

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 5: Auditors ceasing to hold office

Part 1: Notification requirements

545. *Part 1* of Schedule 5 makes amendments to Chapter 4 of Part 16 of the Companies Act 2006 (the “2006 Act”) and, together with Part 2 of the Schedule, forms part of the law of England and Wales, Scotland and Northern Ireland (in line with the extent of the 2006 Act).
546. *Paragraphs 2 and 4* omit sections 512 and 517 respectively of the 2006 Act and, in doing so, remove the requirements for a company to notify the registrar of companies if its auditor is removed from office by the company or resigns from office.
547. *Paragraph 3* amends subsection (2) of section 516 of the 2006 Act. Currently section 516 provides that a notice of resignation sent by an auditor of a company is ineffective if that notice is not accompanied by the statement required by the current section 519. The effect of the amendment is that an auditor’s notice of resignation will only be ineffective if the auditor is resigning from a public interest company and that notice is not accompanied by a statement pursuant to the amended section 519.
548. *Paragraphs 5, 7 and 8* make amendments to sections 518, 520 and 521 (respectively) of the 2006 Act consistent with the changes to section 519 made by section 18. In section 518, the effect is that, for a non-public interest company, a resigning auditor’s rights (to call a shareholders’ meeting to explain his or her (or its) reasons for resigning) do not apply where the auditor’s statement under new section 519(1) includes a declaration pursuant to new section 519(3B) that the auditor considers that none of his or her (or its) reasons for leaving, and no connected matters, need to be brought to the attention of shareholders or creditors.
549. *Paragraphs 7 and 8* make similar amendments to sections 520 and 521 (respectively). The effect is that, where the auditor’s statement includes the declaration pursuant to new section 519(3B) described above, a non-public interest company does not need to circulate a copy of the auditor’s statement under new section 519(1) to its shareholders and creditors, and the auditor does not need to send a copy to the registrar of companies.
550. Currently section 522 provides that an auditor must in many cases notify the audit authority of his or her (or its) reasons for leaving office. *Paragraph 9* amends this requirement such that only an auditor who must send a statement to the company in accordance with new section 519(1) must send a copy of that statement to the appropriate audit authority.
551. *Paragraph 10* removes the mandatory duty in section 524 for an audit authority to inform the accounting authorities (the Financial Reporting Council’s conduct committee and the Secretary of State) about an auditor’s departure. However, the amending provision makes it clear that the audit authority has a discretion to pass on

to the accounting authorities a copy of the auditor's statement or any other relevant information connected to the auditor's departure.

Part 2: Miscellaneous

552. *Paragraph 14* substitutes, for subsections (1) and (2) of section 514 of the 2006 Act, subsections (1), (2) and (2A). Generally speaking, this section applies where a resolution is proposed as a written resolution of a private company whose effect is the appointment, at the end of the "period for appointing auditors" (see section 485 of the 2006 Act), of a new auditor in place of the current auditor or, where the company does not have an auditor, of an individual (or firm) who was not the auditor when the company last had an auditor. Section 514 sets out a special procedure that must be followed where such a resolution is proposed, which includes the sending by the company of a copy of the written resolution to both the current/last auditor and the new auditor, and allowing the former to make representations. The amendments make it clearer when section 514 does and does not apply. The special procedure will not apply where the current/last auditor already has or had analogous rights to make representations under section 511 (there has been a resolution at a general meeting removing the auditor) or 518 (the auditor has resigned). In cases where the company does not have an auditor, the special procedure is also not applicable where the previous auditor has already had the opportunity to make representations under section 514 (or 515 – see below) or where a period for appointing auditors has already ended since the departure.
553. *Paragraph 15* amends section 515 by substituting new subsections (1), (1A), (2) and (2A) for existing subsections (1) and (2). Section 515 makes similar provision to section 514 where a resolution is proposed at a shareholder meeting whose effect would be to appoint a new auditor in place of the incumbent or, where the company does not have an auditor, an individual (or firm) other than the individual (or firm) who (or which) was the last auditor. Section 515 stipulates that special notice of such a resolution is required and provides for the sending by the company of a copy of the intended resolution to both the current/last auditor and the new auditor. It gives the former the opportunity to make representations. Like the amendments being made to section 514, the paragraph 15 amendments make it clearer when special notice and the related rights to make representations etc do and do not apply. Special notice etc will not apply where the current/last auditor has or had analogous rights to make representations under section 511 or 518. In cases where the company does not have an auditor, special notice etc is also not applicable where the individual (or firm) who was the last auditor has already had the opportunity to make representations under section 515 (or 514 – see above) or where, in the case of a private company, a period for appointing auditors has already ended or, in the case of a public company, an accounts meeting has already taken place since the departure.
554. Broadly speaking, *paragraphs 16 to 20* replace references to documents being "deposited" (e.g. at the company's registered office) with references to documents being "sent" or "received". The effect is to facilitate electronic communication by engaging section 1143 of, and Schedules 4 and 5 to, the 2006 Act.
555. *Schedule 5* comes into force on a day to be appointed by the Secretary of State in a commencement order.