

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

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 15: Accounts and Reports

Chapter 11: Revision of Defective Accounts and Reports

Section 454: Voluntary revision of accounts etc

700. This section restates section 245 of the 1985 Act providing for the voluntary revision of defective accounts and reports and summary financial statements. It replicates the existing power for the Secretary of State to make provision in regulations as to the application of the provisions of this Act to revised annual accounts and reports and summary financial statements. Regulations under this section are subject to the negative resolution procedure, which is consistent with the existing powers.

Section 455: Secretary of State's notice in respect of accounts or reports

701. This section re-enacts section 245A of the 1985 Act. It concerns the Secretary of State's giving notice to the directors of a company if there is or may be a question as to whether the annual accounts or directors' report comply with the requirements of the Act or the IAS Regulation (Regulation (EC) 1606/2002 on the application of international accounting standards).

Sections 456 to 458: Application to court

702. [Sections 456](#) and [457](#) concern applications to the court in respect of defective accounts or reports. They re-enact sections 245B and 245C of the 1985 Act. Section 457 gives the Secretary of State the power to authorise a person for the purposes of section 456 to apply to the courts to require the directors of companies to prepare revised accounts and reports where the original accounts or reports were defective. Authorisation is subject to the negative resolution procedure, which corresponds to the existing provision. The Financial Reporting Review Panel (FRRP) is the only authorised person under this provision to date (the [Companies \(Defective Accounts\) \(Authorised Person\) Order 2005: SI 2005/699](#)).

703. [Section 458](#) re-enacts sections 245D and 245E of the 1985 Act. It provides for the disclosure of information by the Commissioners for Her Majesty's Revenue and Customs to a person authorised under section 457 (currently the FRRP) to apply to the court in respect of defective accounts and reports. The provision contains important limitations, including criminal offences for use or disclosure of the information other than for permitted purposes. Section 458(5)(b)(ii) increases the term of imprisonment from three months to six months for a person convicted on summary conviction in Scotland or Northern Ireland for an offence of unlawful disclosure. *Subsection (2)* provides that personal data may not be disclosed in contravention of the Data Protection Act 1998.

Section 459: Power of authorised person to require documents, information and explanations

704. This section re-enacts section 245F of the 1985 Act. *Subsections (1) to (3)* provide the FRRP (as the person authorised under section 457) with a statutory power to require a company and its officers, employees and auditors to provide documents and information. Where a person refuses to provide information or documents to the FRRP, the FRRP may apply to the court for an order. The court may make an order requiring disclosure. Failure to comply with such an order would be contempt of court.

Section 460: Restrictions on disclosure of information obtained under compulsory powers

705. This section re-enacts section 245G of the 1985 Act. It ensures that information obtained by the FRRP under the powers in section 459 is subject to restrictions on onward disclosure. Information relating to the private affairs of an individual or to any particular business may not be disclosed by the FRRP without the consent of the individual or business in question, except for the purposes of carrying out the FRRP's functions, or unless it is disclosed to specified persons or for specified purposes set out in section 461.

Section 461: Permitted disclosure of information obtained under compulsory powers

706. This section restates section 245G(3) of, and Schedule 7B to, the 1985 Act with modifications. It sets out the disclosures of information obtained by the authorised person under section 459 that are permitted. *Subsection (3)* lists the specified persons to whom disclosures are permitted and *subsection (4)* lists the specified purposes for which disclosure may be made. *Subsections (5) and (6)* set out the circumstances in which a disclosure to an overseas regulatory authority is permitted. *Subsection (7)* provides that nothing in the section authorises a disclosure in contravention of the Data Protection Act 1998.

Section 462: Power to amend categories of permitted disclosure

707. This section re-enacts section 245G(4) to (6) of the 1985 Act. It gives the Secretary of State power to amend the disclosure provisions relating to information obtained by the authorised person. As under the current law, an order under the section is subject to the negative resolution procedure.