, and
  - (b) undertakings excluded from consolidation under section 229(3) or (4).

This subsection does not apply in relation to the information required under paragraph 10 or 29 of that Schedule.

- (6) If advantage is taken of subsection (5)—
  - (a) there shall be included in the notes to the company’s annual accounts a statement that the information is given only with respect to such undertakings as are mentioned in that subsection, and
  - (b) the full information (both that which is disclosed in the notes to the accounts and that which is not) shall be annexed to the company’s next annual return.

For this purpose the “next annual return” means that next delivered to the registrar after the accounts in question have been approved under section 233.

- (7) If a company fails to comply with subsection (6)(b), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.”.
- (2) Schedule 3 to this Act (disclosure of information: related undertakings) is substituted for Schedule 5 to the Companies Act 1985.
- (3) The following section is inserted in Part VII of the Companies Act 1985—

**“232 Disclosure required in notes to accounts: emoluments and other benefits of directors and others**

- (1) The information specified in Schedule 6 shall be given in notes to a company’s annual accounts.
- (2) In that Schedule—
- Part I relates to the emoluments of directors (including emoluments waived), pensions of directors and past directors, compensation for loss of office to directors and past directors and sums paid to third parties in respect of directors' services,
- Part II relates to loans, quasi-loans and other dealings in favour of directors and connected persons, and
- Part III relates to transactions, arrangements and agreements made by the company or a subsidiary undertaking for officers of the company other than directors.
- (3) It is the duty of any director of a company, and any person who is or has at any time in the preceding five years been an officer of the company, to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part I of Schedule 6.
- (4) A person who makes default in complying with subsection (3) commits an offence and is liable to a fine.”.
- (4) Schedule 6 to the Companies Act 1985 is amended in accordance with Schedule 4 to this Act.

**7 Approval and signing of accounts**

The following section is inserted in Part VII of the Companies Act 1985—

*“Approval and signing of accounts*

**233 Approval and signing of accounts**

- (1) A company’s annual accounts shall be approved by the board of directors and signed on behalf of the board by a director of the company.
- (2) The signature shall be on the company’s balance sheet.
- (3) Every copy of the balance sheet which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the board.

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- (4) The copy of the company's balance sheet which is delivered to the registrar shall be signed on behalf of the board by a director of the company.
- (5) If annual accounts are approved which do not comply with the requirements of this Act, every director of the company who is party to their approval and who knows that they do not comply or is reckless as to whether they comply is guilty of an offence and liable to a fine.

For this purpose every director of the company at the time the accounts are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

- (6) If a copy of the balance sheet—
- (a) is laid before the company, or otherwise circulated, published or issued, without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included, or
  - (b) is delivered to the registrar without being signed as required by this section,
- the company and every officer of it who is in default is guilty of an offence and liable to a fine.”.

## 8 Directors' report

- (1) The following sections are inserted in Part VII of the Companies Act 1985—

### *“Directors' report*

#### **234 Duty to prepare directors' report**

- (1) The directors of a company shall for each financial year prepare a report—
- (a) containing a fair review of the development of the business of the company and its subsidiary undertakings during the financial year and of their position at the end of it, and
  - (b) stating the amount (if any) which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves.
- (2) The report shall state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company and its subsidiary undertakings in the course of the year and any significant change in those activities in the year.
- (3) The report shall also comply with Schedule 7 as regards the disclosure of the matters mentioned there.
- (4) In Schedule 7—
- Part I relates to matters of a general nature, including changes in asset values, directors' shareholdings and other interests and contributions for political and charitable purposes,
  - Part II relates to the acquisition by a company of its own shares or a charge on them,

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Part III relates to the employment, training and advancement of disabled persons,

Part IV relates to the health, safety and welfare at work of the company's employees, and

Part V relates to the involvement of employees in the affairs, policy and performance of the company.

- (5) In the case of any failure to comply with the provisions of this Part as to the preparation of a directors' report and the contents of the report, every person who was a director of the company immediately before the end of the period for laying and delivering accounts and reports for the financial year in question is guilty of an offence and liable to a fine.
- (6) In proceedings against a person for an offence under this section it is a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

#### **234A Approval and signing of directors' report**

- (1) The directors' report shall be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
  - (2) Every copy of the directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.
  - (3) The copy of the directors' report which is delivered to the registrar shall be signed on behalf of the board by a director or the secretary of the company.
  - (4) If a copy of the directors' report—
    - (a) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this section or without the required statement of the signatory's name being included, or
    - (b) is delivered to the registrar without being signed as required by this section,the company and every officer of it who is in default is guilty of an offence and liable to a fine.”.
- (2) Schedule 7 to the Companies Act 1985 (matters to be included in directors' report) is amended in accordance with Schedule 5 to this Act.

## **9 Auditors' report**

The following sections are inserted in Part VII of the Companies Act 1985—

### *“Auditors' report*

#### **235 Auditors' report**

- (1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

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- (2) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Act, and in particular whether a true and fair view is given—
- (a) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year,
  - (b) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,
  - (c) in the case of group accounts, of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.
- (3) The auditors shall consider whether the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts; and if they are of opinion that it is not they shall state that fact in their report.

### **236 Signature of auditors' report**

- (1) The auditors' report shall state the names of the auditors and be signed by them.
- (2) Every copy of the auditors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the names of the auditors.
- (3) The copy of the auditors' report which is delivered to the registrar shall state the names of the auditors and be signed by them.
- (4) If a copy of the auditors' report—
- (a) is laid before the company, or otherwise circulated, published or issued, without the required statement of the auditors' names, or
  - (b) is delivered to the registrar without the required statement of the auditors' names or without being signed as required by this section,
- the company and every officer of it who is in default is guilty of an offence and liable to a fine.
- (5) References in this section to signature by the auditors are, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf.

### **237 Duties of auditors**

- (1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to—
- (a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them, and
  - (b) whether the company's individual accounts are in agreement with the accounting records and returns.
- (2) If the auditors are of opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from

branches not visited by them, or if the company's individual accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

- (3) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.
- (4) If the requirements of Schedule 6 (disclosure of information: emoluments and other benefits of directors and others) are not complied with in the annual accounts, the auditors shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.”.

## **10 Publication of accounts and reports**

The following sections are inserted in Part VII of the Companies Act 1985—

### **“238 Publication of accounts and reports Persons entitled to receive copies of accounts and reports**

- (1) A copy of the company's annual accounts, together with a copy of the directors' report for that financial year and of the auditors' report on those accounts, shall be sent to—
  - (a) every member of the company,
  - (b) every holder of the company's debentures, and
  - (c) every person who is entitled to receive notice of general meetings,not less than 21 days before the date of the meeting at which copies of those documents are to be laid in accordance with section 241.
- (2) Copies need not be sent—
  - (a) to a person who is not entitled to receive notices of general meetings and of whose address the company is unaware, or
  - (b) to more than one of the joint holders of shares or debentures none of whom is entitled to receive such notices, or
  - (c) in the case of joint holders of shares or debentures some of whom are, and some not, entitled to receive such notices, to those who are not so entitled.
- (3) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.
- (4) If copies are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.
- (5) If default is made in complying with this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.
- (6) Where copies are sent out under this section over a period of days, references elsewhere in this Act to the day on which copies are sent out shall be construed as references to the last day of that period.

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### **239 Right to demand copies of accounts and reports**

- (1) Any member of a company and any holder of a company's debentures is entitled to be furnished, on demand and without charge, with a copy of the company's last annual accounts and directors' report and a copy of the auditors' report on those accounts.
- (2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 238.
- (3) If a demand under this section is not complied with within seven days, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (4) If in proceedings for such an offence the issue arises whether a person had already been furnished with a copy of the relevant document under this section, it is for the defendant to prove that he had.

### **240 Requirements in connection with publication of accounts**

- (1) If a company publishes any of its statutory accounts, they must be accompanied by the relevant auditors' report under section 235.
- (2) A company which is required to prepare group accounts for a financial year shall not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.
- (3) If a company publishes non-statutory accounts, it shall publish with them a statement indicating—
  - (a) that they are not the company's statutory accounts,
  - (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar,
  - (c) whether the company's auditors have made a report under section 235 on the statutory accounts for any such financial year, and
  - (d) whether any report so made was qualified or contained a statement under section 237(2) or (3) (accounting records or returns inadequate, accounts not agreeing with records and returns or failure to obtain necessary information and explanations);and it shall not publish with the non-statutory accounts any auditors' report under section 235.
- (4) For the purposes of this section a company shall be regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.
- (5) References in this section to a company's statutory accounts are to its individual or group accounts for a financial year as required to be delivered to the registrar under section 242; and references to the publication by a company of "non-statutory accounts" are to the publication of—



- (a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company, or
  - (b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company,
- otherwise than as part of the company's statutory accounts.
- (6) A company which contravenes any provision of this section, and any officer of it who is in default, is guilty of an offence and liable to a fine.”.

## **11 Laying and delivering of accounts and reports**

The following sections are inserted in Part VII of the Companies Act 1985—

### *“Laying and delivering of accounts and reports*

#### **241 Accounts and reports to be laid before company in general meeting**

- (1) The directors of a company shall in respect of each financial year lay before the company in general meeting copies of the company's annual accounts, the directors' report and the auditors' report on those accounts.
- (2) If the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (3) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (4) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.

#### **242 Accounts and reports to be delivered to the registrar**

- (1) The directors of a company shall in respect of each financial year deliver to the registrar a copy of the company's annual accounts together with a copy of the directors' report for that year and a copy of the auditors' report on those accounts.  

If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.
- (2) If the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

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- (3) Further, if the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance, the court may on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

- (4) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing that the requirements of subsection (1) would be complied with before the end of the period allowed for laying and delivering accounts and reports.
- (5) It is not a defence in any proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.

#### **242A Civil penalty for failure to deliver accounts**

- (1) Where the requirements of section 242(1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, the company is liable to a civil penalty.

This is in addition to any liability of the directors under section 242.

- (2) The amount of the penalty is determined by reference to the length of the period between the end of the period allowed for laying and delivering accounts and reports and the day on which the requirements are complied with, and whether the company is a public or private company, as follows:—

<i>Length of period</i>	<i>Public company</i>	<i>Private company</i>
Not more than 3 months.	£500	£100
More than 3 months but not more than 6 months.	£1,000	£250
More than 6 months but not more than 12 months.	£2,000	£500
More than 12 months.	£5,000	£1,000

- (3) The penalty may be recovered by the registrar and shall be paid by him into the Consolidated Fund.
- (4) It is not a defence in proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.

#### **243 Accounts of subsidiary undertakings to be appended in certain cases**

- (1) The following provisions apply where at the end of the financial year a parent company has as a subsidiary undertaking—
- (a) a body corporate incorporated outside Great Britain which does not have an established place of business in Great Britain, or
  - (b) an unincorporated undertaking,

which is excluded from consolidation in accordance with section 229(4) (undertaking with activities different from the undertakings included in the consolidation).

- (2) There shall be appended to the copy of the company's annual accounts delivered to the registrar in accordance with section 242 a copy of the undertaking's latest individual accounts and, if it is a parent undertaking, its latest group accounts.

If the accounts appended are required by law to be audited, a copy of the auditors' report shall also be appended.

- (3) The accounts must be for a period ending not more than twelve months before the end of the financial year for which the parent company's accounts are made up.

- (4) If any document required to be appended is in a language other than English, the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

- (5) The above requirements are subject to the following qualifications—

- (a) an undertaking is not required to prepare for the purposes of this section accounts which would not otherwise be prepared, and if no accounts satisfying the above requirements are prepared none need be appended;
- (b) a document need not be appended if it would not otherwise be required to be published, or made available for public inspection, anywhere in the world, but in that case the reason for not appending it shall be stated in a note to the company's accounts;
- (c) where an undertaking and all its subsidiary undertakings are excluded from consolidation in accordance with section 229(4), the accounts of such of the subsidiary undertakings of that undertaking as are included in its consolidated group accounts need not be appended.

- (6) Subsections (2) to (4) of section 242 (penalties, &c. in case of default) apply in relation to the requirements of this section as they apply in relation to the requirements of subsection (1) of that section.

#### **244 Period allowed for laying and delivering accounts and reports**

- (1) The period allowed for laying and delivering accounts and reports is—
- (a) for a private company, 10 months after the end of the relevant accounting reference period, and
  - (b) for a public company, 7 months after the end of that period.

This is subject to the following provisions of this section.

- (2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is—
- (a) 10 months or 7 months, as the case may be, from the first anniversary of the incorporation of the company, or
  - (b) 3 months from the end of the accounting reference period, whichever last expires.

- (3) Where a company carries on business, or has interests, outside the United Kingdom, the Channel Islands and the Isle of Man, the directors may, in respect

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of any financial year, give to the registrar before the end of the period allowed by subsection (1) or (2) a notice in the prescribed form—

- (a) stating that the company so carries on business or has such interests, and
- (b) claiming a 3 month extension of the period allowed for laying and delivering accounts and reports;

and upon such a notice being given the period is extended accordingly.

- (4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under section 225 (alteration of accounting reference date), the period allowed for laying and delivering accounts is that applicable in accordance with the above provisions or 3 months from the date of the notice under that section, whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.
- (6) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.”.

## 12 Remedies for failure to comply with accounting requirements

The following sections are inserted in Part VII of the Companies Act 1985—

### **“245 Revision of defective accounts and reports Voluntary revision of annual accounts or directors' report**

- (1) If it appears to the directors of a company that any annual accounts of the company, or any directors' report, did not comply with the requirements of this Act, they may prepare revised accounts or a revised report.
- (2) Where copies of the previous accounts or report have been laid before the company in general meeting or delivered to the registrar, the revisions shall be confined to—
  - (a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Act, and
  - (b) the making of any necessary consequential alterations.
- (3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to revised annual accounts or a revised directors' report.
- (4) The regulations may, in particular—
  - (a) make different provision according to whether the previous accounts or report are replaced or are supplemented by a document indicating the corrections to be made;
  - (b) make provision with respect to the functions of the company's auditors in relation to the revised accounts or report;
  - (c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been—

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- (i) sent out to members and others under section 238(1),
  - (ii) laid before the company in general meeting, or
  - (iii) delivered to the registrar,
- or where a summary financial statement based on the previous accounts or report has been sent to members under section 251;
- (d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **245A Secretary of State's notice in respect of annual accounts**

- (1) Where copies of a company's annual accounts have been sent out under section 238, or a copy of a company's annual accounts has been laid before the company in general meeting or delivered to the registrar, and it appears to the Secretary of State that there is, or may be, a question whether the accounts comply with the requirements of this Act, he may give notice to the directors of the company indicating the respects in which it appears to him that such a question arises, or may arise.
- (2) The notice shall specify a period of not less than one month for the directors to give him an explanation of the accounts or prepare revised accounts.
- (3) If at the end of the specified period, or such longer period as he may allow, it appears to the Secretary of State that no satisfactory explanation of the accounts has been given and that the accounts have not been revised so as to comply with the requirements of this Act, he may if he thinks fit apply to the court.
- (4) The provisions of this section apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.

#### **245B Application to court in respect of defective accounts**

- (1) An application may be made to the court—
  - (a) by the Secretary of State, after having complied with section 245A, or
  - (b) by a person authorised by the Secretary of State for the purposes of this section,for a declaration or declarator that the annual accounts of a company do not comply with the requirements of this Act and for an order requiring the directors of the company to prepare revised accounts.
- (2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.
- (3) If the court orders the preparation of revised accounts, it may give directions with respect to—
  - (a) the auditing of the accounts,

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- (b) the revision of any directors' report or summary financial statement, and
  - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts,
- and such other matters as the court thinks fit.
- (4) If the court finds that the accounts did not comply with the requirements of this Act it may order that all or part of—
- (a) the costs (or in Scotland expenses) of and incidental to the application, and
  - (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts,
- shall be borne by such of the directors as were party to the approval of the defective accounts.
- For this purpose every director of the company at the time the accounts were approved shall be taken to have been a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.
- (5) Where the court makes an order under subsection (4) it shall have regard to whether the directors party to the approval of the defective accounts knew or ought to have known that the accounts did not comply with the requirements of this Act, and it may exclude one or more directors from the order or order the payment of different amounts by different directors.
- (6) On the conclusion of proceedings on an application under this section, the applicant shall give to the registrar for registration an office copy of the court order or, as the case may be, notice that the application has failed or been withdrawn.
- (7) The provisions of this section apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.

#### **245C Other persons authorised to apply to court**

- (1) The Secretary of State may authorise for the purposes of section 245B any person appearing to him—
- (a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the accounting requirements of this Act,
  - (b) to have satisfactory procedures for receiving and investigating complaints about the annual accounts of companies, and
  - (c) otherwise to be a fit and proper person to be authorised.
- (2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.
- (3) The Secretary of State may refuse to authorise a person if he considers that his authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.
- (4) Authorisation shall be by order made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (5) Where authorisation is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.
- (6) Neither a person authorised under this section, nor any officer, servant or member of the governing body of such a person, shall be liable in damages for anything done or purporting to be done for the purposes of or in connection with—
  - (a) the taking of steps to discover whether there are grounds for an application to the court,
  - (b) the determination whether or not to make such an application, or
  - (c) the publication of its reasons for any such decision,unless the act or omission is shown to have been in bad faith.”.

### *Exemptions and special provisions*

## **13 Small and medium-sized companies and groups**

- (1) The following sections are inserted in Part VII of the Companies Act 1985, as the beginning of a Chapter II—

### **“CHAPTER II**

#### **EXEMPTIONS, EXCEPTIONS AND SPECIAL PROVISIONS**

### *Small and medium-sized companies and groups*

#### **246 Exemptions for small and medium-sized companies**

- (1) A company which qualifies as a small or medium-sized company in relation to a financial year—
  - (a) is exempt from the requirements of paragraph 36A of Schedule 4 (disclosure with respect to compliance with accounting standards), and
  - (b) is entitled to the exemptions provided by Schedule 8 with respect to the delivery to the registrar under section 242 of individual accounts and other documents for that financial year.
- (2) In that Schedule—
  - Part I relates to small companies,
  - Part II relates to medium-sized companies, and
  - Part III contains supplementary provisions.
- (3) A company is not entitled to the exemptions mentioned in subsection (1) if it is, or was at any time within the financial year to which the accounts relate—
  - (a) a public company,
  - (b) a banking or insurance company, or
  - (c) an authorised person under the Financial Services Act 1986,or if it is or was at any time during that year a member of an ineligible group.

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- (4) A group is ineligible if any of its members is—
- (a) a public company or a body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,
  - (b) an authorised institution under the Banking Act 1987,
  - (c) an insurance company to which Part II of the Insurance Companies Act 1982 applies, or
  - (d) an authorised person under the Financial Services Act 1986.
- (5) A parent company shall not be treated as qualifying as a small company in relation to a financial year unless the group headed by it qualifies as a small group, and shall not be treated as qualifying as a medium-sized company in relation to a financial year unless that group qualifies as a medium-sized group (see section 249).

#### **247 Qualification of company as small or medium-sized**

- (1) A company qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met—
- (a) in the case of the company's first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year.
- (2) A company shall be treated as qualifying as small or medium-sized in relation to a financial year—
- (a) if it so qualified in relation to the previous financial year under subsection (1); or
  - (b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

##### *SMALL COMPANY*

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1. Turnover	Not more than £2 million
2. Balance sheet total	Not more than £975,000
3. Number of employees	Not more than 50

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##### *MEDIUM-SIZED COMPANY*

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1. Turnover	Not more than £8 million
2. Balance sheet total	Not more than £3.9 million
3. Number of employees	Not more than 250.

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- (4) For a period which is a company's financial year but not in fact a year the maximum figures for turnover shall be proportionately adjusted.



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- (5) The balance sheet total means—
- (a) where in the company's accounts Format 1 of the balance sheet formats set out in Part I of Schedule 4 is adopted, the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D in that Format, and
  - (b) where Format 2 is adopted, the aggregate of the amounts shown under the general heading "Assets".
- (6) The number of employees means the average number of persons employed by the company in the year (determined on a weekly basis).

That number shall be determined by applying the method of calculation prescribed by paragraph 56(2) and (3) of Schedule 4 for determining the corresponding number required to be stated in a note to the company's accounts."

- (2) Schedule 6 to this Act is substituted for Schedule 8 to the Companies Act 1985.
- (3) The following sections are inserted in Part VII of the Companies Act 1985—

**“248 Exemption for small and medium-sized groups**

- (1) A parent company need not prepare group accounts for a financial year in relation to which the group headed by that company qualifies as a small or medium-sized group and is not an ineligible group.
- (2) A group is ineligible if any of its members is—
- (a) a public company or a body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,
  - (b) an authorised institution under the Banking Act 1987,
  - (c) an insurance company to which Part II of the Insurance Companies Act 1982 applies, or
  - (d) an authorised person under the Financial Services Act 1986.
- (3) If the directors of a company propose to take advantage of the exemption conferred by this section, it is the auditors' duty to provide them with a report stating whether in their opinion the company is entitled to the exemption.
- (4) The exemption does not apply unless—
- (a) the auditors' report states that in their opinion the company is so entitled, and
  - (b) that report is attached to the individual accounts of the company.

**249 Qualification of group as small or medium-sized**

- (1) A group qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met—
- (a) in the case of the parent company's first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year.

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- (2) A group shall be treated as qualifying as small or medium-sized in relation to a financial year—
- (a) if it so qualified in relation to the previous financial year under subsection (1); or
  - (b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.
- (3) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements—

*SMALL GROUP*

1. Aggregate turnover	Not more than £2 million net (or £2.4 million gross)
2. Aggregate balance sheet total	Not more than £1 million net (or £1.2 million gross)
3. Aggregate number of employees	Not more than 50

*MEDIUM-SIZED GROUP*

1. Aggregate turnover	Not more than £8 million net (or £9.6 million gross)
2. Aggregate balance sheet total	Not more than £3.9 million net (or £4.7 million gross)
3. Aggregate number of employees	Not more than 250.

- (     The aggregate figures shall be ascertained by aggregating the relevant figures determined in accordance with section 247 for each member of the group.

In relation to the aggregate figures for turnover and balance sheet total, “net” means with the set-offs and other adjustments required by Schedule 4A in the case of group accounts and “gross” means without those set-offs and other adjustments; and a company may satisfy the relevant requirement on the basis of either the net or the gross figure.

- (5) The figures for each subsidiary undertaking shall be those included in its accounts for the relevant financial year, that is—
- (a) if its financial year ends with that of the parent company, that financial year, and
  - (b) if not, its financial year ending last before the end of the financial year of the parent company.
- (6) If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.”.

## 14 **Dormant companies**

The following section is inserted in Part VII of the Companies Act 1985—

*“Dormant companies*

**250 Resolution not to appoint auditors**

- (1) A company may by special resolution make itself exempt from the provisions of this Part relating to the audit of accounts in the following cases—
- (a) if the company has been dormant from the time of its formation, by a special resolution passed before the first general meeting of the company at which annual accounts are laid;
  - (b) if the company has been dormant since the end of the previous financial year and—
    - (i) is entitled in respect of its individual accounts for that year to the exemptions conferred by section 246 on a small company, or would be so entitled but for being a member of an ineligible group, and
    - (ii) is not required to prepare group accounts for that year,by a special resolution passed at a general meeting of the company at which the annual accounts for that year are laid.
- (2) A company may not pass such a resolution if it is—
- (a) a public company,
  - (b) a banking or insurance company, or
  - (c) an authorised person under the Financial Services Act 1986.
- (3) A company is “dormant” during a period in which no significant accounting transaction occurs, that is, no transaction which is required by section 221 to be entered in the company’s accounting records; and a company ceases to be dormant on the occurrence of such a transaction.

For this purpose there shall be disregarded any transaction arising from the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum.

- (4) Where a company is, at the end of a financial year, exempt by virtue of this section from the provisions of this Part relating to the audit of accounts—
- (a) sections 238 and 239 (right to receive or demand copies of accounts and reports) have effect with the omission of references to the auditors' report;
  - (b) no copies of an auditors' report need be laid before the company in general meeting;
  - (c) no copy of an auditors' report need be delivered to the registrar, and if none is delivered, the copy of the balance sheet so delivered shall contain a statement by the directors, in a position immediately above the signature required by section 233(4), that the company was dormant throughout the financial year; and
  - (d) the company shall be treated as entitled in respect of its individual accounts for that year to the exemptions conferred by section 246 on a small company notwithstanding that it is a member of an ineligible group.

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- (5) Where a company which is exempt by virtue of this section from the provisions of this Part relating to the audit of accounts—
- (a) ceases to be dormant, or
  - (b) would no longer qualify (for any other reason) to make itself exempt by passing a resolution under this section,
- it shall thereupon cease to be so exempt.”.

## 15 **Public listed companies: provision of summary financial statement**

The following section is inserted in Part VII of the Companies Act 1985—

### *“Listed public companies*

#### **251 Provision of summary financial statement to shareholders**

- (1) A public company whose shares, or any class of whose shares, are listed need not, in such cases as may be specified by regulations made by the Secretary of State, and provided any conditions so specified are complied with, send copies of the documents referred to in section 238(1) to members of the company, but may instead send them a summary financial statement.

In this subsection “listed” means admitted to the Official List of The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.

- (2) Copies of the documents referred to in section 238(1) shall, however, be sent to any member of the company who wishes to receive them; and the Secretary of State may by regulations make provision as to the manner in which it is to be ascertained whether a member of the company wishes to receive them.
- (3) The summary financial statement shall be derived from the company’s annual accounts and the directors’ report and shall be in such form and contain such information as may be specified by regulations made by the Secretary of State.
- (4) Every summary financial statement shall—
- (a) state that it is only a summary of information in the company’s annual accounts and the directors’ report;
  - (b) contain a statement by the company’s auditors of their opinion as to whether the summary financial statement is consistent with those accounts and that report and complies with the requirements of this section and regulations made under it;
  - (c) state whether the auditors’ report on the annual accounts was unqualified or qualified, and if it was qualified set out the report in full together with any further material needed to understand the qualification;
  - (d) state whether the auditors’ report on the annual accounts contained a statement under—
    - (i) section 237(2) (accounting records or returns inadequate or accounts not agreeing with records and returns), or
    - (ii) section 237(3) (failure to obtain necessary information and explanations),

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and if so, set out the statement in full.

- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) If default is made in complying with this section or regulations made under it, the company and every officer of it who is in default is guilty of an offence and liable to a fine.
- (7) Section 240 (requirements in connection with publication of accounts) does not apply in relation to the provision to members of a company of a summary financial statement in accordance with this section.”.

## **16 Private companies: election to dispense with laying of accounts and reports before general meeting**

The following sections are inserted in Part VII of the Companies Act 1985—

*“Private companies*

### **252 Election to dispense with laying of accounts and reports before general meeting**

- (1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the laying of accounts and reports before the company in general meeting.
- (2) An election has effect in relation to the accounts and reports in respect of the financial year in which the election is made and subsequent financial years.
- (3) Whilst an election is in force, the references in the following provisions of this Act to the laying of accounts before the company in general meeting shall be read as references to the sending of copies of the accounts to members and others under section 238(1)—
  - (a) section 235(1) (accounts on which auditors are to report),
  - (b) section 270(3) and (4) (accounts by reference to which distributions are justified), and
  - (c) section 320(2) (accounts relevant for determining company’s net assets for purposes of ascertaining whether approval required for certain transactions);and the requirement in section 271(4) that the auditors' statement under that provision be laid before the company in general meeting shall be read as a requirement that it be sent to members and others along with the copies of the accounts sent to them under section 238(1).
- (4) If an election under this section ceases to have effect, section 241 applies in relation to the accounts and reports in respect of the financial year in which the election ceases to have effect and subsequent financial years.

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### **253 Right of shareholder to require laying of accounts**

- (1) Where an election under section 252 is in force, the copies of the accounts and reports sent out in accordance with section 238(1)—
  - (a) shall be sent not less than 28 days before the end of the period allowed for laying and delivering accounts and reports, and
  - (b) shall be accompanied, in the case of a member of the company, by a notice informing him of his right to require the laying of the accounts and reports before a general meeting;
 and section 238(5) (penalty for default) applies in relation to the above requirements as to the requirements contained in that section.
- (2) Before the end of the period of 28 days beginning with the day on which the accounts and reports are sent out in accordance with section 238(1), any member or auditor of the company may by notice in writing deposited at the registered office of the company require that a general meeting be held for the purpose of laying the accounts and reports before the company.
- (3) If the directors do not within 21 days from the date of the deposit of such a notice proceed duly to convene a meeting, the person who deposited the notice may do so himself.
- (4) A meeting so convened shall not be held more than three months from that date and shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (5) Where the directors do not duly convene a meeting, any reasonable expenses incurred by reason of that failure by the person who deposited the notice shall be made good to him by the company, and shall be recouped by the company out of any fees, or other remuneration in respect of their services, due or to become due to such of the directors as were in default.
- (6) The directors shall be deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening it.”.

## **17 Unlimited companies: exemption from requirement to deliver accounts and reports**

The following section is inserted in Part VII of the Companies Act 1985—

*“Unlimited companies*

### **254 Exemption from requirement to deliver accounts and reports**

- (1) The directors of an unlimited company are not required to deliver accounts and reports to the registrar in respect of a financial year if the following conditions are met.
- (2) The conditions are that at no time during the relevant accounting reference period—

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- (a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited, or
- (b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it, or
- (c) has the company been a parent company of an undertaking which was then limited.

The references above to an undertaking being limited at a particular time are to an undertaking (under whatever law established) the liability of whose members is at that time limited.

- (3) The exemption conferred by this section does not apply if at any time during the relevant accounting period the company carried on business as the promoter of a trading stamp scheme within the Trading Stamps Act 1964.
- (4) Where a company is exempt by virtue of this section from the obligation to deliver accounts, section 240 (requirements in connection with publication of accounts) has effect with the following modifications—
  - (a) in subsection (3)(b) for the words from “whether statutory accounts” to “have been delivered to the registrar” substitute “that the company is exempt from the requirement to deliver statutory accounts”, and
  - (b) in subsection (5) for “as required to be delivered to the registrar under section 242” substitute “as prepared in accordance with this Part and approved by the board of directors”.

## **18 Banking and insurance companies and groups: special provisions**

- (1) The following sections are inserted in Part VII of the Companies Act 1985—

*“Banking and insurance companies and groups*

### **255 Special provisions for banking and insurance companies**

- (1) A banking or insurance company may prepare its individual accounts in accordance with Part I of Schedule 9 rather than Schedule 4.
- (2) Accounts so prepared shall contain a statement that they are prepared in accordance with the special provisions of this Part relating to banking companies or insurance companies, as the case may be.
- (3) In relation to the preparation of individual accounts in accordance with the special provisions of this Part relating to banking or insurance companies, the references to the provisions of Schedule 4 in section 226(4) and (5) (relationship between specific requirements and duty to give true and fair view) shall be read as references to the provisions of Part I of Schedule 9.
- (4) The Secretary of State may, on the application or with the consent of the directors of a company which prepares individual accounts in accordance with the special provisions of this Part relating to banking or insurance companies, modify in relation to the company any of the requirements of this Part for the purpose of adapting them to the circumstances of the company.

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This does not affect the duty to give a true and fair view.

### **255A Special provisions for banking and insurance groups**

- (1) The parent company of a banking or insurance group may prepare group accounts in accordance with the provisions of this Part as modified by Part II of Schedule 9.
- (2) Accounts so prepared shall contain a statement that they are prepared in accordance with the special provisions of this Part relating to banking groups or insurance groups, as the case may be.
- (3) References in this Part to a banking group are to a group where—
  - (a) the parent company is a banking company, or
  - (b) at least one of the undertakings in the group is an authorised institution under the Banking Act 1987 and the predominant activities of the group are such as to make it inappropriate to prepare group accounts in accordance with the formats in Part I of Schedule 4.
- (4) References in this Part to an insurance group are to a group where—
  - (a) the parent company is an insurance company, or
  - (b) the predominant activity of the group is insurance business and activities which are a direct extension of or ancillary to insurance business.
- (5) In relation to the preparation of group accounts in accordance with the special provisions of this Part relating to banking or insurance groups, the references to the provisions of Schedule 4A in section 227(5) and (6) (relationship between specific requirements and duty to give true and fair view) shall be read as references to those provisions as modified by Part II of Schedule 9.
- (6) The Secretary of State may, on the application or with the consent of the directors of a company which prepares group accounts in accordance with the special provisions of this Part relating to banking or insurance groups, modify in relation to the company any of the requirements of this Part for the purpose of adapting them to the circumstances of the company.

### **255B Modification of disclosure requirements in relation to banking company or group**

- (1) In relation to a company which prepares accounts in accordance with the special provisions of this Part relating to banking companies or groups, the provisions of Schedule 5 (additional disclosure: related undertakings) have effect subject to Part III of Schedule 9.
- (2) In relation to a banking company, or the parent company of a banking company, the provisions of Schedule 6 (disclosure: emoluments and other benefits of directors and others) have effect subject to Part IV of Schedule 9.



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### **255C Directors' report where accounts prepared in accordance with special provisions**

- (1) The following provisions apply in relation to the directors' report of a company for a financial year in respect of which it prepares accounts in accordance with the special provisions of this Part relating to banking or insurance companies or groups.
- (2) The information required to be given by paragraph 6, 8 or 13 of Part I of Schedule 9 (which is allowed to be given in a statement or report annexed to the accounts), may be given in the directors' report instead.

Information so given shall be treated for the purposes of audit as forming part of the accounts.

- (3) The reference in section 234(1)(b) to the amount proposed to be carried to reserves shall be construed as a reference to the amount proposed to be carried to reserves within the meaning of Part I of Schedule 9.
- (4) If the company takes advantage, in relation to its individual or group accounts, of the exemptions conferred by paragraph 27 or 28 of Part I of Schedule 9, paragraph 1 of Schedule 7 (disclosure of asset values) does not apply.
- (5) The directors' report shall, in addition to complying with Schedule 7, also comply with Schedule 10 (which specifies additional matters to be disclosed).”.

- (2) The following section is inserted in Part VII of the Companies Act 1985—

### **“255D Power to apply provisions to banking partnerships**

- (1) The Secretary of State may by regulations apply to banking partnerships, subject to such exceptions, adaptations and modifications as he considers appropriate, the provisions of this Part applying to banking companies.
- (2) A “banking partnership” means a partnership which is an authorised institution under the Banking Act 1987.
- (3) Regulations under this section shall be made by statutory instrument.
- (4) No regulations under this section shall be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.”.

- (3) Schedule 9 to the Companies Act 1985 (form and content of special category accounts) is amended in accordance with Schedule 7 to this Act.

- (4) In that Schedule—

Part I contains amendments relating to the form and content of accounts of banking and insurance companies and groups,

Part II contains provisions with respect to the group accounts of banking and insurance groups,

Part III contains provisions adapting the requirements of Schedule 5 to the Companies Act 1985 (additional disclosure: related undertakings), and

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Part IV contains provisions relating to the requirements of Schedule 6 to that Act (additional disclosure: emoluments and other benefits of directors and others).

- (5) Schedule 8 to this Act (directors' report where accounts prepared in accordance with special provisions for banking and insurance companies and groups) is substituted for Schedule 10 to the Companies Act 1985.

*Supplementary provisions*

**19 Accounting standards**

The following section is inserted in Part VII of the Companies Act 1985, as the beginning of a Chapter III—

**“CHAPTER III**

SUPPLEMENTARY PROVISIONS

*Accounting standards*

**256 Accounting standards**

- (1) In this Part “accounting standards” means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.
- (2) References in this Part to accounting standards applicable to a company’s annual accounts are to such standards as are, in accordance with their terms, relevant to the company’s circumstances and to the accounts.
- (3) The Secretary of State may make grants to or for the purposes of bodies concerned with—
  - (a) issuing accounting standards,
  - (b) overseeing and directing the issuing of such standards, or
  - (c) investigating departures from such standards or from the accounting requirements of this Act and taking steps to secure compliance with them.
- (4) Regulations under this section may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.”.

**20 Power to alter accounting requirements**

The following section is inserted in Part VII of the Companies Act 1985—

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*“Power to alter accounting requirements*

**257 Power of Secretary of State to alter accounting requirements**

- (1) The Secretary of State may by regulations made by statutory instrument modify the provisions of this Part.
- (2) Regulations which—
  - (a) add to the classes of documents required to be prepared, laid before the company in general meeting or delivered to the registrar,
  - (b) restrict the classes of company which have the benefit of any exemption, exception or special provision,
  - (c) require additional matter to be included in a document of any class, or
  - (d) otherwise render the requirements of this Part more onerous,shall not be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.
- (3) Otherwise, a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations under this section may—
  - (a) make different provision for different cases or classes of case,
  - (b) repeal and re-enact provisions with modifications of form or arrangement, whether or not they are modified in substance,
  - (c) make consequential amendments or repeals in other provisions of this Act, or in other enactments, and
  - (d) contain such transitional and other incidental and supplementary provisions as the Secretary of State thinks fit.
- (5) Any modification by regulations under this section of section 258 or Schedule 10A (parent and subsidiary undertakings) does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.”.

**21 Parent and subsidiary undertakings**

- (1) The following section is inserted in Part VII of the Companies Act 1985—

*“Parent and subsidiary undertakings*

**258 Parent and subsidiary undertakings**

- (1) The expressions “parent undertaking” and “subsidiary undertaking” in this Part shall be construed as follows; and a “parent company” means a parent undertaking which is a company.
- (2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—
  - (a) it holds a majority of the voting rights in the undertaking, or

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- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
  - (c) it has the right to exercise a dominant influence over the undertaking—
    - (i) by virtue of provisions contained in the undertaking’s memorandum or articles, or
    - (ii) by virtue of a control contract, or
  - (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.
- (3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking—
- (a) if any of its subsidiary undertakings is a member of that undertaking, or
  - (b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.
- (4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking and—
- (a) it actually exercises a dominant influence over it, or
  - (b) it and the subsidiary undertaking are managed on a unified basis.
- (5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.
- (6) Schedule 10A contains provisions explaining expressions used in this section and otherwise supplementing this section.”.
- (2) Schedule 9 to this Act (parent and subsidiary undertakings: supplementary provisions) is inserted after Schedule 10 to the Companies Act 1985, as Schedule 10A.

## 22 Other interpretation provisions

The following sections are inserted in Part VII of the Companies Act 1985—

### *“Other interpretation provisions*

#### **259 Meaning of “undertaking” and related expressions**

- (1) In this Part “undertaking” means—
- (a) a body corporate or partnership, or
  - (b) an unincorporated association carrying on a trade or business, with or without a view to profit.
- (2) In this Part references to shares—
- (a) in relation to an undertaking with a share capital, are to allotted shares;
  - (b) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and

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- (c) in relation to an undertaking without capital, are to interests—
  - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.
- (3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

This is subject to provision in any specific context providing for the translation of such expressions.
- (4) References in this Part to “fellow subsidiary undertakings” are to undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.
- (5) In this Part “group undertaking”, in relation to an undertaking, means an undertaking which is—
  - (a) a parent undertaking or subsidiary undertaking of that undertaking, or
  - (b) a subsidiary undertaking of any parent undertaking of that undertaking.

## **260 Participating interests**

- (1) In this Part a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.
- (2) A holding of 20 per cent. or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.
- (3) The reference in subsection (1) to an interest in shares includes—
  - (a) an interest which is convertible into an interest in shares, and
  - (b) an option to acquire shares or any such interest;and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.
- (4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.
- (5) For the purposes of this section as it applies in relation to the expression “participating interest” in section 258(4) (definition of “subsidiary undertaking”)—
  - (a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings, and
  - (b) the references in subsection (1) to the purpose and activities of an undertaking include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.
- (6) In the balance sheet and profit and loss formats set out in Part I of Schedule 4, “participating interest” does not include an interest in a group undertaking.

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- (7) For the purposes of this section as it applies in relation to the expression “participating interest”—
- (a) in those formats as they apply in relation to group accounts, and
  - (b) in paragraph 20 of Schedule 4A (group accounts: undertakings to be accounted for as associated undertakings),
- the references in subsections (1) to (4) to the interest held by, and the purposes and activities of, the undertaking concerned shall be construed as references to the interest held by, and the purposes and activities of, the group (within the meaning of paragraph 1 of that Schedule).

### **261 Notes to the accounts**

- (1) Information required by this Part to be given in notes to a company’s annual accounts may be contained in the accounts or in a separate document annexed to the accounts. (2) References in this Part to a company’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision of this Act, and required or allowed by any such provision to be given in a note to company accounts.

### **262 Minor definitions**

- (1) In this Part—
- “annual accounts” means—
    - (a) the individual accounts required by section 226, and
    - (b) any group accounts required by section 227,
 (but see also section 230 (treatment of individual profit and loss account where group accounts prepared));
  - “annual report”, in relation to a company, means the directors' report required by section 234;
  - “balance sheet date” means the date as at which the balance sheet was made up;
  - “capitalisation”, in relation to work or costs, means treating that work or those costs as a fixed asset;
  - “credit institution” means an undertaking carrying on a deposit-taking business within the meaning of the Banking Act 1987;
  - “fixed assets” means assets of a company which are intended for use on a continuing basis in the company’s activities, and “current assets” means assets not intended for such use;
  - “group” means a parent undertaking and its subsidiary undertakings;
  - “included in the consolidation”, in relation to group accounts, or “included in consolidated group accounts”, means that the undertaking is included in the accounts by the method of full (and not proportional) consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly;
  - “purchase price”, in relation to an asset of a company or any raw materials or consumables used in the production of such an asset, includes any consideration (whether in cash or otherwise) given by the company in respect of that asset or those materials or consumables, as the case may be;

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“qualified”, in relation to an auditors' report, means that the report does not state the auditors' unqualified opinion that the accounts have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare accounts in accordance with this Act, under any corresponding legislation under which it is required to prepare accounts;

“true and fair view” refers—

- (a) in the case of individual accounts, to the requirement of section 226(2), and
- (b) in the case of group accounts, to the requirement of section 227(3);

“turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of—

- (i) trade discounts,
- (ii) value added tax, and
- (iii) any other taxes based on the amounts so derived.

- (2) In the case of an undertaking not trading for profit, any reference in this Part to a profit and loss account is to an income and expenditure account; and references to profit and loss and, in relation to group accounts, to a consolidated profit and loss account shall be construed accordingly.
- (3) References in this Part to “realised profits” and “realised losses”, in relation to a company's accounts, are to such profits or losses of the company as fall to be treated as realised in accordance with principles generally accepted, at the time when the accounts are prepared, with respect to the determination for accounting purposes of realised profits or losses.

This is without prejudice to—

- (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or
- (b) any specific provision for the treatment of profits or losses of any description as realised.

## **262A Index of defined expressions**

The following Table shows the provisions of this Part defining or otherwise explaining expressions used in this Part (other than expressions used only in the same section or paragraph)—

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“accounting reference date and accounting reference period	section 224
accounting standards and applicable accounting standards	section 256
annual accounts	
(generally)	section 262(1)
(includes notes to the accounts)	section 261(2)
annual report	section 262(1)

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associated undertaking (in Schedule 4A)	paragraph 20 of that Schedule
balance sheet (includes notes)	section 261(2)
balance sheet date	section 262(1)
banking group	section 255A(3)
capitalisation (in relation to work or costs)	section 262(1)
credit institution	section 262(1)
current assets	section 262(1)
fellow subsidiary undertaking	section 259(4)
financial year	section 223
fixed assets	section 262(1)
group	section 262(1)
group undertaking	section 259(5)
historical cost accounting rules (in Schedule 4)	paragraph 29 of that Schedule
included in the consolidation and related expressions	section 262(1)
individual accounts	section 262(1)
insurance group	section 255A(4)
land of freehold tenure and land of leasehold tenure (in relation to Scotland)	
—in Schedule 4	paragraph 93 of that Schedule
—in Schedule 9	paragraph 36 of that Schedule
lease, long lease and short lease	
—in Schedule 4	paragraph 83 of that Schedule
—in Schedule 9	paragraph 34 of that Schedule
listed investment	
—in Schedule 4	paragraph 84 of that Schedule
—in Schedule 9	paragraph 33 of that Schedule
notes to the accounts	section 261(1)
parent undertaking (and parent company)	section 258 and Schedule 10A
participating interest	section 260
pension costs (in Schedule 4)	paragraph 94(2) and (3) of that Schedule



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period allowed for laying and delivering accounts and reports	section 244
profit and loss account (includes notes)	section 261(2)
(in relation to a company not trading for profit)	section 262(2)
provision	
—in Schedule 4	paragraphs 88 and 89 of that Schedule
—in Schedule 9	paragraph 32 of that Schedule
purchase price	section 262(1)
qualified	section 262(1)
realised losses and realised profits	section 262(3)
reserve (in Schedule 9)	paragraph 32 of that Schedule
shares	section 259(2)
social security costs (in Schedule 4)	paragraph 94(1) and (3) of that Schedule
special provisions for banking and insurance companies and groups	sections 255 and 255A
subsidiary undertaking	section 258 and Schedule 10A
true and fair view	section 262(1)
turnover	section 262(1)
undertaking and related expressions	section 259(1) to (3)”””

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### *Consequential amendments*

## **23 Consequential amendments**

The enactments specified in Schedule 10 have effect with the amendments specified there, which are consequential on the amendments made by the preceding provisions of this Part.