

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 15: Accounts and Reports

632. The provisions of this Part replace the provisions of Part 7 of the 1985 Act relating to accounts and reports. The provisions of Part 7 of the 1985 Act relating to audit are replaced by provisions in Part 16 of the Act.
633. The provisions have been reordered and redrafted to make it easier for companies of whatever size to find the requirements relevant to them. In Part 7 of the 1985 Act the provisions applying to small companies are generally expressed as modifications of the provisions applying to large companies. These sections proceed on the opposite basis: where provisions do not apply to all kinds of company, provisions applying to small companies appear before the provisions applying to other companies.
634. A further change is to enable the Secretary of State to replace the detailed Schedules to Part 7 of the 1985 Act by regulations. This will give more flexibility to arrange the material currently in Schedules to make it easier to follow for different types of company. It is unnecessary and undesirable to have parallel and duplicative regimes on the detail for different types of company in primary legislation, but this could be done in parallel sets of regulations for different sizes and types of company.
635. The main substantive changes in this Part are:
- a reduction in the time limit for private companies to file their accounts from ten months to nine months after the year end (section 442);
 - a reduction in the time limit for public companies to lay full financial statements before the company in general meeting and file them from 7 months to 6 months after the year end (section 442);
 - new requirements for quoted companies to publish their annual accounts and reports on a website (section 430); and
 - replacement of the general power of the Secretary of State to alter accounting requirements in section 257 of the 1985 Act by a general power of amendment by regulations (section 468) and more specific powers in relation to specific sections.

Chapter 1: Introduction

Section 380: Scheme of this Part

636. This introductory section indicates the main way in which the structure of this Part differs from that of Part 7 of the 1985 Act: provisions relating to small companies are set out before provisions relating to larger companies; provisions applying to private companies appear before those applying to public companies; and provisions applying to quoted companies appear after those applying to other companies.

Companies subject to the small companies regime

Section 381: Companies subject to the small companies regime

Section 382: Companies qualifying as small: general

Section 383: Companies qualifying as small: parent companies

Section 384: Companies excluded from the small companies regime

637. These sections set out which companies, parent companies or groups fall within the small companies regime – that is, those that qualify as small companies or groups and are not excluded from the regime for one of the reasons set out in section 384. With two small changes, the conditions for qualification as a small company are unchanged from the current regime (sections 247, 247A and 249 of the 1985 Act). Firstly, section 382(5) now contains a generalised definition of balance sheet total for both Companies Act and IAS individual accounts. Secondly, whereas section 247A(2) of the 1985 Act provides that a group is ineligible if any of its members is a body corporate having power to offer its shares or debentures to the public, the reference in section 384(2)(b) is now to a body corporate whose securities are admitted to trading on a regulated market in an EEA state. The definition of “regulated market” is to be found in section 1173. This reflects changes made by the Accounts Modernisation Directive (2003/51/EEC).

Section 385: Quoted and unquoted companies

638. The definitions of quoted and unquoted company in this section are equivalent to the definition of “quoted company” in section 262 of the 1985 Act. A power is conferred to amend the definition of “quoted company” by regulations. If the regulations extend the application of this Part then they will be subject to affirmative resolution procedure. Otherwise they are subject to negative resolution procedure.

Chapter 2: Accounting Records

Sections 386 to 389: Accounting records

639. These sections set out the general duty to keep accounting records and specify where and for how long records are to be kept. They replace equivalent provisions in sections 221 and 222 of the 1985 Act. Their purpose is to ensure that businesses record transactions to enable them to show the company’s financial position and to prepare accounts which comply with the Companies Act and, where relevant, with International Accounting Standards. “Accounting records” is a broad term and there is no specific definition as the records may differ depending on the nature and complexity of the business. For a simple business these may include, for example, bank statements, purchase orders, sales and purchase invoices, whilst a more sophisticated business may have integrated records, which it holds electronically.

640. **Section 387** creates a criminal offence for every officer of a company who is in default, where the company has failed to keep adequate accounting records under section 386. The section replicates the existing penalties under section 221(5) and (6) of the 1985 Act (imprisonment or a fine).

641. **Section 389** makes similar provision in relation to failure to comply with section 388, replacing section 222(4) and (6) of the 1985 Act.

Chapter 3: a Company’s Financial Year

Section 390: A company’s financial year

642. This section replaces section 223 of the 1985 Act. A company’s financial year is the period for which its accounts and reports must be prepared. A company’s financial year

is the same as its accounting reference period (see section 391), subject to the directors' decision to alter the last day of the period by plus or minus seven days.

Section 391: Accounting reference periods and accounting reference date

Section 392: Alteration of accounting reference date

643. These sections replace sections 224 and 225 of the 1985 Act.
644. **Section 391(2) and (3)** preserve the accounting reference dates of companies incorporated before 1st April 1996 (in the case of GB companies), and before 22nd August 1997 (in the case of Northern Irish companies). Otherwise, a company's accounting reference date is the last day of the month in which the anniversary of its incorporation falls. Its first accounting reference period is a period of more than six months but not more than eighteen months beginning with the date of incorporation and ending with the accounting reference date unless the company changes its accounting reference date (the date on which the accounting reference period ends), in accordance with section 392. Subsequent accounting reference periods (financial years) are successive periods of 12 months, again subject to any alteration of the accounting reference date.
645. **Section 392(4)** provides that a company cannot change its accounting reference date if the period allowed for delivering accounts and reports to the registrar for that period has already expired. Under the corresponding provision in the 1985 Act, the company cannot change the date "if the period allowed for laying and delivering accounts and reports in relation to that period has already expired." Under the Act only public companies are obliged to lay their accounts at a general meeting (section 437).

Chapter 4: Annual Accounts

Section 393: Accounts to give true and fair view

646. **Subsection (1)** introduces an overarching obligation on directors (the preparers of accounts) not to approve accounts unless they give a true and fair view of the financial position of the company and, in the case of group accounts, the group. This provision reflects the underlying legal duty already expressed in Community law.
647. **Subsection (2)** in addition places a requirement on auditors to take this overarching duty to give a true and fair view into consideration when giving an opinion on the accounts. This requirement supplements the functions of an auditor set out in section 485.

Individual accounts

648. **Sections 394 to 397**, which replace sections 226, 226A and 226B of the 1985 Act, concern the duty of the directors to prepare individual accounts. The individual accounts may either be prepared under the Act (Companies Act individual accounts) or (unless the company is a charity) in accordance with international accounting standards adopted under the IAS Regulation (IAS individual accounts). The terms "IAS Regulation" and "international accounting standards" are defined in section 474. Once a company has switched to IAS individual accounts all subsequent individual accounts must be prepared in accordance with IAS unless there is a relevant change of circumstance (see section 395(3) to (5)). The provisions concerning the form and content of Companies Act accounts to be found in the Schedules to Part 7 of the 1985 Act will in future be contained in regulations to be made by the Secretary of State (section 396(3)). The Parliamentary procedure for such regulations is set out in section 473.

Group accounts: small companies

Section 398: Option to prepare group accounts

649. This section provides that a company that is subject to the small companies regime and is a parent company is not obliged to prepare group accounts in addition to its individual accounts, (restating section 248 of the 1985 Act), but it may opt to do so. The current exemption in section 248 of the 1985 Act from preparation of group accounts by parent companies heading medium sized groups has been abolished, following the substantial increase in the financial thresholds for medium sized groups in 2004.

Group accounts: other companies

Sections 399 to 402: group accounts: other companies

650. The sections relating to group accounts have been reorganised to make them easier to follow.
651. **Sections 399 to 402** re-enact sections 227(1) and (8), 228, 228A and 229(5) of the 1985 Act. Section 399 concerns the requirements and exemptions from requirements in relation to group accounts. Parent companies not subject to the small companies regime have the duty to prepare consolidated accounts unless exempt from having to do so under sections 400 to 402. Section 400 provides an exemption from preparing group accounts for companies included in EEA group accounts of a larger group. Section 401 provides such an exemption for companies included in non-EEA group accounts of a larger group, and section 402 provides an exemption when all the company's subsidiary undertakings could be excluded from consolidation in Companies Act group accounts (see section 405).

Group accounts: general

Section 403: Group accounts: applicable accounting framework

652. This section replaces section 227(2) to (7) of the 1985 Act. Parent companies whose securities are publicly traded must prepare group accounts in accordance with the IAS Regulation. Other parent companies (with the exception of charitable companies) have the choice whether to prepare group accounts under the Companies Act (Companies Act group accounts) or in accordance with adopted international accounting standards (IAS group accounts). Once a company has switched to IAS group accounts all subsequent group accounts must be prepared in accordance with IAS unless there is a relevant change of circumstance (see *subsections (4) to (6)*).

Section 404: Companies Act group accounts

653. For companies preparing Companies Act group accounts, this section gives the Secretary of State power to make provision by regulations as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts. The regulations will replace the current requirements contained in Schedule 4A to the 1985 Act. These regulations are subject to the Parliamentary procedure in section 473.

Section 405: Companies Act group accounts: subsidiary undertakings included in the consolidation

654. This section replaces section 229 of the 1985 Act. It requires all subsidiary undertakings to be included in the consolidated accounts subject to certain permitted exclusions.

Section 406: IAS group accounts

655. This section re-enacts section 227B of the 1985 Act. A company may opt or may be required to prepare group accounts in accordance with international accounting standards. This section provides that where it does so, this must be stated in the notes to the accounts.

Section 407: Consistency of financial reporting within group

656. This section re-enacts section 227C of the 1985 Act. If the parent company prepares both consolidated and individual accounts under IAS, it is not required to ensure that all its subsidiary undertakings also use IAS. However, it must otherwise ensure that its individual accounts and those of all its subsidiary undertakings use the same financial reporting framework, unless there are good reasons for not doing so.

Section 408: Individual profit and loss account where group accounts prepared

657. This section replaces section 230 of the 1985 Act. A parent company that prepares group accounts and that meets the criteria in *subsection (1)(a) and (b)* may, subject to the profit and loss account being approved by the directors, dispense with the inclusion of a profit and loss account in the company's accounts, for example when delivered to the registrar. The profit and loss account may also omit the information on employee numbers and costs required by section 411. The exemption currently provided for in section 230(2) of the 1985 Act for certain information required by provisions of Schedule 4 to the 1985 Act, will be provided for in regulations under section 396.

Information to be given in notes to the accounts

Section 409: Information about related undertakings

658. This section replaces section 231(1) to (4) of the 1985 Act. The requirement to disclose information about related undertakings in the notes to a company's annual accounts applies whether or not the company has to produce group accounts but there are different disclosure requirements in each case. This section gives the Secretary of State a new power to make regulations requiring information about related undertakings to be given in notes to a company's annual accounts. These regulations are subject to the Parliamentary procedure in section 473. The regulations will replace the provisions of Schedule 5 to the 1985 Act.
659. *Subsection (3)* enables regulations under the section to make provision corresponding to section 231(3) of the 1985 Act authorising the omission from the notes to the accounts of information in respect of undertakings established outside the UK, or carrying on business outside the UK where the directors consider that disclosure would be seriously prejudicial to the business of that undertaking, or to the business of the company or any of its subsidiary undertakings. The Secretary of State must agree to the omission. This exemption is sought by a very small number of companies each year.

Section 410: Information about related undertakings: alternative compliance

660. This section replaces section 231(5) to (7) of the 1985 Act. Where there are numerous related undertakings and the directors believe that full disclosure would result in information of excessive length in the notes to the accounts, they may give more limited information. As a minimum this must include information in *subsection (2)(a) and (b)*. *Subsection (3)* provides that the full information on the related undertakings must be submitted with the next annual return.

Section 411: Information about employee numbers and costs

661. This section replaces section 231A of the 1985 Act concerning particulars of staff. Section 231A was inserted by the 1985 Act ([International Accounting Standards](#)

and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947) re-enacting provisions previously in the Schedules to Part 7 of the 1985 Act so that they continued to apply both to companies preparing Companies Act accounts and to those preparing IAS accounts.

Section 412: Information about directors' benefits: remuneration

662. This section, together with section 413, replaces section 232 of the 1985 Act. Section 232 of the 1985 Act, with Schedules 6 and 7A, provides for disclosure of specified information on directors' remuneration in notes to a company's annual accounts. Section 412 of the 2006 Act instead gives the Secretary of State a new power to make provision by regulations requiring information about directors' remuneration to be given in notes to a company's annual accounts. Regulations under this section are subject to the Parliamentary procedure in section 473.

Section 413: Information about directors' benefits: advances, credit and guarantees

663. This section replaces section 232 of the 1985 Act as regards the disclosure of advances, credit and guarantees. Under section 232 of the 1985 Act, information on the following areas must be given in notes to a company's annual accounts:

- details of loans, quasi-loans, credit transactions and related guarantees and security between a company and its directors or persons connected with its directors;
- details of any other transactions or arrangements in which a director, indirectly or directly, has a material interest.

This can be seen as an extension of the internal disclosure of directors' interests required by section 317 of the 1985 Act.

664. **Section 413** sets out the new disclosure requirements in respect of (a) advances and credits granted by the company to its directors, and (b) guarantees of any kind entered into by the company on behalf of its directors. The wording of section 413 is much closer to that of articles 43(1)(13) and 34(13) of the Fourth (78/660/EEC) and Seventh (83/349/EEC) Company Law Directives.

665. The powers under section 396(3)(b) (Companies Act individual accounts) and section 404(3)(b) (Companies Act group accounts) will be used to require the disclosure of information about certain related party transactions in the notes to Companies Act accounts. Companies will no longer be required to disclose transactions made between the company and officers other than directors.

666. Under section 413(8) banks and the holding companies of credit institutions need only state (a) the amount of an advance or credit, and (b) in relation to a guarantee, the amount of the maximum liability that may be incurred by the company (or its subsidiary). In the light of the simplified disclosure regime for advances, credit and guarantees, sections 343 and 344 of the 1985 Act, which make special provision for financial institutions, are repealed.

Section 414: Approval and signing of accounts

667. This section replaces section 233 of the 1985 Act. It provides that a company's annual accounts (its individual accounts and any group accounts) must be approved by the board of directors and the balance sheet must be signed. *Subsection (3)*, which requires the balance sheet of accounts prepared in accordance with the small companies regime to carry a statement to that effect, re-enacts section 246(8) of the 1985 Act. *Subsections (4) and (5)* re-enact the criminal offence in section 233 of the 1985 Act for approval of accounts that do not comply with the requirements of the Companies Act or, where applicable, of Article 4 of the IAS Regulation. Section 233 (4) of the 1985 Act, which required that a director of the company should sign the copy of the balance

sheet delivered to the registrar, has not been reproduced. This requirement would have hampered developments in the electronic delivery of accounts.

Chapter 5: Directors' Report

Sections 415 to 419: Directors' report

668. These sections concern the duty to prepare a directors' report, its content, approval and signature. They replace sections 234, 234ZZA, 234ZZB, 234ZA, 234A, 246(4)(a) and 246A(2A) and 246(8) of the 1985 Act.
669. [Section 416\(4\)](#) gives the Secretary of State power to make provisions by regulations as to other matters that must be disclosed in the directors' report. These regulations replace the provision formerly made by Schedule 7 to the 1985 Act. The regulations are subject to the Parliamentary procedure in section 473.
670. [Section 417](#) provides for what must be contained in the business review element of the directors' report. All companies, other than small companies, will need to produce a business review, as required by the EU Accounts Modernisation Directive ([2003/51/EEC](#)). *Subsection (2)* sets out the purpose of the review, that is, to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company). *Subsections (3), (4), (6) and (8)* specify the content of the review. *Subsection (5)* specifies information that quoted companies in particular must include in their review where necessary for an understanding of the company's business. Where directors of quoted companies have nothing to report on environmental, employee, social and community matters or essential contractual or other arrangements, their review must say so. *Subsection (7)* exempts medium-sized companies from reporting non-financial key performance indicators – an exemption allowed by the EU directive. *Subsection (9)* provides that where the directors' report is a group report, all references in section 417 to the company are to be read as references to the company and its consolidated subsidiary undertakings. *Subsection (10)* enables directors to omit from the business review information about impending developments or matters in the course of negotiation where in their opinion disclosure would be seriously prejudicial to the interests of the company. *Subsection (11)* enables directors to omit from the business review information about a third party otherwise required by subsection (5)(c) (essential contractual or other arrangements) where in the directors' opinion it would be seriously prejudicial to that third party and contrary to the public interest.

Chapter 6: Quoted Companies: Directors' Remuneration Report

Sections 420 to 422: Quoted companies: directors' remuneration report

671. These sections replace sections 234B and 234C of the 1985 Act. Those sections, which were inserted into the Act by the [Directors' Remuneration Report Regulations 2002 \(S.I. 2002/1986\)](#), require quoted companies to:
- publish a report on directors' remuneration as part of the company's annual reporting cycle; and
 - disclose within the report details of individual directors' remuneration packages, the company's remuneration policy, and the role of the board and remuneration committee in this area.
672. [Section 421](#) gives the Secretary of State power to make provision by regulations as to the information that must be contained in a directors' remuneration report and how it should be set out. These matters are currently set out in Schedule 7A to the 1985 Act, and regulations made under section 421 will replace the provisions in Schedule 7A. The regulations will also specify the extent to which the directors' remuneration

report should be subject to audit. Regulations under section 421 are subject to the Parliamentary procedure in section 473.

Chapter 7: Publication of Accounts and Reports

Section 423: Duty to circulate copies of annual accounts and reports

673. This section replaces section 238 of the 1985 Act. *Subsection (1)* provides that a company must send a copy of its annual accounts and reports (as defined in section 471 and including any relevant auditor's report) to specified persons. *Subsection (2)* restricts the general obligation of companies to send copies of accounts and reports. The obligation will in future be to send the accounts and reports only to persons for whom the company has a current address. This is to avoid companies having to send copies of the annual accounts and reports to addresses from which correspondence has previously been returned marked not known at this address (or its electronic equivalent). General provisions about how to supply copies to joint holders are in Part 6 of Schedule 5 (Communications by a company).

Section 424: Time allowed for sending out copies of accounts and reports

674. This section makes changes to the time for distributing accounts and reports for both private and public companies. Private companies (unless they opted out of the requirement) were previously required to lay their accounts at a general meeting and to send their accounts and reports to members 21 days before that meeting. They are no longer required to hold any general meeting and the requirement now is to send out their accounts and reports no later than the earlier of the date of actual delivery to the registrar or the deadline for delivery (see section 442 for the time limits for filing). Public companies must still send the annual accounts and reports out at least 21 days before the general meeting at which the accounts and reports are to be laid (defined as the "relevant accounts meeting").

Section 425: Default in sending out copies of accounts and reports: offences

675. There is no change to these offences (in section 238(5) of the 1985 Act).

Sections 426 to 429: Option to provide summary financial statement

676. These sections restate section 251 of the 1985 Act. All companies have the option under section 426 to provide summary financial statements instead of copies of the full accounts and reports. This section reproduces the existing power for the Secretary of State to make provision by regulations:

- as to the circumstances in which a company may send out summary financial statements; and
- as to the manner in which it is to be ascertained whether a person wishes to receive a copy of the (full) accounts and reports.

It also makes new provision for persons nominated to enjoy information rights under section 146 (indirect investors) to be able to be provided with summary financial statements rather than the full accounts and reports.

677. **Section 427** sets out the form and content requirements for summary financial statements prepared by unquoted companies, whilst section 428 sets out the form and content requirements for summary financial statements prepared by quoted companies. In both cases, the Secretary of State may make regulations as to the form and content of summary financial statements. There is also a new power for regulations to provide that any specified material be sent separately at the same time as the summary financial statement instead of being included in it. This is to cover the requirements of the Takeovers Directive as to necessary explanatory material (see section 992). As in the

1985 Act, these powers are subject to the negative resolution procedure. Section 429 restates the existing offences in section 251(6) of the 1985 Act.

Section 430: Quoted companies: requirements as to website publication

678. This section introduces a new requirement on quoted companies (as defined in section 385) to put the full annual accounts and reports on a website. A quoted company will still have to send the full accounts and reports to its members under section 423.
679. The annual accounts and reports must be made available as soon as is reasonably practicable on a website that is maintained by or on behalf of the company, and that identifies the company in question. Access to the website must be available to all members of the public and not just to members, and there must be continuous access to the website without charge. Access to the information on the website and the ability to obtain a hard copy of the information from the website, may be restricted by the company where necessary to comply with any statutory or regulatory requirement (e.g. of an overseas regulator).
680. The annual accounts and reports for a financial year must remain available until the accounts and reports for the next financial year are published on the website. Right of member or debenture holder to demand copies of accounts and reports

Sections 431 and 432: Right of member or debenture holder to demand copies of accounts and reports

681. These sections re-enact section 239 of the 1985 Act and entitle a member or debenture holder to demand a copy of the company's last annual accounts and reports without charge. Section 431 lists the documents to which members or debenture holders of unquoted companies are entitled, while section 432 lists those to which members or debenture holders of quoted companies are entitled. The company must comply with a demand within seven days of receipt of the request by the company.

Sections 433 to 436: Requirements in connection with publication of accounts and reports

682. **Section 433** brings together provisions scattered throughout Part 7 of the 1985 Act (in sections 233(3) and (6)(a), 234A(2) and (4)(a) and 234C(2) and (4)(a)) concerning statements of the name of the signatory in published accounts and reports. In the case of unquoted companies, every copy of the balance sheet and directors' report that is published by or on behalf of the company must state the name of the director who signed it on behalf of the board. For quoted companies this applies to copies of the balance sheet, directors' remuneration report and directors' report.
683. **Sections 434** and **435** re-enact section 240 of the 1985 Act concerning requirements in connection with the publication of statutory or non-statutory accounts.
684. "Publication" is defined in section 436.

Chapter 8: Public Companies: Laying of Accounts and Reports before General Meeting

Section 437: Public companies: laying of accounts and reports before general meeting

Section 438: Public companies: offence of failure to lay accounts and reports

685. These sections re-enact section 241 of the 1985 Act on the laying of accounts and reports before the company in general meeting, but restrict its application to public companies. Under the Act, private companies are under no statutory obligation to hold an AGM or to lay accounts and reports in general meetings. There is therefore no statutory link

for them between the accounts and AGMs (although such a link might be provided for in the company's articles). Any AGM that a private company may hold pursuant to its articles will not be a statutory meeting. Public companies will still be required to hold AGMs and they must now hold them within 6 months of the end of the accounting reference period.

Chapter 9: Quoted Companies: Members' Approval of Directors' Remuneration Report

Section 439: Quoted companies: members' approval of directors' remuneration report

Section 440: Quoted companies: offences in connection with procedure for approval

686. These sections restate the requirement under section 241A of the 1985 Act that a quoted company circulate a resolution approving the directors' remuneration report for the preceding financial year to its shareholders prior to its annual general meeting. The vote is advisory: as such, it does not require directors to amend contractual entitlements, nor to amend their remuneration policy, but the result of the vote will send a very strong signal to directors about the level of support among shareholders for the board's remuneration policy. In practice, directors will wish to take notice of the views of the company's members, and to respond appropriately. All "existing directors" (that is, every person who, immediately before the general meeting, is a director of the company) have a responsibility to ensure that the resolution is put to the vote of the meeting. As such, the requirement does not apply to past directors (even if they served on the board or as members of the remuneration committee in the current financial year), but it does apply to "existing directors" who were, for whatever reason, not present at the general meeting.

Chapter 10: Filing of Accounts and Reports

Sections 441 to 443: Duty to file accounts and reports

687. These sections cover the general duty to file accounts and reports with the registrar of companies and the period allowed for filing accounts.
688. **Section 442** reduces the period for filing accounts from ten months to nine months for private companies and from seven months to six months for public companies. These periods are calculated from the end of the relevant accounting reference period. The timetable for delivering accounts to the registrar was last amended in 1976. The periods have been reduced to reflect improvements in technology and the increased rate at which information becomes out of date. Filing timescales in other countries are generally less generous than in the UK. Under subsection (6), whether a company is private or public for the purpose of its filing obligations is determined by its status immediately before the end of the relevant accounting reference period.
689. **Section 443** is a new provision defining how to calculate the periods allowed for filing accounts and reports. In general this is the same date the relevant number of months later. So, for example, if the end of the accounting reference period is 5th June, 6 months from then is 5th December. However, as months are of unequal length, there can be confusion as to whether 6 months from say 30th June is 30th December (exactly 6 months later) or 31st December (the end of the sixth month). Under the rule laid down in this section, 6 months from 30th June will be 31st December. This reverses the "corresponding date rule" laid down by the House of Lords in *Dodds v Walker* [1981] 1 WLR 1027.

Sections 444 to 448: Filing obligations of different descriptions of company

690. These sections concern the filing obligations of different sizes of company. They restructure the provisions in sections 242, 246, 246A and 254 of the 1985 Act to make clearer what companies have to do.
691. **Section 444** concerns the filing obligations of companies subject to the small companies regime. Such companies may file abbreviated accounts and this section gives the Secretary of State the power to make regulations concerning abbreviated accounts for such companies. Under *subsection (5)*, small companies filing a full balance sheet with the registrar (whether prepared in accordance with international accounting standards or under the Act), but omitting a copy of the profit and loss account and/or the directors' report, must include a statement on the balance sheet that they are delivered in accordance with the small companies regime. *Subsection (7)* requires the filed copy of the audit report to state the name of the auditor and, if there is one, of the senior statutory auditor, unless they are taking advantage of the exemption in section 506, in which case they must state that they are doing so.
692. **Section 445** restates provisions in section 246A of the 1985 Act permitting medium-sized companies (as defined in section 465) to file abbreviated accounts and gives the Secretary of State the power to make regulations concerning abbreviated accounts for such companies.
693. **Section 446** concerns the filing obligations of unquoted companies.
694. **Section 447** concerns the filing obligations of quoted companies. This is a restatement of section 242 of the 1985 Act. *Subsection (3)* provides for the copies of the filed documents including the balance sheet to state the name of the person who signed the documents.
695. **Section 448** replaces section 254 of the 1985 Act. It exempts unlimited companies from the obligation to file accounts. There are limitations on the exemption set out in *subsections (2) and (3)*.

Sections 449 and 450: Requirements where abbreviated accounts delivered

696. **Section 449** replaces the provision in section 247B of the 1985 Act. It requires a special auditor's report in place of the auditor's report required by section 495 where a company delivers abbreviated accounts to the registrar of companies. There is no requirement for the special auditor's report where the company is entitled to exemption from audit and has taken advantage of that exemption.
697. **Section 450** replaces sections 246(7) and (8) and 246A(4) of the 1985 Act concerning the approval and signing of abbreviated accounts.

Sections 451 to 453: Failure to file accounts and reports

698. **Sections 451 and 452** re-enact sanctions in section 242(2) to (5) of the 1985 Act for failing to file accounts and reports within the required periods.
699. **Section 453**, which provides a civil penalty for failure to file accounts, restates section 242A of the 1985 Act with one change. Rather than setting out the table of penalties in the legislation, *subsection (2)* provides for the Secretary of State to make regulations specifying both the relevant periods and the amounts of the penalties. Regulations that have the effect of increasing the penalty will be subject to the affirmative resolution procedure. Otherwise, they will be subject to the negative resolution procedure.

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.

Chapter 12: Supplementary Provisions

Section 463: Liability for false or misleading statements in reports

708. This section is concerned with the extent of directors' liability in relation to the statutory narrative reporting requirements under this Part of the Act (accounts and reports). *Subsection (1)* specifies that the liability provision applies to statements made in the directors' report (which includes the business review under section 417), the directors' remuneration report (under section 420) or summary financial statements derived from them. *Subsection (2)* limits the directors' liability to the company only in respect of loss suffered by it as a result of any untrue or misleading statement in a report, or the omission from a report of anything required to be included. *Subsection (3)* specifies that a director will only be liable in certain circumstances – that is, if an untrue or misleading statement is made deliberately or recklessly, or an omission amounts to dishonest concealment of a material fact. *Subsection (4)* ensures that third parties, such as auditors, will remain liable only to the company for negligence in preparing their own report. *Subsection (6)* ensures that these liability provisions do not affect any liability for a civil penalty or for a criminal offence.

Section 464: Accounting standards

709. This section re-enacts section 256 of the 1985 Act.

Sections 465 to 467: Companies qualifying as medium-sized

710. Medium-sized companies benefit from certain limited accounting and reporting exemptions. For example, section 417(7) exempts medium-sized companies from disclosing certain non-financial information in their directors' reports.

711. **Sections 465 to 467** set out which companies or parent companies qualify as medium-sized. The conditions for qualification as a medium sized company have been separated from those relating to small companies to make them easier to follow but are otherwise unchanged from the current regime (sections 247, 247A and 249 of the 1985 Act), save that, as in the case of the definition of small companies, the definition of balance sheet total in section 465(5) has been generalised.

Section 468: General power to make further provision about accounts and reports

712. This section gives the Secretary of State a general power to amend Part 15 by regulations in the areas specified in *subsection (1)(a) to (d)*. This power, together with a number of specific powers in Part 15 to enable the form and contents of accounts and reports to be prescribed by regulations, replaces the wider general power in section 257 of the 1985 Act. *Subsection (3)* provides that the general power may not be used to amend the provisions of section 393 (accounts to give true and fair view) or Chapter 11 (revision of defective accounts and reports) other than consequentially. *Subsections (4) and (5)* enable regulations under the section to create criminal offences or provide for civil penalties in circumstances corresponding to those in Part 15. The regulations are subject to the Parliamentary procedure in section 473.

Section 469: Preparation and filing of accounts in euros

713. This section re-enacts section 242B of the 1985 Act, replacing references to ECUs with references to euros. It enables companies to show the amounts in their annual accounts additionally in euros, and to deliver to the registrar an additional copy of their accounts translated into euros.

Section 470: Power to apply provisions to banking partnerships

714. This section re-enacts section 255D of the 1985 Act. It gives the Secretary of State the power to apply the accounting and reporting provisions of this Act that apply to banking companies to banking partnerships. As under the current law, the regulations are subject to the affirmative resolution procedure.

Section 471: Meaning of “annual accounts” and related expressions

715. This section provides definitions of the terms “annual accounts” and “annual accounts and reports” for the purpose of this Part, the meaning being different for unquoted and quoted companies.

Section 472: Notes to the accounts

716. This section re-enacts section 261 of the 1985 Act. It concerns the notes to a company’s accounts.

Section 473: Parliamentary procedure for certain regulations under this Part

717. This section specifies the Parliamentary procedure that must be followed in connection with regulations made under the various provisions of this Part which replace the requirements as to the form and content of accounts and reports currently contained in Schedules to Part 7 of the 1985 Act, and in relation to the general regulation-making power in section 468. This section follows section 257 of the 1985 Act in requiring affirmative resolution procedure for regulations which add to the documents required to be prepared by companies, restrict the exemptions available to particular classes or types of company, add to the information to be included in any particular document or otherwise make the requirements more onerous. Other regulations are subject to negative resolution procedure.

Section 474: Minor definitions

718. This section contains other definitions for the purposes of this Part.