



# Companies Act 2006

## 2006 CHAPTER 46

### PART 16

#### AUDIT

### CHAPTER 1

#### REQUIREMENT FOR AUDITED ACCOUNTS

##### *Requirement for audited accounts*

#### **475 Requirement for audited accounts**

- (1) A company's annual accounts for a financial year must be audited in accordance with this Part unless the company—
  - (a) is exempt from audit under—
    - section 477 (small companies), or
    - section 480 (dormant companies);
  - or
  - (b) is exempt from the requirements of this Part under section 482 (non-profit-making companies subject to public sector audit).
- (2) A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.
- (3) A company is not entitled to exemption under any of the provisions mentioned in subsection (1)(a) unless its balance sheet contains a statement by the directors to the effect that—
  - (a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476, and

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- (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts.
- (4) The statement required by subsection (2) or (3) must appear on the balance sheet above the signature required by section 414.

#### **476 Right of members to require audit**

- (1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 475(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year.
- (2) The notice must be given by—
  - (a) members representing not less in total than 10% in nominal value of the company’s issued share capital, or any class of it, or
  - (b) if the company does not have a share capital, not less than 10% in number of the members of the company.
- (3) The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year.

*Exemption from audit: small companies*

#### **477 Small companies: conditions for exemption from audit**

- (1) A company that meets the following conditions in respect of a financial year is exempt from the requirements of this Act relating to the audit of accounts for that year.
- (2) The conditions are—
  - (a) that the company qualifies as a small company in relation to that year,
  - (b) that its turnover in that year is not more than £5.6 million, and
  - (c) that its balance sheet total for that year is not more than £2.8 million.
- (3) For a period which is a company’s financial year but not in fact a year the maximum figure for turnover shall be proportionately adjusted.
- (4) For the purposes of this section—
  - (a) whether a company qualifies as a small company shall be determined in accordance with section 382(1) to (6), and
  - (b) “balance sheet total” has the same meaning as in that section.
- (5) This section has effect subject to—
  - section 475(2) and (3) (requirements as to statements to be contained in balance sheet),
  - section 476 (right of members to require audit),
  - section 478 (companies excluded from small companies exemption), and
  - section 479 (availability of small companies exemption in case of group company).

#### **478 Companies excluded from small companies exemption**

A company is not entitled to the exemption conferred by section 477 (small companies) if it was at any time within the financial year in question—

- (a) a public company,
- (b) a company that—
  - (i) is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
  - (ii) carries on insurance market activity, or
- (c) a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or an employers' association as defined in section 122 of that Act or Article 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)).

#### **479 Availability of small companies exemption in case of group company**

(1) A company is not entitled to the exemption conferred by section 477 (small companies) in respect of a financial year during any part of which it was a group company unless—

- (a) the conditions specified in subsection (2) below are met, or
- (b) subsection (3) applies.

(2) The conditions are—

- (a) that the group—
  - (i) qualifies as a small group in relation to that financial year, and
  - (ii) was not at any time in that year an ineligible group;
- (b) that the group's aggregate turnover in that year is not more than £5.6 million net (or £6.72 million gross);
- (c) that the group's aggregate balance sheet total for that year is not more than £2.8 million net (or £3.36 million gross).

(3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant.

(4) In this section—

- (a) “group company” means a company that is a parent company or a subsidiary undertaking, and
- (b) “the group”, in relation to a group company, means that company together with all its associated undertakings.

For this purpose undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.

(5) For the purposes of this section—

- (a) whether a group qualifies as small shall be determined in accordance with section 383 (companies qualifying as small: parent companies);
- (b) “ineligible group” has the meaning given by section 384(2) and (3);
- (c) a group's aggregate turnover and aggregate balance sheet total shall be determined as for the purposes of section 383;
- (d) “net” and “gross” have the same meaning as in that section;

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- (e) a company may meet any relevant requirement on the basis of either the gross or the net figure.
- (6) The provisions mentioned in subsection (5) apply for the purposes of this section as if all the bodies corporate in the group were companies.

*Exemption from audit: dormant companies*

**480 Dormant companies: conditions for exemption from audit**

- (1) A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if—
  - (a) it has been dormant since its formation, or
  - (b) it has been dormant since the end of the previous financial year and the following conditions are met.
- (2) The conditions are that the company—
  - (a) as regards its individual accounts for the financial year in question—
    - (i) is entitled to prepare accounts in accordance with the small companies regime (see sections 381 to 384), or
    - (ii) would be so entitled but for having been a public company or a member of an ineligible group, and
  - (b) is not required to prepare group accounts for that year.
- (3) This section has effect subject to—
  - section 475(2) and (3) (requirements as to statements to be contained in balance sheet),
  - section 476 (right of members to require audit), and
  - section 481 (companies excluded from dormant companies exemption).

**481 Companies excluded from dormant companies exemption**

A company is not entitled to the exemption conferred by section 480 (dormant companies) if it was at any time within the financial year in question a company that—

- (a) is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
- (b) carries on insurance market activity.

*Companies subject to public sector audit*

**482 Non-profit-making companies subject to public sector audit**

- (1) The requirements of this Part as to audit of accounts do not apply to a company for a financial year if it is non-profit-making and its accounts—
  - (a) are subject to audit—
    - (i) by the Comptroller and Auditor General by virtue of an order under section 25(6) of the Government Resources and Accounts Act 2000 (c. 20), or
    - (ii) by the Auditor General for Wales by virtue of section 96, or an order under section 144, of the Government of Wales Act 1998 (c. 38);

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- (b) are accounts—
    - (i) in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies, or
    - (ii) that are subject to audit by the Auditor General for Scotland by virtue of an order under section 483 (Scottish public sector companies: audit by Auditor General for Scotland); or
  - (c) are subject to audit by the Comptroller and Auditor General for Northern Ireland by virtue of an order under Article 5(3) of the Audit and Accountability (Northern Ireland) Order 2003 (S.I. 2003/418 (N.I. 5)).
- (2) In the case of a company that is a parent company or a subsidiary undertaking, subsection (1) applies only if every group undertaking is non-profit-making.
  - (3) In this section “non-profit-making” has the same meaning as in Article 48 of the Treaty establishing the European Community.
  - (4) This section has effect subject to section 475(2) (balance sheet to contain statement that company entitled to exemption under this section).

#### **483 Scottish public sector companies: audit by Auditor General for Scotland**

- (1) The Scottish Ministers may by order provide for the accounts of a company having its registered office in Scotland to be audited by the Auditor General for Scotland.
- (2) An order under subsection (1) may be made in relation to a company only if it appears to the Scottish Ministers that the company—
  - (a) exercises in or as regards Scotland functions of a public nature none of which relate to reserved matters (within the meaning of the Scotland Act 1998 (c. 46)), or
  - (b) is entirely or substantially funded from a body having accounts falling within paragraph (a) or (b) of subsection (3).
- (3) Those accounts are—
  - (a) accounts in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies,
  - (b) accounts which are subject to audit by the Auditor General for Scotland by virtue of an order under this section.
- (4) An order under subsection (1) may make such supplementary or consequential provision (including provision amending an enactment) as the Scottish Ministers think expedient.
- (5) An order under subsection (1) shall not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, the Scottish Parliament.

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*General power of amendment by regulations*

**484 General power of amendment by regulations**

- (1) The Secretary of State may by regulations amend this Chapter or section 539 (minor definitions) so far as applying to this Chapter by adding, altering or repealing provisions.
- (2) The regulations may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (3) Regulations under this section imposing new requirements, or rendering existing requirements more onerous, are subject to affirmative resolution procedure.
- (4) Other regulations under this section are subject to negative resolution procedure.

**CHAPTER 2**

APPOINTMENT OF AUDITORS

*Private companies*

**485 Appointment of auditors of private company: general**

- (1) An auditor or auditors of a private company must be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.
- (2) For each financial year for which an auditor or auditors is or are to be appointed (other than the company's first financial year), the appointment must be made before the end of the period of 28 days beginning with—
  - (a) the end of the time allowed for sending out copies of the company's annual accounts and reports for the previous financial year (see section 424), or
  - (b) if earlier, the day on which copies of the company's annual accounts and reports for the previous financial year are sent out under section 423.

This is the “period for appointing auditors”.

- (3) The directors may appoint an auditor or auditors of the company—
  - (a) at any time before the company's first period for appointing auditors,
  - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company's next period for appointing auditors, or
  - (c) to fill a casual vacancy in the office of auditor.
- (4) The members may appoint an auditor or auditors by ordinary resolution—
  - (a) during a period for appointing auditors,
  - (b) if the company should have appointed an auditor or auditors during a period for appointing auditors but failed to do so, or
  - (c) where the directors had power to appoint under subsection (3) but have failed to make an appointment.

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- (5) An auditor or auditors of a private company may only be appointed—
- (a) in accordance with this section, or
  - (b) in accordance with section 486 (default power of Secretary of State).

This is without prejudice to any deemed re-appointment under section 487.

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

- (1) If a private company fails to appoint an auditor or auditors in accordance with section 485, the Secretary of State may appoint one or more persons to fill the vacancy.
- (2) Where subsection (2) of that section applies and the company fails to make the necessary appointment before the end of the period for appointing auditors, the company must within one week of the end of that period give notice to the Secretary of State of his power having become exercisable.
- (3) If a company fails to give the notice required by this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**487 Term of office of auditors of private company**

- (1) An auditor or auditors of a private company hold office in accordance with the terms of their appointment, subject to the requirements that—
  - (a) they do not take office until any previous auditor or auditors cease to hold office, and
  - (b) they cease to hold office at the end of the next period for appointing auditors unless re-appointed.
- (2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless—
  - (a) he was appointed by the directors, or
  - (b) the company's articles require actual re-appointment, or
  - (c) the deemed re-appointment is prevented by the members under section 488, or
  - (d) the members have resolved that he should not be re-appointed, or
  - (e) the directors have resolved that no auditor or auditors should be appointed for the financial year in question.
- (3) This is without prejudice to the provisions of this Part as to removal and resignation of auditors.
- (4) No account shall be taken of any loss of the opportunity of deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

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#### **488 Prevention by members of deemed re-appointment of auditor**

- (1) An auditor of a private company is not deemed to be re-appointed under section 487(2) if the company has received notices under this section from members representing at least the requisite percentage of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed.
- (2) The “requisite percentage” is 5%, or such lower percentage as is specified for this purpose in the company’s articles.
- (3) A notice under this section—
  - (a) may be in hard copy or electronic form,
  - (b) must be authenticated by the person or persons giving it, and
  - (c) must be received by the company before the end of the accounting reference period immediately preceding the time when the deemed re-appointment would have effect.

#### *Public companies*

#### **489 Appointment of auditors of public company: general**

- (1) An auditor or auditors of a public company must be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.
- (2) For each financial year for which an auditor or auditors is or are to be appointed (other than the company’s first financial year), the appointment must be made before the end of the accounts meeting of the company at which the company’s annual accounts and reports for the previous financial year are laid.
- (3) The directors may appoint an auditor or auditors of the company—
  - (a) at any time before the company’s first accounts meeting;
  - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company’s next accounts meeting;
  - (c) to fill a casual vacancy in the office of auditor.
- (4) The members may appoint an auditor or auditors by ordinary resolution—
  - (a) at an accounts meeting;
  - (b) if the company should have appointed an auditor or auditors at an accounts meeting but failed to do so;
  - (c) where the directors had power to appoint under subsection (3) but have failed to make an appointment.
- (5) An auditor or auditors of a public company may only be appointed—
  - (a) in accordance with this section, or
  - (b) in accordance with section 490 (default power of Secretary of State).

#### **490 Appointment of auditors of public company: default power of Secretary of State**

- (1) If a public company fails to appoint an auditor or auditors in accordance with section 489, the Secretary of State may appoint one or more persons to fill the vacancy.

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- (2) Where subsection (2) of that section applies and the company fails to make the necessary appointment before the end of the accounts meeting, the company must within one week of the end of that meeting give notice to the Secretary of State of his power having become exercisable.
- (3) If a company fails to give the notice required by this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **491 Term of office of auditors of public company**

- (1) The auditor or auditors of a public company hold office in accordance with the terms of their appointment, subject to the requirements that—
  - (a) they do not take office until the previous auditor or auditors have ceased to hold office, and
  - (b) they cease to hold office at the conclusion of the accounts meeting next following their appointment, unless re-appointed.
- (2) This is without prejudice to the provisions of this Part as to removal and resignation of auditors.

#### *General provisions*

#### **492 Fixing of auditor’s remuneration**

- (1) The remuneration of an auditor appointed by the members of a company must be fixed by the members by ordinary resolution or in such manner as the members may by ordinary resolution determine.
- (2) The remuneration of an auditor appointed by the directors of a company must be fixed by the directors.
- (3) The remuneration of an auditor appointed by the Secretary of State must be fixed by the Secretary of State.
- (4) For the purposes of this section “remuneration” includes sums paid in respect of expenses.
- (5) This section applies in relation to benefits in kind as to payments of money.

#### **493 Disclosure of terms of audit appointment**

- (1) The Secretary of State may make provision by regulations for securing the disclosure of the terms on which a company’s auditor is appointed, remunerated or performs his duties.

Nothing in the following provisions of this section affects the generality of this power.

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- (2) The regulations may—
- (a) require disclosure of—
    - (i) a copy of any terms that are in writing, and
    - (ii) a written memorandum setting out any terms that are not in writing;
  - (b) require disclosure to be at such times, in such places and by such means as are specified in the regulations;
  - (c) require the place and means of disclosure to be stated—
    - (i) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
    - (ii) in the directors' report, or
    - (iii) in the auditor’s report on the company’s annual accounts.
- (3) The provisions of this section apply to a variation of the terms mentioned in subsection (1) as they apply to the original terms.
- (4) Regulations under this section are subject to affirmative resolution procedure.

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

- (1) The Secretary of State may make provision by regulations for securing the disclosure of—
- (a) the nature of any services provided for a company by the company’s auditor (whether in his capacity as auditor or otherwise) or by his associates;
  - (b) the amount of any remuneration received or receivable by a company’s auditor, or his associates, in respect of any such services.

Nothing in the following provisions of this section affects the generality of this power.

- (2) The regulations may provide—
- (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described);
  - (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);
  - (c) for the disclosure of separate amounts so received or receivable by the company’s auditor or any of his associates, or of aggregate amounts so received or receivable by all or any of those persons.
- (3) The regulations may—
- (a) provide that “remuneration” includes sums paid in respect of expenses;
  - (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
  - (c) apply to services provided for associates of a company as well as to those provided for a company;
  - (d) define “associate” in relation to an auditor and a company respectively.
- (4) The regulations may provide that any disclosure required by the regulations is to be made—

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- (a) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
  - (b) in the directors' report, or
  - (c) in the auditor's report on the company's annual accounts.
- (5) If the regulations provide that any such disclosure is to be made as mentioned in subsection (4)(a) or (b), the regulations may require the auditor to supply the directors of the company with any information necessary to enable the disclosure to be made.
- (6) Regulations under this section are subject to negative resolution procedure.

### CHAPTER 3

#### FUNCTIONS OF AUDITOR

##### *Auditor's report*

#### **495 Auditor's report on company's annual accounts**

- (1) A company's auditor must make a report to the company's members on all annual accounts of the company of which copies are, during his tenure of office—
- (a) in the case of a private company, to be sent out to members under section 423;
  - (b) in the case of a public company, to be laid before the company in general meeting under section 437.
- (2) The auditor's report must include—
- (a) an introduction identifying the annual accounts that are the subject of the audit and the financial reporting framework that has been applied in their preparation, and
  - (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
- (3) The report must state clearly whether, in the auditor's opinion, the annual accounts—
- (a) give a true and fair view—
    - (i) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year,
    - (ii) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,
    - (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and of 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;
  - (b) have been properly prepared in accordance with the relevant financial reporting framework; and
  - (c) have been prepared in accordance with the requirements of this Act (and, where applicable, Article 4 of the IAS Regulation).

Expressions used in this subsection that are defined for the purposes of Part 15 (see section 474) have the same meaning as in that Part.

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- (4) The auditor’s report—
- (a) must be either unqualified or qualified, and
  - (b) must include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report.

**496 Auditor’s report on directors’ report**

The auditor must state in his report on the company’s annual accounts whether in his opinion the information given in the directors’ report for the financial year for which the accounts are prepared is consistent with those accounts.

**497 Auditor’s report on auditable part of directors’ remuneration report**

- (1) If the company is a quoted company, the auditor, in his report on the company’s annual accounts for the financial year, must—
  - (a) report to the company’s members on the auditable part of the directors’ remuneration report, and
  - (b) state whether in his opinion that part of the directors’ remuneration report has been properly prepared in accordance with this Act.
- (2) For the purposes of this Part, “the auditable part” of a directors’ remuneration report is the part identified as such by regulations under section 421.

*Duties and rights of auditors*

**498 Duties of auditor**

- (1) A company’s auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to—
  - (a) whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him, and
  - (b) whether the company’s individual accounts are in agreement with the accounting records and returns, and
  - (c) in the case of a quoted company, whether the auditable part of the company’s directors’ remuneration report is in agreement with the accounting records and returns.
- (2) If the auditor is of the opinion—
  - (a) that adequate accounting records have not been kept, or that returns adequate for their audit have not been received from branches not visited by him, or
  - (b) that the company’s individual accounts are not in agreement with the accounting records and returns, or
  - (c) in the case of a quoted company, that the auditable part of its directors’ remuneration report is not in agreement with the accounting records and returns,
 the auditor shall state that fact in his report.

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- (3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.
- (4) If—
- (a) the requirements of regulations under section 412 (disclosure of directors' benefits: remuneration, pensions and compensation for loss of office) are not complied with in the annual accounts, or
  - (b) in the case of a quoted company, the requirements of regulations under section 421 as to information forming the auditable part of the directors' remuneration report are not complied with in that report,
- the auditor must include in his report, so far as he is reasonably able to do so, a statement giving the required particulars.
- (5) If the directors of the company have prepared accounts and reports in accordance with the small companies regime and in the auditor's opinion they were not entitled so to do, the auditor shall state that fact in his report.

#### **499 Auditor's general right to information**

- (1) An auditor of a company—
- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
  - (b) may require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are—
- (a) any officer or employee of the company;
  - (b) any person holding or accountable for any of the company's books, accounts or vouchers;
  - (c) any subsidiary undertaking of the company which is a body corporate incorporated in the United Kingdom;
  - (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
  - (e) any person who fell within any of paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.
- (3) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 501.
- (4) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

#### **500 Auditor's right to information from overseas subsidiaries**

- (1) Where a parent company has a subsidiary undertaking that is not a body corporate incorporated in the United Kingdom, the auditor of the parent company may require

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it to obtain from any of the following persons such information or explanations as he may reasonably require for the purposes of his duties as auditor.

- (2) Those persons are—
  - (a) the undertaking;
  - (b) any officer, employee or auditor of the undertaking;
  - (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
  - (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relates or relate.
- (3) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person concerned.
- (4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 501.
- (5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

#### **501 Auditor's rights to information: offences**

- (1) A person commits an offence who knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—
  - (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 499, and
  - (b) is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).
- (3) A person who fails to comply with a requirement under section 499 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanations.
- (4) If a parent company fails to comply with section 500, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (6) Nothing in this section affects any right of an auditor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 499 or 500.

## **502 Auditor’s rights in relation to resolutions and meetings**

- (1) In relation to a written resolution proposed to be agreed to by a private company, the company’s auditor is entitled to receive all such communications relating to the resolution as, by virtue of any provision of Chapter 2 of Part 13 of this Act, are required to be supplied to a member of the company.
- (2) A company’s auditor is entitled—
- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive,
  - (b) to attend any general meeting of the company, and
  - (c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.
- (3) Where the auditor is a firm, the right to attend or be heard at a meeting is exercisable by an individual authorised by the firm in writing to act as its representative at the meeting.

### *Signature of auditor’s report*

## **503 Signature of auditor’s report**

- (1) The auditor’s report must state the name of the auditor and be signed and dated.
- (2) Where the auditor is an individual, the report must be signed by him.
- (3) Where the auditor is a firm, the report must be signed by the senior statutory auditor in his own name, for and on behalf of the auditor.

## **504 Senior statutory auditor**

- (1) The senior statutory auditor means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with—
- (a) standards issued by the European Commission, or
  - (b) if there is no applicable standard so issued, any relevant guidance issued by—
    - (i) the Secretary of State, or
    - (ii) a body appointed by order of the Secretary of State.
- (2) The person identified as senior statutory auditor must be eligible for appointment as auditor of the company in question (see Chapter 2 of Part 42 of this Act).
- (3) The senior statutory auditor is not, by reason of being named or identified as senior statutory auditor or by reason of his having signed the auditor’s report, subject to any civil liability to which he would not otherwise be subject.
- (4) An order appointing a body for the purpose of subsection (1)(b)(ii) is subject to negative resolution procedure.

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### **505 Names to be stated in published copies of auditor's report**

- (1) Every copy of the auditor's report that is published by or on behalf of the company must—
  - (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
  - (b) if the conditions in section 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.
- (2) For the purposes of this section a company is regarded as publishing the report 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.
- (3) If a copy of the auditor's report is published without the statement required by this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **506 Circumstances in which names may be omitted**

- (1) The auditor's name and, where the auditor is a firm, the name of the person who signed the report as senior statutory auditor, may be omitted from—
  - (a) published copies of the report, and
  - (b) the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports),if the following conditions are met.
- (2) The conditions are that the company—
  - (a) considering on reasonable grounds that statement of the name would create or be likely to create a serious risk that the auditor or senior statutory auditor, or any other person, would be subject to violence or intimidation, has resolved that the name should not be stated, and
  - (b) has given notice of the resolution to the Secretary of State, stating—
    - (i) the name and registered number of the company,
    - (ii) the financial year of the company to which the report relates, and
    - (iii) the name of the auditor and (where the auditor is a firm) the name of the person who signed the report as senior statutory auditor.

#### *Offences in connection with auditor's report*

### **507 Offences in connection with auditor's report**

- (1) A person to whom this section applies commits an offence if he knowingly or recklessly causes a report under section 495 (auditor's report on company's annual accounts) to include any matter that is misleading, false or deceptive in a material particular.

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- (2) A person to whom this section applies commits an offence if he knowingly or recklessly causes such a report to omit a statement required by—
- (a) section 498(2)(b) (statement that company’s accounts do not agree with accounting records and returns),
  - (b) section 498(3) (statement that necessary information and explanations not obtained), or
  - (c) section 498(5) (statement that directors wrongly took advantage of exemption from obligation to prepare group accounts).
- (3) This section applies to—
- (a) where the auditor is an individual, that individual and any employee or agent of his who is eligible for appointment as auditor of the company;
  - (b) where the auditor is a firm, any director, member, employee or agent of the firm who is eligible for appointment as auditor of the company.
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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

- (1) The Secretary of State may issue guidance for the purpose of helping relevant regulatory and prosecuting authorities to determine how they should carry out their functions in cases where behaviour occurs that—
- (a) appears to involve the commission of an offence under section 507 (offences in connection with auditor’s report), and
  - (b) has been, is being or may be investigated pursuant to arrangements—
    - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or
    - (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases).
- (2) The Secretary of State must obtain the consent of the Attorney General before issuing any such guidance.
- (3) In this section “relevant regulatory and prosecuting authorities” means—
- (a) supervisory bodies within the meaning of Part 42 of this Act,
  - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (bodies concerned with accounting standards etc),
  - (c) the Director of the Serious Fraud Office,
  - (d) the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland, and
  - (e) the Secretary of State.
- (4) This section does not apply to Scotland.

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### **509 Guidance for regulatory authorities: Scotland**

- (1) The Lord Advocate may issue guidance for the purpose of helping relevant regulatory authorities to determine how they should carry out their functions in cases where behaviour occurs that—
  - (a) appears to involve the commission of an offence under section 507 (offences in connection with auditor’s report), and
  - (b) has been, is being or may be investigated pursuant to arrangements—
    - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or
    - (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases).
- (2) The Lord Advocate must consult the Secretary of State before issuing any such guidance.
- (3) In this section “relevant regulatory authorities” means—
  - (a) supervisory bodies within the meaning of Part 42 of this Act,
  - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (bodies concerned with accounting standards etc), and
  - (c) the Secretary of State.
- (4) This section applies only to Scotland.

## **CHAPTER 4**

### REMOVAL, RESIGNATION, ETC OF AUDITORS

#### *Removal of auditor*

### **510 Resolution removing auditor from office**

- (1) The members of a company may remove an auditor from office at any time.
- (2) This power is exercisable only—
  - (a) by ordinary resolution at a meeting, and
  - (b) in accordance with section 511 (special notice of resolution to remove auditor).
- (3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination—
  - (a) of his appointment as auditor, or
  - (b) of any appointment terminating with that as auditor.
- (4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

### **511 Special notice required for resolution removing auditor from office**

- (1) Special notice is required for a resolution at a general meeting of a company removing an auditor from office.
- (2) On receipt of notice of such an intended resolution the company must immediately send a copy of it to the auditor proposed to be removed.
- (3) The auditor proposed to be removed may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.
- (4) The company must (unless the representations are received by it too late for it to do so)—
  - (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (5) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.
- (6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the company's costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

### **512 Notice to registrar of resolution removing auditor from office**

- (1) Where a resolution is passed under section 510 (resolution removing auditor from office), the company must give notice of that fact to the registrar within 14 days.
- (2) If a company fails to give the notice required by this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of it who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **513 Rights of auditor who has been removed from office**

- (1) An auditor who has been removed by resolution under section 510 has, notwithstanding his removal, the rights conferred by section 502(2) in relation to any general meeting of the company—
  - (a) at which his term of office would otherwise have expired, or
  - (b) at which it is proposed to fill the vacancy caused by his removal.

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- (2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

*Failure to re-appoint auditor*

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

- (1) This section applies where a resolution is proposed as a written resolution of a private company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has expired, or is to expire, at the end of the period for appointing auditors.
- (2) The following provisions apply if—
- (a) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
  - (b) such a period has ended and an auditor or auditors should have been appointed but were not.
- (3) The company must send a copy of the proposed resolution to the person proposed to be appointed and to the outgoing auditor.
- (4) The outgoing auditor may, within 14 days after receiving the notice, make with respect to the proposed resolution representations in writing to the company (not exceeding a reasonable length) and request their circulation to members of the company.
- (5) The company must circulate the representations together with the copy or copies of the resolution circulated in accordance with section 291 (resolution proposed by directors) or section 293 (resolution proposed by members).
- (6) Where subsection (5) applies—
- (a) the period allowed under section 293(3) for service of copies of the proposed resolution is 28 days instead of 21 days, and
  - (b) the provisions of section 293(5) and (6) (offences) apply in relation to a failure to comply with that subsection as in relation to a default in complying with that section.
- (7) Copies of the representations need not be circulated if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

- (8) If any requirement of this section is not complied with, the resolution is ineffective.

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

- (1) This section applies to a resolution at a general meeting of a company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has ended, or is to end—

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- (a) in the case of a private company, at the end of the period for appointing auditors;
  - (b) in the case of a public company, at the end of the next accounts meeting.
- (2) Special notice is required of such a resolution if—
- (a) in the case of a private company—
    - (i) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
    - (ii) such a period has ended and an auditor or auditors should have been appointed but were not;
  - (b) in the case of a public company—
    - (i) there has been no accounts meeting of the company since the outgoing auditor ceased to hold office, or
    - (ii) there has been an accounts meeting at which an auditor or auditors should have been appointed but were not.
- (3) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be appointed and to the outgoing auditor.
- (4) The outgoing auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.
- (5) The company must (unless the representations are received by it too late for it to do so)—
- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (6) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the outgoing auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.
- (7) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the company's costs (in Scotland, expenses) on the application to be paid in whole or in part by the outgoing auditor, notwithstanding that he is not a party to the application.

### *Resignation of auditor*

## **516 Resignation of auditor**

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.
- (2) The notice is not effective unless it is accompanied by the statement required by section 519.

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- (3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

#### **517 Notice to registrar of resignation of auditor**

- (1) Where an auditor resigns the company must within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.
- (2) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

#### **518 Rights of resigning auditor**

- (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation (see section 519).
- (2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
- (3) He may request the company to circulate to its members—
- (a) before the meeting convened on his requisition, or
  - (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,
- a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (4) The company must (unless the statement is received too late for it to comply)—
- (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and
  - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.
- (5) The directors must within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given.
- (6) If default is made in complying with subsection (5), every director who failed to take all reasonable steps to secure that a meeting was convened commits an offence.
- (7) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

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- (8) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.
- (9) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

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

- (10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 502(2) in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above.

In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

*Statement by auditor on ceasing to hold office*

**519 Statement by auditor to be deposited with company**

- (1) Where an auditor of an unquoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company.
- (2) If he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he must deposit at the company's registered office a statement to that effect.
- (3) Where an auditor of a quoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office.
- (4) The statement required by this section must be deposited—
- (a) in the case of resignation, along with the notice of resignation;
  - (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor;
  - (c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (7) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;

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- (b) on summary conviction, to a fine not exceeding the statutory maximum.

## **520 Company's duties in relation to statement**

- (1) This section applies where the statement deposited under section 519 states the circumstances connected with the auditor's ceasing to hold office.
- (2) The company must within 14 days of the deposit of the statement either—
  - (a) send a copy of it to every person who under section 423 is entitled to be sent copies of the accounts, or
  - (b) apply to the court.
- (3) If it applies to the court, the company must notify the auditor of the application.
- (4) If the court is satisfied that the auditor is using the provisions of section 519 to secure needless publicity for defamatory matter—
  - (a) it shall direct that copies of the statement need not be sent out, and
  - (b) it may further order the company's costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, even if he is not a party to the application.

The company must within 14 days of the court's decision send to the persons mentioned in subsection (2)(a) a statement setting out the effect of the order.

- (5) If no such direction is made the company must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days of the court's decision or, as the case may be, of the discontinuance of the proceedings.
- (6) In the event of default in complying with this section an offence is committed by every officer of the company who is in default.
- (7) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (8) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

## **521 Copy of statement to be sent to registrar**

- (1) Unless within 21 days beginning with the day on which he deposited the statement under section 519 the auditor receives notice of an application to the court under section 520, he must within a further seven days send a copy of the statement to the registrar.
- (2) If an application to the court is made under section 520 and the auditor subsequently receives notice under subsection (5) of that section, he must within seven days of receiving the notice send a copy of the statement to the registrar.
- (3) An auditor who fails to comply with subsection (1) or (2) commits an offence.
- (4) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

- (5) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

## **522 Duty of auditor to notify appropriate audit authority**

- (1) Where—
- (a) in the case of a major audit, an auditor ceases for any reason to hold office, or
  - (b) in the case of an audit that is not a major audit, an auditor ceases to hold office before the end of his term of office,
- the auditor ceasing to hold office must notify the appropriate audit authority.
- (2) The notice must—
- (a) inform the appropriate audit authority that he has ceased to hold office, and
  - (b) be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with section 519.
- (3) If the statement so deposited is to the effect that he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, the notice must also be accompanied by a statement of the reasons for his ceasing to hold office.
- (4) The auditor must comply with this section—
- (a) in the case of a major audit, at the same time as he deposits a statement at the company's registered office in accordance with section 519;
  - (b) in the case of an audit that is not a major audit, at such time (not being earlier than the time mentioned in paragraph (a)) as the appropriate audit authority may require.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) If that person is a firm an offence is committed by—
- (a) the firm, and
  - (b) every officer of the firm who is in default.
- (7) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

## **523 Duty of company to notify appropriate audit authority**

- (1) Where an auditor ceases to hold office before the end of his term of office, the company must notify the appropriate audit authority.
- (2) The notice must—
- (a) inform the appropriate audit authority that the auditor has ceased to hold office, and

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- (b) be accompanied by—
  - (i) a statement by the company of the reasons for his ceasing to hold office, or
  - (ii) if the copy of the statement deposited by the auditor at the company’s registered office in accordance with section 519 contains a statement of circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, a copy of that statement.
- (3) The company must give notice under this section not later than 14 days after the date on which the auditor’s statement is deposited at the company’s registered office in accordance with section 519.
- (4) If a company fails to comply with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (6) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **524 Information to be given to accounting authorities**

- (1) The appropriate audit authority on receiving notice under section 522 or 523 of an auditor’s ceasing to hold office—
  - (a) must inform the accounting authorities, and
  - (b) may if it thinks fit forward to those authorities a copy of the statement or statements accompanying the notice.
- (2) The accounting authorities are—
  - (a) the Secretary of State, and
  - (b) any person authorised by the Secretary of State for the purposes of section 456 (revision of defective accounts: persons authorised to apply to court).
- (3) If either of the accounting authorities is also the appropriate audit authority it is only necessary to comply with this section as regards any other accounting authority.
- (4) If the court has made an order under section 520(4) directing that copies of the statement need not be sent out by the company, sections 460 and 461 (restriction on further disclosure) apply in relation to the copies sent to the accounting authorities as they apply to information obtained under section 459 (power to require documents etc).

#### **525 Meaning of “appropriate audit authority” and “major audit”**

- (1) In sections 522, 523 and 524 “appropriate audit authority” means—
  - (a) in the case of a major audit—
    - (i) the Secretary of State, or

- (ii) if the Secretary of State has delegated functions under section 1252 to a body whose functions include receiving the notice in question, that body;
  - (b) in the case of an audit that is not a major audit, the relevant supervisory body. “Supervisory body” has the same meaning as in Part 42 (statutory auditors) (see section 1217).
- (2) In sections 522 and this section “major audit” means a statutory audit conducted in respect of—
- (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
  - (b) any other person in whose financial condition there is a major public interest.
- (3) In determining whether an audit is a major audit within subsection (2)(b), regard shall be had to any guidance issued by any of the authorities mentioned in subsection (1).

### *Supplementary*

#### **526 Effect of casual vacancies**

If an auditor ceases to hold office for any reason, any surviving or continuing auditor or auditors may continue to act.

## **CHAPTER 5**

### QUOTED COMPANIES: RIGHT OF MEMBERS TO RAISE AUDIT CONCERNS AT ACCOUNTS MEETING

#### **527 Members' power to require website publication of audit concerns**

- (1) The members of a quoted company may require the company to publish on a website a statement setting out any matter relating to—
- (a) the audit of the company’s accounts (including the auditor’s report and the conduct of the audit) that are to be laid before the next accounts meeting, or
  - (b) any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting,
- that the members propose to raise at the next accounts meeting of the company.
- (2) A company is required to do so once it has received requests to that effect from—
- (a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or
  - (b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

- (3) In subsection (2) a “relevant right to vote” means a right to vote at the accounts meeting.

- (4) A request—
  - (a) may be sent to the company in hard copy or electronic form,
  - (b) must identify the statement to which it relates,
  - (c) must be authenticated by the person or persons making it, and
  - (d) must be received by the company at least one week before the meeting to which it relates.
- (5) A quoted company is not required to place on a website a statement under this section if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.
- (6) The court may order the members requesting website publication to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

#### **528 Requirements as to website availability**

- (1) The following provisions apply for the purposes of section 527 (website publication of members' statement of audit concerns).
- (2) The information must be made available on a website that—
  - (a) is maintained by or on behalf of the company, and
  - (b) identifies the company in question.
- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted.
- (4) The statement—
  - (a) must be made available within three working days of the company being required to publish it on a website, and
  - (b) must be kept available until after the meeting to which it relates.
- (5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if—
  - (a) the information is made available on the website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

#### **529 Website publication: company's supplementary duties**

- (1) A quoted company must in the notice it gives of the accounts meeting draw attention to—
  - (a) the possibility of a statement being placed on a website in pursuance of members' requests under section 527, and
  - (b) the effect of the following provisions of this section.
- (2) A company may not require the members requesting website publication to pay its expenses in complying with that section or section 528 (requirements in connection with website publication).

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- (3) Where a company is required to place a statement on a website under section 527 it must forward the statement to the company's auditor not later than the time when it makes the statement available on the website.
- (4) The business which may be dealt with at the accounts meeting includes any statement that the company has been required under section 527 to publish on a website.

### **530 Website publication: offences**

- (1) In the event of default in complying with
  - (a) section 528 (requirements as to website publication), or
  - (b) section 529 (companies' supplementary duties in relation to request for website publication),an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **531 Meaning of “quoted company”**

- (1) For the purposes of this Chapter a company is a quoted company if it is a quoted company in accordance with section 385 (quoted and unquoted companies for the purposes of Part 15) in relation to the financial year to which the accounts to be laid at the next accounts meeting relate.
- (2) The provisions of subsections (4) to (6) of that section (power to amend definition by regulations) apply in relation to the provisions of this Chapter as in relation to the provisions of that Part.

## **CHAPTER 6**

### **AUDITORS' LIABILITY**

#### *Voidness of provisions protecting auditors from liability*

### **532 Voidness of provisions protecting auditors from liability**

- (1) This section applies to any provision—
  - (a) for exempting an auditor of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring in the course of the audit of accounts, or
  - (b) by which a company directly or indirectly provides an indemnity (to any extent) for an auditor of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is auditor occurring in the course of the audit of accounts.
- (2) Any such provision is void, except as permitted by—

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- (a) section 533 (indemnity for costs of successfully defending proceedings), or
  - (b) sections 534 to 536 (liability limitation agreements).
- (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.
- (4) For the purposes of this section companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

*Indemnity for costs of defending proceedings*

**533 Indemnity for costs of successfully defending proceedings**

Section 532 (general voidness of provisions protecting auditors from liability) does not prevent a company from indemnifying an auditor against any liability incurred by him—

- (a) in defending proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or
- (b) in connection with an application under section 1157 (power of court to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.

*Liability limitation agreements*

**534 Liability limitation agreements**

- (1) A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of accounts, of which the auditor may be guilty in relation to the company.
- (2) Section 532 (general voidness of provisions protecting auditors from liability) does not affect the validity of a liability limitation agreement that—
- (a) complies with section 535 (terms of liability limitation agreement) and of any regulations under that section, and
  - (b) is authorised by the members of the company (see section 536).
- (3) Such an agreement—
- (a) is effective to the extent provided by section 537, and
  - (b) is not subject—
    - (i) in England and Wales or Northern Ireland, to section 2(2) or 3(2)(a) of the Unfair Contract Terms Act 1977 (c. 50);
    - (ii) in Scotland, to section 16(1)(b) or 17(1)(a) of that Act.

**535 Terms of liability limitation agreement**

- (1) A liability limitation agreement—
- (a) must not apply in respect of acts or omissions occurring in the course of the audit of accounts for more than one financial year, and
  - (b) must specify the financial year in relation to which it applies.

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- (2) The Secretary of State may by regulations—
- (a) require liability limitation agreements to contain specified provisions or provisions of a specified description;
  - (b) prohibit liability limitation agreements from containing specified provisions or provisions of a specified description.
- “Specified” here means specified in the regulations.
- (3) Without prejudice to the generality of the power conferred by subsection (2), that power may be exercised with a view to preventing adverse effects on competition.
- (4) Subject to the preceding provisions of this section, it is immaterial how a liability limitation agreement is framed.
- In particular, the limit on the amount of the auditor’s liability need not be a sum of money, or a formula, specified in the agreement.
- (5) Regulations under this section are subject to negative resolution procedure.

### **536 Authorisation of agreement by members of the company**

- (1) A liability limitation agreement is authorised by the members of the company if it has been authorised under this section and that authorisation has not been withdrawn.
- (2) A liability limitation agreement between a private company and its auditor may be authorised—
- (a) by the company passing a resolution, before it enters into the agreement, waiving the need for approval,
  - (b) by the company passing a resolution, before it enters into the agreement, approving the agreement’s principal terms, or
  - (c) by the company passing a resolution, after it enters into the agreement, approving the agreement.
- (3) A liability limitation agreement between a public company and its auditor may be authorised—
- (a) by the company passing a resolution in general meeting, before it enters into the agreement, approving the agreement’s principal terms, or
  - (b) by the company passing a resolution in general meeting, after it enters into the agreement, approving the agreement.
- (4) The “principal terms” of an agreement are terms specifying, or relevant to the determination of—
- (a) the kind (or kinds) of acts or omissions covered,
  - (b) the financial year to which the agreement relates, or
  - (c) the limit to which the auditor’s liability is subject.
- (5) Authorisation under this section may be withdrawn by the company passing an ordinary resolution to that effect—
- (a) at any time before the company enters into the agreement, or
  - (b) if the company has already entered into the agreement, before the beginning of the financial year to which the agreement relates.

Paragraph (b) has effect notwithstanding anything in the agreement.

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### **537 Effect of liability limitation agreement**

- (1) A liability limitation agreement is not effective to limit the auditor’s liability to less than such amount as is fair and reasonable in all the circumstances of the case having regard (in particular) to—
  - (a) the auditor’s responsibilities under this Part,
  - (b) the nature and purpose of the auditor’s contractual obligations to the company, and
  - (c) the professional standards expected of him.
- (2) A liability limitation agreement that purports to limit the auditor’s liability to less than the amount mentioned in subsection (1) shall have effect as if it limited his liability to that amount.
- (3) In determining what is fair and reasonable in all the circumstances of the case no account is to be taken of—
  - (a) matters arising after the loss or damage in question has been incurred, or
  - (b) matters (whenever arising) affecting the possibility of recovering compensation from other persons liable in respect of the same loss or damage.

### **538 Disclosure of agreement by company**

- (1) A company which has entered into a liability limitation agreement must make such disclosure in connection with the agreement as the Secretary of State may require by regulations.
- (2) The regulations may provide, in particular, that any disclosure required by the regulations shall be made—
  - (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), or
  - (b) in the directors' report.
- (3) Regulations under this section are subject to negative resolution procedure.

## **CHAPTER 7**

### SUPPLEMENTARY PROVISIONS

### **539 Minor definitions**

In this Part—

“e-money issuer” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on the activity of issuing electronic money within the meaning of article 9B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

“ISD investment firm” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000;

“qualified”, in relation to an auditor’s report (or a statement contained in an auditor’s report), means that the report or statement does not state the

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auditor’s 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;

“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—

- (a) trade discounts,
- (b) value added tax, and
- (c) any other taxes based on the amounts so derived;

“UCITS management company” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000.