

**2016 No.**

**COMPANIES**

**AUDITORS**

**The Statutory Auditors and Third Country Auditors Regulations  
2016**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - - - \*\*\*

The Secretary of State is a Minister designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to auditors and the audit of accounts.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 1239(1)(a) of the Companies Act 2006(c).

**PART 1**

**Introduction**

**Citation and commencement**

1. These Regulations may be cited as the Statutory Auditors and Third Country Auditors Regulations 2016 and come into force on [...2016].

**Interpretation**

2. In these Regulations—

“audit reporting requirements” means the requirements of sections 495 to 498 and 503 to 506 of the Companies Act 2006 and, in the case of a public interest entity, also means the requirements of Articles 10 and 11 of the Audit Regulation,

“audited person”, “firm”, “statutory auditor” and “statutory audit work” have the same meaning as in Part 42 of the Companies Act 2006,

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(a) S.I. 2007/1679.

(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislation and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) 2006 c. 46.

“the Audit Regulation” means Regulation (EU) 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC(a),

“the competent authority” means the Financial Reporting Council Limited(b),

“maintaining body” means the recognised supervisory body responsible under regulation 11 for keeping the register and making it available for inspection by electronic means,

“network” means an association of persons other than a firm co-operating in audit work by way of—

- (a) profit-sharing;
- (b) cost-sharing;
- (c) common ownership, control or management;
- (d) common quality control policies and procedures;
- (e) common business strategy; or
- (f) use of a common name,

“personal data” has the same meaning as in section 1(1) of the Data Protection Act 1998(c),

“public interest entity” means—

- (a) an issuer whose transferable securities are admitted to trading on a regulated market;
- (b) a credit institution within the meaning given by Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council(d), other than one listed in Article 2 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and investment firms(e)
- (c) an insurance undertaking within the meaning given by Article 2(1) of Council Directive 1991/674/EEC of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings(f)

“issuer” and “regulated market” have the same meaning as in Part 6 of the Financial Services and Markets Act 2000(g)

“register” means the register required to be kept under regulation 9,

“recognised supervisory body” means a supervisory body, within the meaning in section 1217(1) of the Companies Act 2006(h), recognised in accordance with Schedule 10 of that Act,

“sanction” means any measure taken by the competent authority under regulation 4,

“transferable securities” means anything which is a transferrable security for the purposes of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments(i),

“working day”, in relation to an obligation imposed by these Regulations on a recognised supervisory body, means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(j) in the part of the United Kingdom in which the recognised supervisory body has its principal office.

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- (a) OJ L 158/77 27.05.14.
  - (b) A company registered in England and Wales with number 02486368.
  - (c) 1998 c. 29.
  - (d) OJ L 176/1 27.06.13.
  - (e) OJ L 176/338 27.06.13.
  - (f) OJ L 374/7 31.12.91.
  - (g) 2000 c. 8.
  - (h) 2006 c. 46.
  - (i) OJ L 145/1 30.04.04.
  - (j) 1971 c. 80.

## PART 2

### The Competent Authority

#### **The competent authority**

3.—(1) The competent authority shall in accordance with these regulations and Part 42 of the Companies Act 2006 oversee-

- (a) the determination of technical standards (which must meet the requirements of Schedule 1) and of other standards (which must meet the requirements of that Schedule) on professional ethics and internal quality control of statutory auditors and statutory audit work;
- (b) the determination of the manner in which the standards determined under sub-paragraph (a) are to be applied in practice;
- (c) the application of the standards determined under sub-paragraph (a) (including provision for securing compliance with those standards);
- (d) the determination of criteria for approval and registration of individuals and firms as eligible for appointment as statutory auditors;
- (e) the application of the criteria determined under sub-paragraph (d);
- (f) procedures for maintaining the competence of persons eligible for appointment as statutory auditors;
- (g) monitoring of audits;
- (h) investigative and administrative disciplinary systems

(2) The competent authority must consider whether and how tasks arising from its oversight of the matters listed in sub-paragraphs (c) to (h) of paragraph (1) may be delegated to any recognised supervisory body.

(3) In exercising its duty under paragraph (2), the competent authority—

- (a) must consult the recognised supervisory bodies, and
- (b) may consider the requirements of Schedule 10 to the Companies Act 2006 (including the way in which recognised supervisory bodies discharge those requirements).

(4) The competent authority may delegate specified tasks to any recognised supervisory body in accordance with paragraphs (6) to (8).

(5) The competent authority may not delegate tasks related to any of the matters listed in Article 24(1) (a) to (c) of the Audit Regulation.

(6) The competent authority shall specify the tasks delegated and any conditions under which those tasks are to be carried out (and may vary those conditions).

(7) The competent authority may specify (including by reference to the type of statutory auditor or audited person) exceptions to any delegation.

(8) The competent authority shall specify the circumstances in which tasks delegated must revert to the competent authority.

(9) The Secretary of State may give directions to the competent authority in connection with the delegation of tasks to the recognised supervisory bodies.

(10) Schedule 1 (which prescribes requirements a statutory auditor must fulfil in relation to professional ethics, independence, objectivity, confidentiality and professional secrecy) has effect.

#### **The competent authority: sanctioning powers**

4.—(1) If the competent authority considers that a person (“A”) has contravened a relevant requirement, it may—

- (a) give a notice requiring A to cease the conduct giving rise to the contravention and to abstain from any repetition of that conduct,

- (b) publish a statement (including a statement on the competent authority’s website) to that effect,
- (c) make an order prohibiting A from carrying out statutory audits or signing audit reports,
- (d) in a case where an audit report by A does not satisfy the audit reporting requirements, make a declaration to that effect, or
- (e) impose on A a financial penalty of such amount as the competent authority considers appropriate.

(2) The competent authority may not exercise the powers under sub-paragraphs (c), (d) or (e) of paragraph (1) if A is not a statutory auditor.

(3) In determining the type and level of sanctions to be imposed under this regulation, the competent authority must take into account all relevant circumstances, including—

- (a) the gravity and duration of the contravention;
- (b) A’s degree of responsibility;
- (c) A’s financial strength;
- (d) the amount, so far as can be determined, of profits gained or losses avoided by A;
- (e) the extent to which A has co-operated with the competent authority;
- (f) any previous contraventions by A.

(4) For the purpose of paragraph (3)(c), A’s financial strength may be determined in such manner as the competent authority considers appropriate, including—

- (a) where A is a firm by reference to A’s total turnover;
- (b) where A is an individual by reference to A’s annual income.

(5) In this regulation, a “relevant requirement” means—

- (a) a requirement of these Regulations,
- (b) a requirement of the Audit Regulation, or
- (c) a requirement of Parts 16 or 42 of the Companies Act 2006.

### **Sanctioning powers: right of appeal**

**5.—**(1) A person on whom the competent authority has imposed a sanction under regulation 4 may appeal against, or with respect to, the sanction.

(2) Except in the case of an order under paragraph (1)(c) of regulation 4 or a financial penalty under paragraph (1)(e) of that regulation, an appeal under this regulation does not suspend the effect of the sanction to which the appeal relates.

(3) The competent authority must provide for a panel to determine the appeal and that panel shall determine the appeal on the merits by reference to the grounds of appeal.

(4) The panel may confirm or set aside the sanction which is the subject of the appeal, or any part of it, and may—

- (a) remit the case to the competent authority,
- (b) impose, or revoke, or vary the amount of a financial penalty,
- (c) give such directions, or take such other steps, as the competent authority itself could have given or taken,
- (d) make any other decision which the competent authority could have made.

### **Publication of sanctions and measures**

**6.—**(1) The competent authority shall publish, in accordance with paragraphs (2) to (5) details of the sanctions it imposes under regulation 4.

(2) The details published under paragraph (1) must include—

- (a) information concerning the type of contravention and its nature;
  - (b) unless any of the circumstances mentioned in paragraph (3) applies, the identity of the person (“P”) sanctioned under regulation 4 or against whom the prohibition order was made under regulation 6; and
  - (c) where a sanction or prohibition order is subject to appeal, information concerning the status and outcome of any appeal.
- (3) The circumstances in which P’s identity must not be published are—
- (a) where P is an individual and the competent authority considers the publication of personal data would be disproportionate;
  - (b) where publication would jeopardise the stability of financial markets;
  - (c) where publication would jeopardise an ongoing criminal investigation; and
  - (d) where publication would cause disproportionate damage to any institution or individual involved.
- (4) The competent authority shall ensure that—
- (a) information published under this regulation remains published for a proportionate period, and
  - (b) is available on the competent authority’s website for at least five years after the relevant date.
- (5) In this regulation, “the relevant date” means—
- (a) where the competent authority imposes a sanction and that decision is appealed, the date on which the appeal is determined,
  - (b) where the competent authority imposes a sanction and that decision is not appealed, the date by which the appeal should have been lodged under regulation 5,
  - (c) where a prohibition order is made and that order is appealed, the date on which the appeal is determined,
  - (d) where a prohibition order is made and that order is not appealed, the date which an appeal should have been lodged.

**Investigation powers:**

7. Schedule 2 (investigation powers) has effect.

**PART 3**

**Restrictions on choice of Auditor**

**Contractual terms restricting choice of auditor**

8.—(1) This regulation applies to any term in a contract which, in relation to the conduct of a statutory audit of an audited person, has the effect of restricting the audited person’s choice of statutory auditor to certain categories or lists of statutory auditors.

(2) A term to which this regulation applies shall have no effect.

(3) Paragraph (2) does not apply where the audited person is a public interest entity (but see Article 16(6) of the Audit Regulation).

PART 4  
Register of Auditors

**Recognised supervisory bodies to keep a register of persons eligible for appointment as statutory auditors**

9. The recognised supervisory bodies, or if there is only one recognised supervisory body, that body, must in accordance with regulations 10 to 14 keep a register of persons eligible for appointment as a statutory auditor in electronic form.

**Contents of the register**

10. The register must contain the information set out—

- (a) in Part 1 of Schedule 3 to these Regulations, in relation to a person eligible for appointment as a statutory auditor who is an individual; and
- (b) in Part 2 of that Schedule, in relation to a person eligible for appointment as a statutory auditor which is a firm.

**Maintenance and inspection of the register**

11.—(1) Where there is only one recognised supervisory body, that body shall be the maintaining body responsible for keeping the register and making it available for inspection by electronic means.

(2) Where there is more than one recognised supervisory body, the competent authority shall designate one of the bodies as the maintaining body responsible for keeping the register and making it available for inspection by electronic means.

(3) The maintaining body shall ensure that the information contained in the register may be inspected in each of the following ways—

- (a) alphabetically by name of person;
- (b) by reference to individuals or firms;
- (c) by reference to registration numbers;
- (d) by reference to recognised supervisory bodies; and
- (e) by address.

(4) Information on the register relating to a person may be excluded from being made available for inspection to the extent that making such information available would create or would be likely to create a serious risk that an individual eligible for appointment as a statutory auditor, or any other person, would be subject to violence or intimidation.

**Obligations of recognised supervisory bodies with respect to maintaining the register**

12.—(1) A recognised supervisory body shall co-operate with the competent authority for the purpose of ensuring that body enters on the register the information required by regulation 3.

(2) Where there is more than one recognised supervisory body, each such body shall co-operate with each other such body for the purpose of ensuring that each body enters on the register the information required by regulation 10.

(3) Where there is more than one recognised supervisory body, each such body must send in electronic form to the maintaining body for entry on the register—

- (a) the information required by regulation 10,
- (b) any changes to that information, including information relating to persons who subsequently become eligible for appointment as statutory auditors.

(4) A recognised supervisory body must take reasonable care to ensure that—

- (a) the information it sends under paragraph (3) is accurate and correct;
- (b) information required under paragraph (3)(b) is sent to the maintaining body within the period of ten working days beginning with the day on which the body becomes aware of the relevant change.

#### **Obligation of recognised supervisory body to provide access to the register**

**13.**—(1) Each recognised supervisory body shall provide at its principal office in the United Kingdom facilities by which any person may inspect the register by electronic means at any reasonable time during a business day.

(2) Any person inspecting the register under paragraph (1) may require a copy of any entry on the register relating to a particular individual or firm.

(3) The recognised supervisory body providing the facilities under paragraph (1) may charge a person a fee not exceeding £1 for a copy of an entry on the register.

#### **Role of the competent authority where a recognised supervisory body is unable properly to discharge obligations**

**14.**—(1) If the competent authority considers that a recognised supervisory body (“A”) is unable properly to discharge any obligation imposed on A by regulations 9 to 13, it may—

- (a) direct A to cease discharging the obligation in question,
- (b) itself discharge any obligation which it has directed A to cease discharging under sub-paragraph (a),
- (c) require A to provide the competent authority with such information as the competent authority needs in order to discharge the obligation,
- (d) direct another recognised supervisory body (“B”) to discharge any obligation which A has been directed to cease discharging under sub-paragraph (a),
- (e) direct B to provide A with such information as the competent authority considers B needs in order to discharge any obligation B has been directed to discharge under sub-paragraph (d).

(2) A recognised supervisory body must comply with any direction given by the competent authority under paragraph (1).

(3) Where and to the extent that—

- (a) the competent authority discharges an obligation under paragraph (1)(b), or
- (b) the competent authority directs B to discharge an obligation under paragraph (1)(d),

any obligation under these Regulations to send or notify information to A shall be read as an obligation to send or notify information to the competent authority or B, as the case may be.

(4) In this regulation the question of whether a recognised supervisory body is able to discharge an obligation imposed on it under these Regulations may be considered by reference to—

- (a) any person eligible for appointment as a statutory auditor; or
- (b) any class of person eligible for appointment as a statutory auditor,

and a class of person eligible for appointment as a statutory auditor may be defined by reference to characteristics of persons eligible for appointment as a statutory auditor or characteristics of audited persons.

#### **Obligation of persons eligible for appointment as a statutory auditor to provide updated information**

**15.** Any person eligible for appointment as a statutory auditor must take all reasonable steps to notify the recognised supervisory body, by virtue of whose rules the person is eligible for appointment as a statutory auditor, without undue delay, of any information necessary to ensure that the information in the register relating to that person is correct.

Date

Parliamentary Under Secretary of State  
Department

Draft



# SCHEDULE 1

## Requirements for professional ethics, independence, objectivity, confidentiality and professional secrecy

### 1. In this Schedule—

“A” means a person appointed as a statutory auditor,

“key audit partner” means—

- (a) the statutory auditor designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out of the statutory audit on behalf of the audit firm; or
- (b) in the case of a group audit, at least the statutory auditor designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor designated at the level of material subsidiaries; or
- (c) the statutory auditor who signs the audit report,

“parent undertaking” has the same meaning as in section 1162 of the Companies Act 2006,

“statutory audit work”, “third country” and “third country auditor” have the same meaning as in Part 42 of the Companies Act 2006(a).

### 2.—(1) Standards must ensure that—

- (a) statutory audit work is conducted properly and with integrity;
- (b) in carrying out statutory audit work, A—
  - (i) maintains professional scepticism throughout the audit;
  - (ii) maintains professional scepticism in particular when reviewing management estimates relating to fair values, the impairment of assets, provisions and future cash flow relevant to the audited person’s ability to continue as a going concern;
  - (iii) recognises the possibility of a material misstatement due to facts or behaviour indicating irregularities, including fraud or error,

notwithstanding A’s past experience of honesty and integrity on the part of the audited person’s management and of the persons charged with the governance of the audited person.

(2) In this paragraph “professional scepticism” means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud and a critical assessment of audit evidence.

(3) Standards must ensure that, during the relevant period A and any other individual in a position to influence the outcome of the statutory audit is independent of the audited person and not involved in the decision-taking of the audited person.

(4) In this paragraph “the relevant period” means—

- (a) the period covered by the financial statements to be audited; and
- (b) the period during which the statutory audit is carried out.

3.—(1) Standards must ensure that A takes all reasonable steps to ensure that, in carrying out statutory audit work, A’s independence is not affected by—

- (a) any existing or potential conflict of interest; or
- (b) any business or other direct or indirect relationship with A or a person having a relevant connection with A.

(2) For the purposes of this paragraph a person has a relevant connection with A if that person—

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(a) 2006 c. 46.

- (a) is a member of A's network;
- (b) is a manager, auditor, employee or other individual whose services are placed at A's disposal or under A's control;
- (c) is directly or indirectly linked to A by control; or
- (d) is a manager, auditor, employee or other individual whose services are placed at the disposal or under the control of a person directly or indirectly linked to A by control.

(3) Standards must ensure that A records in the audit working papers all significant threats to A's independence and the safeguards applied to mitigate those threats.

**4.—**(1) Standards must ensure that A does not accept appointment as a statutory auditor (or, if already appointed, resigns from such an appointment) if there is any qualifying threat created by financial, personal business employment or other relationships between the audited person and—

- (a) A,
- (b) any member of A's network, or
- (c) any individual in a position to influence the outcome of the statutory audit.

(2) In this paragraph "qualifying threat" means a threat of self-review, self-interest, advocacy, familiarity or intimidation which would cause an objective, reasonable and informed third party, taking into account any safeguards applied, to conclude that A's independence is compromised.

**5.—**(1) Standards must ensure that A does not accept appointment as a statutory auditor (or, if already appointed, resigns from such appointment) if—

- (a) A or any person mentioned in sub-paragraph (2), or
- (b) a trust whose managerial responsibilities are discharged by, or which is directly or indirectly controlled by, or which is set up for the benefit of, or whose economic interests are substantially equivalent to those of, A or any person mentioned in sub-paragraphs (2)(a) or (2)(b),

holds or has a material and direct beneficial interest in, or engages in any transaction in any financial instrument issued, guaranteed or otherwise supported by any audited person within A's area of statutory audit work.

(2) This sub-paragraph applies to—

- (a) a key audit partner of A, an employee of A or any other individual-
  - (i) whose services are placed at A's disposal or under A's control, and
  - (ii) who is directly involved in statutory audit work;
- (b) a person who is the spouse, civil partner, child or other relative living in the same household as any person mentioned in sub-sub-paragraph (a); or
- (c) a legal person whose managerial responsibilities are discharged by, or which is directly or indirectly controlled by, any person mentioned in sub-sub-paragraphs (a) or (b) or in which any such person has a beneficial or other substantially equivalent economic interest.

(3) Sub-paragraph (1) does not apply to a beneficial interest owned indirectly through diversified collective investment schemes, including managed funds, such as pensions or life insurance.

(4) Standards must ensure that A and any person mentioned in sub-paragraph (2), who—

- (a) owns financial instruments of the audited person,
- (b) owns financial instruments of any person related to the audited person, in circumstances where owning those instruments may cause, or may be generally perceived as causing, a conflict of interest, or
- (c) has a business or employment relationship with the audited person within the relevant period in circumstances that may cause, or may be generally perceived as causing, a conflict of interest,

does not participate in or otherwise influence the outcome of the statutory audit.

(5) In sub-paragraph (4), “the relevant period” has the same meaning as in paragraph 2(4).

(6) Standards must ensure A and any person mentioned in sub-paragraph (2) does not solicit or accept pecuniary or non-pecuniary gifts or favours from the audited person or from any person related to the audited person,

(7) In sub-paragraph (6) “pecuniary or non-pecuniary gifts” does not include gifts whose value an objective, reasonable and informed person would consider trivial or inconsequential.

**6.** Standards must ensure that if, during the period covered by the financial statements to be audited, the audited person is acquired by, merges with or acquires another person, A shall—

- (a) identify and evaluate any current or recent interests or relationships which could compromise A’s independence and ability to continue carrying out the statutory audit after the effective date of the merger or acquisition, and
- (b) as soon as possible, and in any event within three months,—
  - (i) take such steps as may be necessary to terminate any current interests or relationships which would compromise A’s independence, and
  - (ii) adopt safeguards that minimise any threats to A’s independence arising from prior and current interests and relationships.

**7.—(1)** Standards must ensure that—

- (a) where A is an individual, A, and
- (b) where A is a firm, A’s key audit partner,

does not take up a relevant position with the audited person before the end of the cooling off period.

(2) Standards must also ensure that no person having a relevant connection with A takes up a relevant position with the audited person within one year of having been directly involved in the statutory audit of the audited person.

(3) In this paragraph—

“cooling off period” means—

- (a) in the case of a public interest entity, two years, and
- (b) in any other case, one year,

beginning with the day on which A ceased to be the audited person’s statutory auditor or (if A is a firm), A’s key audit partner ceased to be the key audit partner in connection with the statutory audit of the audited person,

“person having a relevant connection with A” means a person eligible for appointment as a statutory auditor, who is—

- (a) a partner (apart from a key audit partner) or employee of A, or
- (b) any individual whose services are placed at A’s disposal or under A’s control

“relevant position” means—

- (a) any key management position,
- (b) membership of the audited person’s audit committee,
- (c) membership of any body performing equivalent functions to an audit committee in relation to the audited person,
- (d) any position as director or partner of the audited person or, where the audited person’s affairs are managed by a management body or other committee, membership of that management body or committee.

**8.—(1)** Standards must ensure that, before accepting an appointment as a statutory auditor, A assesses and records—

- (a) whether A is complying with the requirements of paragraphs 1 to 7 of this Schedule;

- (b) whether there are any threats to A's independence and the safeguards applied to mitigate those threats;
- (c) whether A has such competent employees, time and resources as are needed to carry out the statutory audit in an appropriate manner;
- (d) where A is a firm, whether the key audit partner is approved as a statutory auditor in the Member State where the statutory audit is required to be carried out.

(2) Standards ensuring the matters mentioned in this paragraph may apply simplified requirements in relation to the statutory audit of companies to which the small companies regime applies under section 381 of the Companies Act 2006<sup>(a)</sup>.

**9.**—(1) Standards must apply adequate provision on confidentiality and professional secrecy in relation to all information and documents to which A has access when carrying out a statutory audit, but such rules must not impede the enforcement of obligations under—

- (a) these Regulations,
- (b) the Audit Regulation, or
- (c) Parts 16 and 42 of the Companies Act 2006.

(2) Standards ensuring the matters mentioned in sub-paragraph (1) must not prevent A from transferring relevant documents concerning the statutory audit to an auditor of the consolidated accounts of a parent undertaking in a third country where such documents are necessary for auditing the accounts of that undertaking.

(3) Standards must ensure that, where A ceases to hold office as statutory auditor, A provides A's successor as statutory auditor with access to all relevant information concerning the audited person, including information concerning the most recent audit.

(4) Standards ensuring the matters mentioned in sub-paragraph (1)—

- (d) must apply in respect of an audit engagement to A after A has ceased that engagement, and
- (e) must apply to A if he ceases to be eligible for appointment as a statutory auditor.

(5) Standards must ensure that any rule of law relating to the confidentiality of information received in the course of statutory audit work by persons appointed as statutory auditors is complied with.

(6) Standards must ensure that no firm is eligible for appointment as a statutory auditor unless the firm has arrangements to prevent any person from being able to exert any influence over the way in which a statutory audit is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit.

**10.**—(1) Standards must ensure that A—

- (a) has appropriate policies and procedures to ensure that no person (including any partner, director, member or shareholder of A or director, member or shareholder of another person in A's network) intervenes in the carrying out of statutory audit work in any way which jeopardises A's independence and objectivity in carrying out such work;
- (b) has sound administrative and accounting procedures, internal quality control mechanisms (which are designed to secure compliance with decisions and procedures at all levels of A's working structure), effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;
- (c) has appropriate policies and procedures to ensure that A's employees and any other individuals, whose services are placed at A's disposal or under A's control and who are directly involved in statutory audit activities, have appropriate knowledge and experience for the duties assigned;

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(a) 2006 c. 46.

- (d) has appropriate policies and procedures to ensure that outsourcing of important audit functions is not undertaken in such a way as to impair the quality of A's internal quality control and the ability of the competent authority to supervise A's compliance with the requirements of—
    - (i) these Regulations,
    - (ii) the Audit Regulation, and
    - (iii) Parts 16 and 42 of the Companies Act 2006;
  - (e) has appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any threats to their independence as referred to in paragraphs 2(3) and 3 to 8;
  - (f) has appropriate policies and procedures for carrying out statutory audits, coaching, supervising and reviewing the activities of A's employees and organising the structure of the audit file as referred to in paragraph 12(1)(f);
  - (g) establishes an internal quality control system to ensure the quality of a statutory audit, which
    - (i) covers at least the policies and procedures mentioned in sub-sub-paragraph (e); and
    - (ii) in the case of a firm, ensures that responsibility for the system lies with an individual who either holds an appropriate qualification or holds a corresponding qualification to audit accounts under the law of an EEA State, or part of an EEA State, other than the United Kingdom;
  - (h) uses appropriate systems, resources and procedures to ensure continuity and regularity in carrying out A's statutory audit work;
  - (i) has appropriate and effective organisational and administrative arrangements for dealing with and recording incidents which have, or may have, serious consequences, for integrity of A's statutory audit work;
  - (j) has in place adequate remuneration policies, including profit-sharing policies, providing sufficient performance incentives to secure audit quality (including provision that the amount of revenue that A derives from services other than statutory audit services must not form part of the performance evaluation and remuneration of any person involved in, or able to influence the carrying out of, the audit);
  - (k) monitors and evaluates the adequacy and effectiveness of A's systems, internal quality control mechanisms and arrangements established in accordance with these Regulations, the Audit Regulation or Parts 16 or 42 of the Companies Act 2006 and takes appropriate measures to address any deficiencies;
  - (l) carries out an annual evaluation of the internal quality control system referred to in sub-paragraph (1)(f), keeps records of the findings of that evaluation and any proposed measure to modify the internal quality control system;
  - (m) documents and communicates to A's employees (and where A is a firm, communicates to A's partners or members) the policies and procedures referred to in this sub-paragraph
  - (n) takes into consideration the scale and complexity of A's activities when complying with the requirements mentioned in this paragraph and is able to demonstrate to the competent authority that its policies and procedures are appropriate given the scale and complexity of those activities.
- (2) The requirements of standards mentioned in sub-paragraph (1) may be simplified in relation to the statutory audit of—
- (a) companies which are exempt from the requirements of the Companies Act 2006 relating to audit by virtue of section 477 of that Act;
  - (b) limited liability partnerships exempt from the requirements of that Act, as applied by the Limited Liability Partnerships (Accounts and Audit) (Application of Companies

Act 2006) Regulations 2008(a), by virtue of section 477 as applied by those Regulations.

**11.—**(1) Standards must ensure that, when A is a firm, A-

- (a) designates at least one key audit partner, and
- (b) applies as its main criteria in selecting a key audit partner-
  - (i) the need to secure the quality of the audit,
  - (ii) the need to secure A's independence and competence in carrying out the audit,
- (c) provides any key audit partner with sufficient resources and with personnel that have the necessary competence and capabilities to carry out their duties appropriately.

(2) Standards must ensure that A devotes sufficient time to the engagement and assigns sufficient resources to enable A to carry out A's duties appropriately.

**12.** Standards must ensure that A—

- (a) keeps records of any breaches (other than breaches which A reasonably considers to be minor breaches) of—
  - (i) these Regulations,
  - (ii) the Audit Regulation, and
  - (iii) Parts 16 and 42 of the Companies Act 2006;
- (b) keeps records of any consequences of any breach recorded in accordance with paragraph 12(1)(a), the measures taken to address such a breach and to modify A's internal quality control system;
- (c) prepares an annual report containing an overview of any measures taken under sub-paragraph (b) and communicates that report internally;
- (d) documents any request for advice from an external expert, together with the advice received;
- (e) maintains a client account record, which includes in respect of every statutory audit-
  - (i) the audited person's name, address and place of business,
  - (ii) when the statutory auditor is a firm, the name of the key audit partner or, where there is more than one key audit partner, the names of all the key audit partners,
  - (iii) the fees charged for carrying out the statutory audit and for other services in any financial year;
- (f) creates an audit file for each statutory audit, which meets the requirements of sub-paragraph (4).
- (g) keeps records of any complaints made in writing about the performance of any statutory audit that person has carried out

(2) The requirements for an audit file are that-

- (a) it documents at least the matters recorded in accordance with paragraph 8;
- (b) in relation to a statutory audit of a public interest entity, it documents the matters recorded in accordance with Articles 6, 7 and 8 of the Audit Regulation;
- (c) it contains any other data and documents that are important in supporting the audit report required by section 495 of the Companies Act 2006;
- (d) in relation to a statutory audit of a public interest entity, it contains any other data and documents that are important in supporting the report to the audit committee required under Article 11 of the Regulation;
- (e) it is closed not more than sixty days after the date the audit report is signed in accordance with section 503 of the Companies Act 2006.

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(a) S.I. 2008/1911.

(3) The requirements of standards mentioned in sub-paragraph (1)(a) to (c) and (g) may be simplified in relation to the statutory audit of companies exempt from the requirements of the Companies Act 2006 relating to audit by virtue of section 477 of that Act.

**13.** Standards must ensure that remuneration received or receivable by a statutory auditor in respect of statutory audit work is not--

- (a) influenced or determined by the statutory auditor providing other services to the audited person, or
- (b) on a contingent fee basis.

**14.** Standards must ensure that the scope of statutory audit work does not include save to the extent required by the audit reporting requirements assurance on the future viability of the audited person or on the efficiency or effectiveness with which the directors or those concerned in the management of the audited person have conducted or will conduct its affairs.

**15.**—(1) Standards must ensure that, in the case of a statutory audit of the consolidated accounts of a group of undertakings—

- (a) the group auditor bears full responsibility for the audit report,
- (b) where any of the undertakings is a public interest entity, the group auditor bears full responsibility for ensuring the requirements of Articles 10 and 11 of the Audit Regulation are met in relation to the audit carried out of that public interest entity,
- (c) the group auditor—
  - (i) evaluates the audit work carried out by any statutory auditors for the purpose of the group audit, and
  - (ii) documents the nature, timing and extent of the work so carried out, including the group auditor's review of the relevant parts of the audit documentation,
- (d) the group auditor reviews the audit work performed by any statutory auditors for the purpose of the group audit and documents it,
- (e) any documentation retained by the group auditor is such as to enable the relevant competent authority to review the work of the group auditor,
- (f) for the purposes of the group auditor's review mentioned in sub-paragraph (1)(c), the group auditor—
  - (i) requests the agreement of the statutory auditor to the transfer of relevant documentation during the conduct of the audit of consolidated financial statements as a condition of the group auditor relying on the statutory auditor's work, and
  - (ii) if unable to request or secure the agreement mentioned in sub-paragraph (1)(f)(i) takes appropriate measures (including carrying out additional statutory audit work directly or outsourcing such work) and informs the relevant competent authority,

(2) Standards must ensure that a group auditor, who is subject to a quality assurance review or an investigation concerning the statutory audit of the consolidated financial statements of a group of undertakings—

- (a) complies with any request by the competent authority for relevant documentation retained by the group auditor and concerning the audit work performed by the respective statutory auditors or third country auditors for the purposes of the group audit (including any working papers relevant to the group audit);
- (b) in cases where the competent authority is unable to obtain documentation from the relevant competent authorities of a third country, complies with any request for additional documentation relating to audit work performed by third country auditors for the purposes of the group audit (including working papers relevant to the group audit);
- (c) in order to comply with any request under sub-paragraph (2)(c), the group auditor—
  - (i) retains copies of such documentation,

- (ii) obtains the agreement of third country auditors or third country audit entities to the group auditor having unrestricted access to such documentation on request,
- (iii) retains documentation to show that the group auditor has undertaken the appropriate procedures in order to gain access to the audit documentation and evidence supporting the existence of any impediments to access.

Draft



## SCHEDULE 2

Regulation 8

### Investigation Powers

1.—(1) The competent authority may for any purpose related to monitoring or investigating audits give notice to any statutory auditor (“A”) requiring A to provide information specified in the notice.

(2) Information may be specified in a notice under sub-paragraph (2) only if-

(a) it is information relating to the statutory audit of the annual accounts or the consolidated accounts of any audited person,

(b) it is information held by A which relates to tasks carried out by A.

(3) The competent authority may give notice to any person mentioned in sub-paragraph (4) requiring that person to provide information relating to the statutory audit of the annual accounts or the consolidated accounts of any public interest entity.

(4) The persons to whom notice may be given under sub-paragraph (3) are-

(a) any person involved in the activities of a statutory auditor (including any person to whom a statutory auditor has outsourced such activities),

(b) any public interest entity,

(c) any subsidiary or parent of a public interest entity or any other subsidiary of a company of which a public interest entity is a subsidiary,

(d) any person otherwise having a connection to a statutory auditor carrying out the statutory audit of the annual accounts or consolidated accounts of a public interest entity.

(5) A notice under sub-paragraph (1) or (3) must be in writing and specify the purposes for which the information is required.

(6) A notice under sub-paragraph (1) or (3) may—

(a) specify the time within which and the manner in which the person to whom it is given must comply with it,

(b) require the creation of documents, or documents of a description, specified in the notice, and

(c) require the provision of those documents to the competent authority.

(7) A requirement to provide information or create a document is a requirement to do so in a legible form.

(8) A notice under sub-paragraph (1) or (3) does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce—

(a) in proceedings in the High Court on the grounds of legal professional privilege, or

(b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(9) In sub-paragraph (8) “communications” means—

(a) communications between a professional legal adviser and his client, or

(b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

2.—(1) If a person fails to comply with a notice under paragraph 1, the competent authority may make an application to the court.

(2) If it appears to the court that the person has failed to comply with the notice, it may make an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.

(3) Where the court makes an order under sub-paragraph (2)—

- (a) it may require the person to meet the costs or expenses of the competent authority's application, or
- (b) if the person is a company, partnership or unincorporated association, the court may require an officer who is responsible for the failure to meet those costs or expenses.

(4) In this paragraph—

“the court” means—

- (a) the High Court,
- (b) in relation to England and Wales, the county court,
- (c) in relation to Northern Ireland, a county court,
- (d) the Court of Session, or
- (e) the sheriff;

“officer” means—

- (a) in the case of a company, a director, manager, secretary or other similar officer,
- (b) in the case of a limited liability partnership, a member,
- (c) in the case of a partnership other than a limited liability partnership, a partner, and
- (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

**3.—**(1) This paragraph applies if a person provides information (including information contained in a document created by the person) in response to a notice under paragraph 1.

(2) In any criminal proceedings against the person—

- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and
- (b) no question relating to the information may be asked by or on behalf of the prosecution.

(3) Sub-paragraph (2) does not apply if, in the proceedings—

- (c) evidence relating to the information is adduced by or on behalf of the person providing it, or
- (d) a question relating to the information is asked by or on behalf of that person.

(4) Sub-paragraph (2) does not apply if the proceedings are for—

- (e) an offence under paragraph 5 (obstruction),
- (f) an offence under section 5 of the Perjury Act 1911(a) (false statutory declarations and other false statements without oath),
- (g) an offence under section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995 (b)(false statements or declarations),
- (h) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979(c)(false statutory declarations and other false unsworn statements).

**4.—**(1) An officer of the competent authority may, for the purposes of inspecting statutory audit work, enter relevant premises at any reasonable time if—

- (a) the requirements of sub-paragraph (3) are satisfied, or
- (b) the occupier of the premises has waved those requirements.

(2) In this paragraph “relevant premises” means premises—

- (a) in which a statutory auditor is carrying out a statutory audit, or

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(a) 1911 c. 6.  
(b) 1995 c. 39.  
(c) S.I. 1979/1714 (N.I. 19).

- (b) where documents related to a statutory audit are kept,  
and does not include premises used wholly or mainly as a dwelling.
- (3) The requirements of this sub-paragraph are that—
- (a) a notice in writing is given to the occupier of the premises by an officer of the competent authority,
  - (b) the notice sets out why entry is necessary and gives details of the statutory audit work subject to inspection (including the name of the audited person and the accounting years in question) and indicates the nature of the offence under paragraph 5, and
  - (c) there are at least two working days between the date the occupier of the premises receives the notice and the date of entry.
- (4) An officer of the competent authority who enters premises under this paragraph must produce evidence of the officer's identity and authority to the occupier of the premises.
- (5) An officer of the competent authority entering premises under this paragraph may—
- (a) be accompanied by such persons and may take onto the premises such equipment as the officer thinks necessary,
  - (b) require a statutory auditor or any person acting on behalf of a statutory auditor to produce any documents relating to the statutory audit of the annual or consolidated accounts of a public interest entity to which the statutory auditor has access,
  - (c) require a statutory auditor or any person acting on behalf of a statutory auditor to give an explanation of any document produced under sub-sub-paragraph (b).
- (6) Where a document required to be produced under sub-paragraph (5)(b) contains information recorded electronically, the power in that sub-paragraph includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.
- (7) This paragraph does not permit an officer of the competent authority to require a person to produce any document which the person would be entitled to refuse to produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
  - (b) in proceedings in the Court of Session on grounds of confidentiality of communications.
- (8) In this paragraph—
- “communications” means—
- (a) communications between a professional legal adviser and the adviser's client, or
  - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- “give”, in relation to the giving of a notice to the occupier of premises, includes delivering it or leaving it at the premises or sending it there by post;
- “working day” means a day other than—
- (a) Saturday or Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(a)</sup> in that part of the United Kingdom in which the premises are situated.
- 5.—**(1) A person commits an offence if the person—
- (a) intentionally obstructs the competent authority or an officer of the competent authority in exercising or seeking to exercise a power under and in accordance with this Schedule,

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(a) 1971 c. 80.

- (b) intentionally fails to comply with a requirement properly imposed by the competent authority or an officer of the competent authority under this Schedule,
  - (c) without reasonable excuse fails to give the competent authority or an officer of the competent authority any other assistance or information which the competent authority or officer may reasonably require for a purpose for which the competent authority or officer may exercise a power under this Schedule.
- (2) A person commits an offence if, in giving information of a kind mentioned in sub-paragraph (1)(c), the person—
- (a) makes a statement which the person knows is false or misleading in a material respect, or
  - (b) recklessly makes a statement which is false or misleading in a material respect.
- (3) A person who is guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Nothing in this paragraph requires a person to answer any question or give any information if to do so might incriminate that person.

## SCHEDULE 3

Regulation 10

### PART 1

#### Information the Register must contain in relation to an individual eligible for appointment as a statutory auditor

1. In relation to an individual the register is to contain the following information—
- (a) the individual's name and address;
  - (b) the individual's registered number;
  - (c) the name and address of the recognised supervisory body under whose rules the individual is eligible for appointment as a statutory auditor;
  - (d) if the individual is responsible for statutory audit work on behalf of any firm, the firm's name, address, registered number and, if the firm has a website, the website address;
  - (e) the name of any EEA competent authority with whom the individual is registered for audit purposes and any registration number which such an authority has allocated to the individual;
  - (f) the name and address of any body which has authorised the individual to conduct audits in accordance with the law of a third country;
  - (g) whether the individual is eligible for appointment as a statutory auditor by virtue of being an EEA auditor who meets the requirements in paragraph 6(1)(aa) of Schedule 10 to the Companies Act 2006.

### PART 2

#### Information the Register must contain in relation to a firm eligible for appointment as a statutory auditor

2. In relation to a firm the register is to contain the following information—
- (a) its name and address;

- (b) its registered number;
- (c) the address of each of its offices in which it carries out statutory audit work;
- (d) information as to how the firm is to be contacted, the primary contact person and, if the firm has a website, the website address;
- (e) the name, business address and registration number of each individual responsible for statutory audit work on behalf of the firm;
- (f) its legal form–
  - (i) in the case of a limited liability partnership, the name and business address of each member of the partnership,
  - (ii) in the case of a body corporate, other than a limited liability partnership, the name and business address of each person who is a director of the body or who holds any shares in it,
  - (iii) in the case of a corporation sole the name and address of the individual for the time being holding the office by the name of which he is the corporation sole,
  - (iv) in the case of a partnership, the name and business address of each partner,
 and references in this paragraph to a limited liability partnership, a body corporate, a corporation sole or a partnership include references to any comparable undertaking incorporated in or formed under the law of any country or territory outside the United Kingdom;
- (g) the name and address of the recognised supervisory body under whose rules it is eligible for appointment as a statutory auditor;
- (h) in the case of a firm which is a member of a network, the name of the network, and either–
  - (i) the names and addresses of the other members of the network and of the affiliates of all the members of that network, or
  - (ii) a reference to a website address or any other place where the information mentioned in sub-paragraph (h)(i) is available to the public;
- (i) the name of any EEA competent authority with whom it is registered for audit purposes and any registration number which such an authority has allocated to it;
- (j) the name and address of any body which has authorised the firm to conduct audits in accordance with the law of a third country;
- (k) whether the firm is eligible for appointment as a statutory auditor by virtue of being an EEA auditor which meets the requirements in paragraph 6(1)(c) of Schedule 10 to the Companies Act 2006.

## **Consultation Draft:**

Delegation and Reclamation of Audit Regulatory Tasks under Regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016 to Supervisory Bodies Recognised by the Financial Reporting Council under section 1217 of the Companies Act 2006

## **Direction by the Parliamentary Under Secretary of State for intellectual property on behalf of the Secretary of State for Business Innovation and Skills under Regulation 3(9) of the Statutory Auditors and Third Country Auditors Regulations 2016**

### **Legal Framework:**

Regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016 (“the 2016 Regulations”) gives effect to the requirements of Article 32(4) to (4b) of the Audit Directive (2006/43/EC) as amended by the new Audit Directive (2015/56/EU) (“the amended Directive”). These provisions also apply for the purposes of Regulation 537/2014 on specific requirements regarding statutory audits of public interest entities (“the Regulation”) by virtue of Article 20(1) and (2) of that Regulation.

Under regulation 3(1) of the 2016 Regulations the Financial Reporting Council (FRC), as the competent authority with ultimate responsibility for the oversight of the regulatory tasks provided for in the amended Directive, is specifically given responsibility for oversight of:

- the approval and registration of statutory auditors and audit firms;
- technical standards and standards of professional ethics and internal quality control of statutory auditors and audit work;
- continuing professional development;
- monitoring of audits via inspections;
- investigative and administrative discipline and sanctioning of auditors.

Under regulation 3(2) the competent authority must consider whether and how tasks arising from its oversight of certain matters listed above may be delegated to any Recognised Supervisory Body (RSB)<sup>1</sup>. However under regulation 3(5), as is required by Article 24(1) of the Regulation, the FRC may not delegate certain inspection, investigation and disciplinary tasks, which it must continue to have full operational responsibility for.

Under regulation 3(6) to (8) the competent authority must specify the tasks delegated and any conditions under which those tasks are to be carried out; may specify exceptions to any delegation; and must specify the circumstances in which any delegated task must revert to the competent authority. This framework is intended to make sure that, whether in relation to an individual engagement of an auditor with an audited entity, or in relation to a class of engagements defined by reference to a

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<sup>1</sup> Recognised Supervisory Bodies are those bodies recognised by the Financial Reporting Council as having appropriate arrangements and resources in place for the supervision of statutory auditors under Section 1217 of the Companies Act 2006 and Part 1 of the Schedule 10 to that Act.

individual auditor or class of auditors or a class of audited entities, a task may be delegated and if necessary reclaimed.

Under regulation 3(9) the Secretary of State may give directions to the competent authority in connection with the delegation of tasks to the recognised supervisory bodies. This direction, issued under that paragraph of regulation 3 is intended to give effect to the Government's statement of 20 July 2016 on the intended effect of the UK's proposed implementation of the Audit Directive and the Regulation. In the statement, the Parliamentary Under-Secretary of State for intellectual property undertook that:

Following this statement and further consideration and formal consultation by the Department for Business Innovation and Skills the Statutory Auditors and Third Country Auditors Regulations 2016 were finalised and laid for debate before both Houses of Parliament.

Following the approval of those regulations by each House and the making of the regulations on [date] by the Parliamentary Under Secretary of State, commencing for all auditor appointments for accounting years beginning on or after 17 June 2016, the Secretary of State now makes the following direction:

**Direction:**

1. In considering whether and how tasks arising from the oversight of matters listed in regulation 3(1)(c) to (h) of the 2016 Regulations may be delegated to any RSB, the FRC should work on the basis that, apart from in circumstances mentioned in paragraphs 2, 3 and 4 below, these tasks are to be delegated to the RSBs.
2. Tasks of monitoring audit quality or of administrative or investigatory sanctions in relation to the engagement of a statutory auditor by an audited entity may be performed directly by the Financial Reporting Council:
  - i. because matters relating to the engagement raise or appear to raise important issues affecting the public interest;
  - ii. because the audited entity is a UK-traded non-EEA company as defined by the section 1241 of the Companies Act 2006 or an equivalent body corporate whose transferable securities are admitted to trading on a regulated market situated or operating in another EEA state.
  - iii. because the engagement is the subject of a joint inspection involving a third country competent authority; or,
  - iv. by agreement with the Recognised Supervisory Body.
3. Any tasks in relation to particular types of auditor or audited entity may be performed directly by the Financial Reporting Council:
  - a. if the FRC considers that the RSB is unable to carry out the task; or,
  - b. by agreement between the FRC and the RSB.

4. Where the FRC or RSB proposes that a task should be reclaimed or excepted from a delegation for a particular type of auditor or audited entity on the basis of paragraph 3 point (b) above, and there is no agreement, the FRC or RSB may approach the Secretary of State seeking a further direction on the matter.

Draft



# Mark-up of proposed amendments to the Companies Act 2006

## Part 16 - AUDIT

### 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.
- (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.

### **Appointment of auditors of private company: additional requirements for public interest entities**

**485A.**—(1) This section applies to the appointment (other than an appointment under sections 485(3), 486 or 487(2)) of an auditor or auditors of a private company which is also a public interest entity.

(2) Before an appointment to which this section applies is made—

- (a) the audit committee of the company must make a recommendation to the directors in connection with the appointment, and
- (b) the directors must propose an auditor or auditors for appointment, the following information in the proposal—
  - (i) the recommendation made by the audit committee in connection with the appointment, and
  - (ii) if the directors' proposal does not accord with that recommendation, the reasons for not following the recommendation.

(3) If the directors' proposal does not accord with the recommendation made by the audit committee, the auditor or auditors proposed for appointment must be chosen by carrying out a selection procedure in accordance with Article 16(3) of the Regulation.

(4) The audit committee must—

- (a) prepare its recommendation by carrying out a selection procedure in accordance with Article 16(3) of the Audit Regulation, unless—
  - (i) the company qualifies as a small company under section 382 or 383 of this Act,
  - (ii) the company qualifies as a medium-sized company under section 465 or 466 of this Act, or
  - (iii) the company is a company with reduced market capitalisation within the meaning in article 2(1)(t) of Directive 2003/71/EC,
- (b) identify its first and second choice candidates for appointment in the recommendation, and
- (c) give reasons for its choices under paragraph (b).

(5) The audit committee must state in the recommendation that—

- (a) the recommendation is free from influence by a third party, and
- (b) the recommendation does not result from a contractual term of the kind mentioned in regulation 8 of the Statutory Auditors and Third Country Auditors Regulations 2016(1) being imposed on the company.

(6) Subsection (4) does not apply—

- (a) if a selection procedure in accordance with Article 16(3) of the Audit Regulation has been carried out in respect of the appointment of the auditor or auditors in relation to one or more of the preceding nine financial years, and
- (b) if the auditor or auditors appointed by the company were appointed for the previous financial year.

### **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--

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(1) S.I. 2016/xxxx.

- (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.

(1A) The terms of appointment of an auditor or auditors of a private company which is also a public interest entity are subject to additional requirements that they cease to hold office on the expiry of the period for appointing auditors that follows the end of the maximum engagement period.

(1B) In this section “the maximum engagement period” means—

- (a) the period of ten years beginning with the date on which the auditor or auditors take office for the first time,
- (b) the period of twenty years beginning with the date on which the auditor or auditors take office for the first time if the requirements of section 485A(4) are satisfied—
  - (i) at least once in that period, and
  - (ii) at least once every ten years in that period, or
- (c) such other period of no more than twenty years beginning with the date on which the auditor or auditors take office for the first time and ending ten years after the date on which the auditors were re-appointed following the carrying out of a selection procedure in accordance with section 485A(4).

(1C) The maximum engagement may be extended by a period of up to two years with the approval of the competent authority, provided the competent authority is satisfied that exceptional circumstances exist.

(1D) An auditor is ineligible for appointment as auditor of a private company which is also a public interest entity if—

- (a) within the four years preceding that appointment the auditor has ceased by virtue of subsection (1A) to hold office as auditor of that company, or
- (b) the auditor is the member of the same network as an auditor who within the four years preceding that appointment has ceased by virtue of that subsection to hold office as auditor of that company.

(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, or

(f) the auditor has ceased to hold office by virtue of subsection (1A).

(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.

#### **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).

#### **Appointment of auditors of public company: additional requirements for public interest entities**

**489A.**—(1) This section applies to the appointment (other than an appointment under section 489(3) or section 490) of an auditor or auditors of a public company which is also a public interest entity.

(2) Before an appointment to which this section applies is made—

- (a) the audit committee of the company must make a recommendation to the directors in connection with the appointment, and
- (b) the directors must propose an auditor or auditors for appointment, including the following information in the proposal—
  - (i) the recommendation made by the audit committee in connection with the appointment, and
  - (ii) if the directors' proposal does not accord with that recommendation, the reasons for not following the recommendation.

(3) If the directors' proposal does not accord with the recommendation made by the audit committee, the auditor or auditors proposed for appointment must be chosen by carrying out a selection procedure in accordance with Article 16(3) of the Audit Regulation.

(4) The audit committee must—

- (a) prepare its recommendation by carrying out a selection procedure in accordance with Article 16(3) of the Audit Regulation, unless—
  - (i) the company qualifies as a small company under section 382 or 383 of this Act;
  - (ii) the company qualifies as a medium-sized company under section 465 or 466 of this Act;
  - (iii) the company is a company with reduced market capitalisation within the meaning in article 2(1)(t) of Directive 2003/71/EC.
- (b) identify its first and second choice candidates for appointment in the recommendation, and
- (c) give reasons for its choices under paragraph (b),

(5) The audit committee must state in the recommendation that—

- (a) the recommendation is free from influence by a third party, and
- (b) the recommendation does not result from a contractual term of the kind mentioned in regulation 8 of the Statutory Auditors and Third Country Auditors Regulations 2016(2) being imposed on the company.

(6) Subsection (4) does not apply—

- (a) if a selection procedure in accordance with Article 16(3) of the Audit Regulation has been carried out in respect of the appointment of the auditor or auditors in relation to one or more of the preceding nine financial years, and
- (b) if the auditor or auditors appointed by the company were appointed for the previous financial year.

#### **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.

(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.

(1A) The terms of appointment of an auditor or auditors of a public company which is a public interest entity are subject to additional requirements that they cease to hold office at the end of the accounts meeting of the company which follows the expiry of the maximum engagement period.

(1B) In this section “the maximum engagement period” means—

- (a) the period of ten years beginning with the date on which the auditor or auditors take office for the first time,
- (b) the period of twenty years beginning with the date on which the auditor or auditors take office for the first time if the requirements of section 489A(4) are satisfied—
  - (i) at least once in that period, and
  - (ii) at least once every ten years in that period, or
- (c) such other period of no more than twenty years beginning with the date on which the auditor or auditors take office for the first time and ending ten years after the date on which the auditors were reappointed following the carrying out of a selection procedure in accordance with section 489A(4).

(1C) The maximum engagement may be extended by a period of up to two years with the approval of the competent authority, provided the competent authority is satisfied that exceptional circumstances exist.

(1D) An auditor is ineligible for appointment as auditor of a public company which is also a public interest entity if—

- (a) within the four years preceding that appointment the auditor has ceased by virtue of subsection (1A) to hold office as auditor of that company, or
- (b) the auditor is the member of the same network as an auditor who within the four years preceding that appointment has ceased by virtue of that subsection to hold office as auditor of that company.

(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.

- (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 strategic report or 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--

- (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 strategic report or 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.

### **Meaning of “public interest entity” and “audit committee”**

**494A.** In this Chapter—

“audit committee” means a body which performs the functions referred to in Article 39(6) of the Audit Directive or equivalent functions,

“Audit Directive” means Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

Audit Regulation means Regulation 537/2014 of the European Parliament and of the Council on specific requirements regarding statutory audit of public interest entities and repealing Commission Decision 2005/909/EC,

“competent authority” means the Financial Reporting Council Limited,

“public interest entity” means—

- (a) an issuer whose transferable securities are admitted to trading on a regulated market;
- (b) a credit institution within the meaning given by Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, other than one listed in Article 2 of Directive 2013/36/EU of



the European Parliament and of the Council on access to the activity of credit institutions and investment firms

- (c) an insurance undertaking within the meaning given by Article 2(1) of Council Directive 1991/674/EEC of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings

## 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 or subsection (3A) that are defined for the purposes of Part 15 (see sections 464, 471 and 474) have the same meaning as in that Part.

(3A) The following provisions apply to the auditors of a company which qualifies as a micro-entity in relation to a financial year (see sections 384A and 384B) in their consideration of whether the Companies Act individual accounts of the company for that year give a true and fair view as mentioned in subsection (3)(a)—

(a) where the accounts comprise only micro-entity minimum accounting items, the auditors must disregard any provision of an accounting standard which would require the accounts to contain information additional to those items,

(b) in relation to a micro-entity minimum accounting item contained in the accounts, the auditors must disregard any provision of an accounting standard which would require the accounts to contain further information in relation to that item, and

(c) where the accounts contain an item of information additional to the micro-entity minimum accounting items, the auditors must have regard to any provision of an accounting standard which relates to that item.

(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,

(c) must include a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the company's ability to continue as a going concern, and

(d) must identify the auditor's place of establishment.

(5) Where more than one person is appointed as auditor—

(a) all the persons appointed must jointly make a report under this section and the report must include a statement as to whether all the persons appointed agree on the matters contained in the report, and

(b) if all the persons appointed cannot agree on the matters contained in the report, the report must include the opinions of each person appointed and give reasons for the disagreement.

## **496 Auditor's report on strategic report and directors' report**

In his report on the company's annual accounts, the auditor must—

(a) state whether, in his opinion, based on the work undertaken in the course of the audit—

(i) the information given in the strategic report (if any) and the directors' report for the financial year for which the accounts are prepared is consistent with those accounts, and

(ii) any such strategic report and the directors' report have been prepared in accordance with applicable legal requirements,

(b) state whether, in the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, he has identified material misstatements in the

strategic report (if any) and the directors' report, and

(c) if applicable, give an indication of the nature of each of the misstatements referred to in paragraph (b).

(2) Where more than one person is appointed as auditor, the report must include a statement as to whether all the persons appointed agree on the statements and indications given under subsection (1) and, if they cannot agree on those statements and indications, the report must include the opinions of each person appointed and give reasons for the disagreement.

#### **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.

#### **497A.— Auditor's report on separate corporate governance statement**

Where the company prepares a separate corporate governance statement in respect of a financial year, the auditor must, in his report of the company's annual accounts for that year—

(a) state whether, in his opinion, based on the work undertaken in the course of the audit, the information given in the statement in compliance with rules 7.2.5 and 7.2.6 in the Disclosure Rules and Transparency Rules sourcebook made by the Financial Conduct Authority (information about internal control and risk management systems in relation to financial reporting processes and about share capital structures)—

(i) is consistent with those accounts, and

(ii) has been prepared in accordance with applicable legal requirements,

(b) state whether, in the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, he has identified material misstatements in the information in the statement referred to in paragraph (a),

(c) if applicable, give an indication of the nature of each of the misstatements referred to in paragraph (b), and

(d) state whether, in his opinion, based on the work undertaken in the course of the audit, rules 7.2.2, 7.2.3 and 7.2.7 in the Disclosure Rules and Transparency Rules sourcebook made by the Financial Conduct Authority (information about the company's corporate governance code and practices and about its administrative, management and supervisory bodies and their committees) have been complied with, if applicable.

(2) Where more than one person is appointed as auditor, the report must include a statement as to whether all the persons appointed agree on the statements and indications given under subsection (1) and, if they cannot agree on those statements and indications, the report must include the opinions of each person appointed and give reasons for the disagreement.

## 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.

(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—

- (a) have prepared accounts in accordance with the small companies regime, or
- (b) have taken advantage of small companies exemption from the requirement to prepare a strategic report or in preparing the directors' report,

and in the auditor's opinion they were not entitled to do so, the auditor shall state that fact in his report.

(6) Where more than one person is appointed as auditor, the report must include a statement as to whether all the persons appointed agree on the statements given under subsections (2) to (5) and, if they cannot agree on those statements and indications, the report must include the opinions of each person appointed and give reasons for the disagreement.

#### **498A. Auditor's duties in relation to separate corporate governance statement**

Where the company is required to prepare a corporate governance statement in respect of a financial year and no such statement is included in the directors' report—

- (a) the company's auditor, in preparing his report on the company's annual accounts for that year, must ascertain whether a corporate governance statement has been prepared, and
- (b) if it appears to the auditor that no such statement has been prepared, he must 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 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.

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

(1) The auditor's report must state the name of the auditor (or, where more than one person is appointed as auditor, all their names) 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.

(4) Where more than one person is appointed as auditor, the report must be signed by all of them.

## **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.

## **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.

**(1A) If more than one person is appointed as auditor, the reference in subsection (1)(a) to the name of the auditor is a reference to the names of all the auditors.**

(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.

(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.

## **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.

Draft

# Mark-up of proposed amendments to the Companies Act 2006

## SCHEDULE 10

### RECOGNISED SUPERVISORY BODIES

Section 1217

#### Part 1

#### Grant and Revocation of Recognition of a Supervisory Body

##### *Application for recognition of supervisory body*

1

(1) A supervisory body may apply to the Secretary of State for an order declaring it to be a recognised supervisory body for the purposes of this Part of this Act ("a recognition order").

(1A) A supervisory body recognised for the purposes of this Part of this Act is also recognised for the purposes of the delegation of tasks by the Competent Authority under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016.

(2) Any such application must be--

- (a) made in such manner as the Secretary of State may direct, and
- (b) accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) may differ as between different applications.

(5) The Secretary of State may require any information to be furnished under this paragraph to be in such form or verified in such manner as he may specify.

(6) Every application must be accompanied by--

- (a) a copy of the applicant's rules, and
- (b) a copy of any guidance issued by the applicant in writing.

(7) The reference in sub-paragraph (6)(b) to guidance issued by the applicant is a reference to any guidance or recommendation--

- (a) issued or made by it to all or any class of its members or persons seeking to become members,
- (b) relevant for the purposes of this Part, and
- (c) intended to have continuing effect,

including any guidance or recommendation relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.

##### *Grant and refusal of recognition*

## 2

- (1) The Secretary of State may, on an application duly made in accordance with paragraph 1 and after being furnished with all such information as he may require under that paragraph, make or refuse to make a recognition order in respect of the applicant.
- (2) The Secretary of State may make a recognition order only if it appears to him, from the information furnished by the body and having regard to any other information in his possession that —
  - (a) the requirements of Part 2 of this Schedule are satisfied in the case of that body, and
  - (b) the body is able to perform tasks which can be delegated by the competent authority under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016.
- (3) The Secretary of State may refuse to make a recognition order in respect of a body if he considers that its recognition is unnecessary having regard to the existence of one or more other bodies which--
  - (a) maintain and enforce rules as to the appointment and conduct of statutory auditors, and
  - (b) have been or are likely to be recognised.
- (4) Where the Secretary of State refuses an application for a recognition order he must give the applicant a written notice to that effect--
  - (a) specifying which requirements, in the opinion of the Secretary of State, are not satisfied, or
  - (b) stating that the application is refused on the ground mentioned in sub-paragraph (3).
- (5) A recognition order must state the date on which it takes effect.

### ***Revocation of recognition***

## 3

- (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him--
  - (a) that any requirement of Part 2 or 3 of this Schedule, other than a requirement relating to a task delegated to the body under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016, is not satisfied in the case of the body to which the recognition order relates ("the recognised body"),
  - (b) that the body has failed to comply with any obligation imposed on it by or by virtue of this Part of this Act, or
  - (c) that the continued recognition of the body is undesirable having regard to the existence of one or more other bodies which have been or are to be recognised.
- (1A) A recognition order may be revoked by a further order made by the Secretary of State if at any time—
  - (a) one or more tasks delegated to the recognised body under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016 has reverted to the competent authority; and
  - (b) it appears to the Secretary of State that the continued recognition of the body is undesirable having regard to the circumstances surrounding the reversion of the task or tasks.
- (2) An order revoking a recognition order must state the date on which it takes effect, which must be after the period of three months beginning with the date on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State must--

- (a) give written notice of his intention to do so to the recognised body,
  - (b) take such steps as he considers reasonably practicable for bringing the notice to the attention of the members of the body, and
  - (c) publish the notice in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under sub-paragraph (3) must--
- (a) state the reasons for which the Secretary of State proposes to act, and
  - (b) give particulars of the rights conferred by sub-paragraph (5).
- (5) A person within sub-paragraph (6) may, within the period of three months beginning with the date of service or publication of the notice under sub-paragraph (3) or such longer period as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (6) The persons within this sub-paragraph are--
- (a) the recognised body on which a notice is served under sub-paragraph (3),
  - (b) any member of the body, and
  - (c) any other person who appears to the Secretary of State to be affected.
- (7) The Secretary of State must have regard to any representations made in accordance with sub-paragraph (5) in determining whether to revoke the recognition order.
- (8) If in any case the Secretary of State considers it essential to do so in the public interest he may revoke a recognition order without regard to the restriction imposed by sub-paragraph (2), even if--
- (a) no notice has been given or published under sub-paragraph (3), or
  - (b) the period of time for making representations in pursuance of such a notice has not expired.
- (9) An order revoking a recognition order may contain such transitional provision as the Secretary of State thinks necessary or expedient.
- (10) A recognition order may be revoked at the request or with the consent of the recognised body and any such revocation is not subject to--
- (a) the restrictions imposed by sub-paragraphs (1) and (2), or
  - (b) the requirements of sub-paragraphs (3) to (5) and (7).
- (11) On making an order revoking a recognition order in respect of a body the Secretary of State must--
- (a) give written notice of the making of the order to the body,
  - (b) take such steps as he considers reasonably practicable for bringing the making of the order to the attention of the members of the body, and
  - (c) publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

***Transitional provision***

4

A recognition order made and not revoked under--

- (a) paragraph 2(1) of Schedule 11 to the Companies Act 1989 (c 40), or
- (b) paragraph 2(1) of Schedule 11 to the Companies (Northern Ireland) Order 1990 (SI 1990/593 (NI 5)),

before the commencement of this Chapter of this Part of this Act is to have effect after the commencement of this Chapter as a recognition order made under paragraph 2(1) of this Schedule.

### ***Orders not statutory instruments***

5

Orders under this Part of this Schedule shall not be made by statutory instrument.

## **Part 2**

### **Requirements for Recognition of a Supervisory Body**

#### ***General***

**5A**

(1) The body ("B") must have rules providing that—

(a) the competent authority, in circumstances where, and to the extent that, a task delegated to B reverts to the competent authority under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016, may apply rules (and may vary the rules it applies) made by B in accordance with the requirements of this Part of this Schedule, and

(b) any other recognised supervisory body, in circumstances where, and to the extent that, a task delegated to B reverts to the competent authority under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016 and is delegated to that other recognised supervisory body, may apply rules (and may vary the rules it applies) made by B in accordance with the requirements of this Part of this Schedule.

(2) The body must consult with the competent authority and with other recognised supervisory bodies in making or varying rules in accordance with the requirements of this Schedule with a view to securing consistency between the rules of all the recognised supervisory bodies.

### ***Holding of appropriate qualification***

6

(1) The body must have rules to the effect that a person is not eligible for appointment as a statutory auditor unless--

- (a) in the case of an individual other than an EEA auditor, he holds an appropriate qualification,
- (aa) in the case of an individual who is an EEA auditor--
  - (i) he holds an appropriate qualification,

(ii) he has been authorised on or before 5 April 2008 to practise the profession of company auditor pursuant to the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (SI 2005/18) and has fulfilled any requirements imposed pursuant to regulation 6 of those Regulations, or

(iii) he ~~has passed an aptitude test in accordance with sub-paragraph (2), unless an aptitude test is not required (see sub-paragraph (2A))~~ meets the requirements of paragraph (1B),

(b) in the case of a firm ~~which is not an EEA auditor--~~

(i) each individual responsible for statutory audit work on behalf of the firm is eligible for appointment as a statutory auditor, and

(ii) the firm is controlled by qualified persons (see paragraph 7 below).

(c) in the case of a firm which is an EEA auditor—

(i) each individual responsible for statutory audit work on behalf of the firm is eligible for appointment as a statutory auditor,

(ii) the firm is eligible for appointment as a statutory auditor or is eligible for a corresponding appointment as an auditor under the law of an EEA State or part of an EEA State, other than the United Kingdom, and

(iii) if the firm is eligible for a corresponding appointment as an auditor under the law of an EEA State or part of an EEA State other than the United Kingdom, the firm provides proof of its eligibility in the form of a certificate, dated not more than three months before it is provided by the firm, from the competent authority of the EEA State concerned.

(1A) The body must have rules which ensure that it informs the EEA competent authorities in which an EEA auditor is approved to carry out audits of accounts, of that EEA auditor's becoming eligible for appointment as a statutory auditor.

(1B) The requirements of this sub-paragraph are that the individual—

(a) already holds a professional qualification which covers the subjects—

(i) covered by a recognised professional qualification; and

(ii) of which knowledge is essential for the pursuit of the profession of statutory auditor, or

(b) has in accordance with the rules required by sub-paragraph (1B) passed an aptitude test in accordance with sub-paragraph (2) or completed in adaptation period in accordance with sub-paragraph (2A).

(1C) The body's rules may specify, subject to any direction given by the Secretary of State, whether the condition in paragraph (1B)(b)—

(a) can only be satisfied by an aptitude test,

(b) can only be satisfied by an adaptation period, or

(c) can be satisfied by either an aptitude test or an adaptation period, according to the choice of the applicant.

(2) The aptitude test--

(a) must test the person's knowledge of subjects--

(i) that are covered by a recognised professional qualification,



- (ii) that are not covered by the professional qualification already held by the person, and
  - (iii) the knowledge of which is essential for the pursuit of the profession of statutory auditor;
- (b) may test the person's knowledge of rules of professional conduct;
  - (c) must not test the person's knowledge of any other matters.

~~(2A) — No aptitude test is required if the subjects that are covered by a recognised professional qualification and the knowledge of which is essential for the pursuit of the profession of statutory auditor are covered by the professional qualification already held by the person.~~

(2A) An “adaptation period” means a period in which the individual (“the applicant”) pursues the profession of statutory auditor under the supervision of an individual who holds an appropriate qualification, subject to an assessment of the applicant’s ability to pursue the profession of statutory auditor in the United Kingdom and, for the purposes of this sub-paragraph--

- (a) the body must have rules governing the adaptation period and the assessment, having regard to the circumstances of each applicant and, in particular, to the fact that each applicant is a qualified professional in another EEA State,
- (b) the applicant may be required to undergo further training during the adaptation period,
- (c) the applicant’s performance during the adaptation period shall be assessed by the body, and
- (d) the body shall determine the applicant’s professional status during the adaptation period.

(3) A firm which has ceased to comply with the conditions mentioned in sub-paragraph (1)(b) may be permitted to remain eligible for appointment as a statutory auditor for a period of not more than three months.

## 7

- (1) This paragraph explains what is meant in paragraph 6(1)(b) by a firm being "controlled by qualified persons".
- (2) In this paragraph references to a person being qualified are--
- (a) in relation to an individual, to his holding--
    - (i) an appropriate qualification, or
    - (ii) a corresponding qualification to audit accounts under the law of an EEA State, or part of an EEA State, other than the United Kingdom;
  - (b) in relation to a firm, to its--
    - (i) being eligible for appointment as a statutory auditor, or
    - (ii) being eligible for a corresponding appointment as an auditor under the law of an EEA State, or part of an EEA State, other than the United Kingdom.
- (3) A firm is to be treated as controlled by qualified persons if, and only if--
- (a) a majority of the members of the firm are qualified persons, and
  - (b) where the firm's affairs are managed by a board of directors, committee or other management body, a majority of that body are qualified persons or, if the body consists of two persons only, at least one of them is a qualified person.

- (4) A majority of the members of a firm means--
- (a) where under the firm's constitution matters are decided upon by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters;
  - (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (5) A majority of the members of the management body of a firm means--
- (a) where matters are decided at meetings of the management body by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;
  - (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (6) Paragraphs 5 to 11 of Schedule 7 to this Act (rights to be taken into account and attribution of rights) apply for the purposes of this paragraph.

***Auditors to be fit and proper persons***

**8**

- (1) The body must have adequate rules and practices designed to ensure that the persons eligible under its rules for appointment as a statutory auditor are fit and proper persons to be so appointed.
- (2) The matters which the body may take into account for this purpose in relation to a person must include--
- (a) any matter relating to any person who is or will be employed by or associated with him for the purposes of or in connection with statutory audit work;
  - (b) in the case of a body corporate, any matter relating to--
    - (i) any director or controller of the body,
    - (ii) any other body corporate in the same group, or
    - (iii) any director or controller of any such other body; and
  - (c) in the case of a partnership, any matter relating to--
    - (i) any of the partners,
    - (ii) any director or controller of any of the partners,
    - (iii) any body corporate in the same group as any of the partners, or
    - (iv) any director or controller of any such other body.
- (3) Where the person is a limited liability partnership, in sub-paragraph (2)(b) "director" is to be read as "member".
- (4) In sub-paragraph (2)(b) and (c) "controller", in relation to a body corporate, means a person who either alone or with an associate or associates is entitled to exercise or control the exercise of 15% or more of the rights to vote on all, or substantially all, matters at general meetings of the body or another body corporate of which it is a subsidiary.

## **Professional integrity and independence**

9

- (1) The body must have adequate rules and practices designed to ensure that--
  - (a) statutory audit work is conducted properly and with integrity, . . .
  - (b) persons are not appointed as statutory auditors in circumstances in which they have an interest likely to conflict with the proper conduct of the audit,
  - (c) persons appointed as statutory auditors take steps to safeguard their independence ~~from any significant threats to it~~ in accordance with standards determined under subparagraph (2),
  - (d) persons appointed as statutory auditors record ~~any such threats and the steps taken to safeguard the proper conduct of the audit from them~~ in accordance with those standards, and
  - (e) remuneration received or receivable by a statutory auditor in respect of statutory audit work is not--
    - (i) influenced or determined by the statutory auditor providing other services to the audited person, or
    - (ii) on a contingent fee basis.
- (2) ~~The body must participate in arrangements within paragraph 21, and T~~ the rules and practices mentioned in sub-paragraph (1) must include provision—
  - (a) requiring compliance with any standards for the time being determined by the competent authority under ~~such arrangements~~ the Statutory Auditors and Third Country Auditors Regulations 2016, and
  - (b) in relation to the audit of public interest entities, ensuring compliance with the requirements of Articles 4 to 6 of the EU Audit Regulation.
- (3) The body must also have adequate rules and practices designed to ensure that--
  - (a) ~~prevent any person from being able to exert any influence over the way in which a statutory audit is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit;~~
  - (b) any rule of law relating to the confidentiality of information received in the course of statutory audit work by persons appointed as statutory auditors is complied with; and
  - (c) a person ceasing to hold office as a statutory auditor makes available to his successor in that office all relevant information which he holds in relation to that office.

(3A) The rules and practices mentioned in sub-paragraph (3) must include provision requiring compliance with standards for the time being determined by the competent authority under the Statutory Auditors and Third Country Auditors 2016.

- (4) The rules referred to in sub-paragraph (3)(b) (confidentiality of information) must apply to persons who are no longer members of the body as they apply to members and any fine imposed in the enforcement of those rules shall be recoverable by the body as a debt due to it from the person obliged to pay it.

(4A) The rules and practices referred to in sub-paragraph (3)(c) must, in relation to the audit of public interest entities, include provision ensuring compliance with Article 18 of the EU Audit Regulation.

## **Technical standards**

10

- (1) The body must have rules and practices as to--

- (a) the technical standards to be applied in statutory audit work, and
  - (b) the manner in which those standards are to be applied in practice.
- (2) ~~The body must participate in arrangements within paragraph 22, and T~~ the rules and practices mentioned in sub-paragraph (1) must include provision—
- (a) requiring compliance with any standards for the time being determined by the competent authority under such arrangements ~~the Statutory Auditors and Third Country Auditors Regulations 2013, and~~
  - (b) in relation to audits of public interest entities, ensuring the requirements of Articles 7, 8 and 15 of the EU Audit Regulation are met.

**Technical standards for group audits**

**10A**

- (1) The body must have rules and practices as to technical standards ensuring that group auditors--
  - (a) review for the purposes of a group audit the audit work conducted by other persons, and
  - (b) record that review.
- (2) ~~The body must participate in arrangements within paragraph 22, and T~~ the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined by the competent authority under such arrangements ~~the Statutory Auditors and Third Country Auditors Regulations 2013.~~
- (3) The body must also have rules and practices ensuring that group auditors--
  - (a) ~~retain~~ have arrangements to handle copies of any documents necessary for the purposes of the review in accordance with those standards ~~that they have received from third country auditors who are not covered by working arrangements under section 1253E, or~~
  - (b) ~~agree with those third country auditors proper and unrestricted access to those documents on request.~~
- (4) The body's rules and practices must ensure that group auditors make those documents available on request to--
  - (a) the body;
  - (b) ~~any other body with which the body has entered into arrangements for the purposes of paragraph 23, 23A or 24 (independent arrangements for monitoring and investigation)~~ the competent authority;
  - (c) the Secretary of State.
- (5) The body may provide that the rules and practices referred to in sub-paragraphs (3) and (4) do not apply if, after taking all reasonable steps, a group auditor is unable to obtain the copies of the documents or the access to the documents necessary for the review.
- (6) If the body does so provide, its rules and practices must ensure that the group auditor records--
  - (a) the steps taken to obtain copies of or access to those documents,
  - (b) the reasons why the copies or access could not be obtained, and
  - (c) any evidence of those steps or those reasons.

(7) In this paragraph--

"group auditor" means a person appointed as statutory auditor to conduct an audit of group accounts;

"group" has the same meaning as in Part 15 of this Act (see section 474).

### ***Public interest entity reporting requirements***

#### **10B**

(1) The body must have adequate rules and practices designed to ensure that persons appointed as statutory auditors of public interest entities provide a report to the entity's audit committee (or, if the entity does not have an audit committee, to the directors or members of the management body of the public interest entity) in accordance with the requirements of Article 11 of the EU Audit Regulation (if it has one) at least once in each calendar year at any time during which they hold the office of statutory auditor.

(2) The body must have adequate rules and practices designed to ensure that, in the case of persons appointed as statutory auditors of public interest entities, the report made under section 495 of this Act, in addition meeting the requirements of that section, meets the requirements of Article 10 of the EU Audit Regulation. The report must include--

(a) a statement in writing confirming the person's independence from the public interest entity;

(b) a description of any services provided by the person to the public interest entity other than in his capacity as statutory auditor;

(c) a description of any significant threats to the person's independence;

(d) an explanation of the steps taken by the person to safeguard his independence from those threats;

(e) a description of any material weaknesses arising from the statutory audit in the public interest entity's internal control in relation to the preparation of accounts; and

(f) any other significant matters arising from the statutory audit.

(3) The body must participate in arrangements within paragraph 22A (arrangements for setting standards), and the rules and practices mentioned in sub-paragraphs (1) and (2) must include provision requiring compliance with any standards for the time being determined under such arrangements by the competent authority under the Statutory Auditors and Third Country Auditors Regulations 2013.

(4) In this paragraph, "audit committee" means a body which performs the functions referred to in Article 39.644.2 of the Audit Directive or equivalent functions.

### ***Public interest entity independence requirements***

#### **10C**

(1) The body must have adequate rules and practices designed to ensure that--

(a) an individual does not accept an appointment by a public interest entity as statutory auditor if--

(i) he has been the statutory auditor of the entity for a continuous period of more than seven years, and

(ii) less than two years have passed since he was last the statutory auditor of the entity;

(b) where a firm has been appointed by a public interest entity as statutory auditor, an individual may not be a key audit partner if--

(i) he has been a key audit partner in relation to audits of the entity for a continuous period of more than seven years as the standards under subparagraph (2) may determine in accordance with Article 17(7) of the EU Audit Regulation, and

(ii) less than two years have passed since he was last the key audit partner in relation to an audit of the entity.

(1A) Rules and practices mentioned in paragraph (1) must specify a shorter period for the purposes of sub-paragraphs (a) (i) and (ii) and (b) (i) and (ii) in accordance with standards set by the competent authority.

(2) ~~The body must participate in arrangements within paragraph 22B (arrangements for setting standards), and~~ The rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined ~~under such arrangements by the competent authority under the Statutory Auditors and Third Country Auditors Regulations 2013.~~

(3) The body must also have adequate rules and practices designed to ensure ~~in accordance with those standards~~ that--

(a) an individual who has been appointed by a public interest entity as statutory auditor may not be appointed as a director or other officer ~~(or be concerned in the management)~~ of the entity during a period ~~(not exceeding two years but to be determined by the competent authority)~~ commencing on the date on which his appointment as statutory auditor ended;

(b) a key audit partner of a firm which has been appointed by a public interest entity as statutory auditor may not be appointed as a director or other officer ~~(or be concerned in the management)~~ of the entity during a period ~~(not exceeding two years but to be determined by the competent authority)~~ commencing on the date on which his appointment as statutory auditor ended;

(4) The rules referred to in sub-paragraph (3) must apply to persons who are no longer members of the body as they apply to members and any fine imposed in the enforcement of those rules shall be recoverable by the body as a debt due to it from the person obliged to pay it.

(5) An auditor of a public interest entity is not to be regarded as an officer of the entity for the purposes of sub-paragraph (3)(a) and (b).

(6) For the purposes of this paragraph--

(a) a "key audit partner" ~~is an individual identified by a firm appointed as statutory auditor as being primarily responsible for the statutory audit; and~~

~~(b) a key audit partner of a firm appointed as statutory auditor of a parent undertaking or a material subsidiary undertaking of a public interest entity is to be treated as if he were a key audit partner of the firm appointed as statutory auditor of the public interest entity. means--~~

~~(i) the statutory auditor designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out of the statutory audit on behalf of the audit firm; or~~

~~(ii) in the case of a group audit, at least the statutory auditor designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor designated at the level of material subsidiaries; or~~

~~(iii) the statutory auditor who signs the audit report,~~

### ***Procedures for maintaining competence***

The body must have rules and practices designed to ensure that persons eligible under its rules for appointment as a statutory auditor continue to maintain an appropriate level of competence in the conduct of statutory audits.

## ***Monitoring and enforcement***

12

- (1) The body must--
  - (a) have adequate resources for the effective monitoring and enforcement of compliance with its rules, and
  - (b) ensure that those resources may not be influenced improperly by the persons monitored.
  
- (1A) The body must--
  - (a) have adequate arrangements for the effective monitoring and enforcement of compliance with its rules, and
  - (b) ensure that those arrangements operate independently of the persons monitored.
  
- (2) The arrangements for monitoring **must make provision for that function to be performed by the competent authority or any body to whom that authority has delegated tasks in accordance with regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016.**
  
- (3) The arrangements for enforcement must include provision for--
  - (a) sanctions which include--
    - (i) the withdrawal of eligibility for appointment as a statutory auditor; and
    - (ii) **a notice requiring the person responsible for any breach to cease the conduct amounting to a breach or and to abstain from repeating such conduct;**
    - (iii) **a public statement identifying the person responsible for any breach and the nature of the breach;**
    - (iv) **a temporary prohibition of up to three years preventing a person responsible for any breach from carrying out statutory audits or signing audit reports;**
    - (v) **a declaration that the audit report does not satisfy the audit reporting requirements**
    - (vi) **an appropriate financial penalty**
    - (vii) any other disciplinary measures necessary to ensure the effective enforcement of the body's rules; and
  - (b) the body making available to the public information relating to steps it has taken to ensure the effective enforcement of its rules.

## Monitoring of audits

13

(1) The body must--

(a) . . . have adequate arrangements for enabling the performance by its members of statutory audit functions ~~, other than statutory audit functions in respect of major audits, that are not the subject of a delegation of tasks relating to the monitoring of audits by the competent authority to the body under the Statutory Auditors and Third Country Auditors Regulations 2016~~ to be monitored by means of inspections;

(b) in the case of members of the body who perform any statutory audit functions in respect of ~~major audits that are not the subject of such a delegation--~~

(i) participate in arrangements ~~within paragraph 23(1)~~ for the monitoring of those audits by the competent authority in accordance with those regulations and, in respect of public interest entities, Article 26 of the Regulation; and

(ii) have rules and practices designed to ensure that a sanction determined ~~under paragraph 23(1)(b) by the competent authority in accordance with those regulations~~ is to be treated as if it were a sanction which the body had determined under arrangements for enforcement within paragraph 12~~(4A)~~;

(ba) in the case of members of the body who perform any third country audit functions--

(i) participate in arrangements ~~in which audits are monitored by the competent authority in accordance with the Statutory Auditors and Third Country Auditors Regulations 2016~~ ~~within paragraph 23A(1)~~; and

(ii) have rules and practices designed to ensure that a sanction ~~imposed~~ by the competent authority in accordance with those Regulations ~~determined under paragraph 23A(1)(b)~~ is to be treated as if it were a sanction which the body had determined under arrangements for enforcement within paragraph 12~~(4A)~~; and

(c) have rules designed to ensure that members of the body take such steps as may reasonably be required of them to enable their performance of any statutory audit functions or third country audit functions to be monitored by means of inspections.

(2) Any monitoring of members of the body under ~~the Statutory Auditors and Third Country Auditors Regulations 2016, Article 26 of the Regulation or arrangements within paragraph 23(1) or 23A(1)~~ is to be regarded (so far as their performance of statutory audit functions in respect of ~~major statutory~~ audit functions, or of third country audit functions, is concerned) as monitoring of compliance with the body's rules for the purposes of paragraph 12(1) and (1A).

(3) The arrangements referred to in sub-paragraph (1)(a) must--



(a) make provision for inspections to be conducted by the competent authority or any recognised supervisory body to whom that authority has delegated tasks in accordance with regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016; and

(b) include an inspection which is conducted in relation to each person eligible for appointment as a statutory auditor ~~at least once every six years-~~

(i) at such frequency as the body considers appropriate given the risks arising from the statutory audit work undertaken by the person eligible for appointment as a statutory auditor; and

(ii) at least once every six years in the case of a person who, during any of the previous five years, has carried out a statutory audit of an entity not subject to the small companies regime (see section 381).

(3A) The arrangements must provide that the determination by the body of the frequency of inspections under sub-sub-paragraph (b) shall be subject to any direction by the Secretary of State.

(4) The inspection must be conducted by persons who--

(a) have an appropriate professional education;

(b) have experience of--

(i) statutory audit work, or

(ii) equivalent work on the audit of accounts under the law of an EEA State, or part of an EEA State, other than the United Kingdom;

(c) have received adequate training in the conduct of inspections;

(d) ~~have declared that they~~ do not have any interests likely to conflict with the proper conduct of the inspection

(e) ~~has not been an employee or partner or member of the management body of the person subject to inspection and has not been otherwise associated with that person for at least three years.~~

(5) The inspection must review one or more statutory audits in which the person to whom the inspection relates has participated.

(6) The inspection must include an assessment of--

(a) the person's compliance with the ~~body's rules established for the purposes of paragraphs 9 (professional integrity and independence), 10 (technical standards), 10A (technical standards for group audits) and 10C (public interest entity independence requirements)~~ standards set by the competent authority under the Statutory Auditors and Third Country Auditors Regulations 2016;

(b) the resources allocated by the person to statutory audit work;

- (c) in the case of an inspection in relation to a firm, its internal quality control system;
  - (d) the remuneration received by the person in respect of statutory audit work.
- (6A) The inspection shall be appropriate and proportionate in view of the scale and complexity of the statutory audit work of the person subject to inspection.
- (6B) Where undertaking inspections of undertakings that qualify as small (see section 382 and 383) or medium sized (see section 465 and 466) the body shall take account of the fact that the standards determined by the competent authority under the Statutory Auditors and Third Country Auditors Regulations 2016 are designed to be applied in a manner that is proportionate to the scale and complexity of the business of the audited entity.
- (7) An inspection conducted in relation to a firm may be treated as an inspection of all individuals responsible for statutory audit work on behalf of that firm, if the firm has a common quality assurance policy with which each such individual is required to comply.
- (8) The main conclusions of the inspection must be recorded in a report which is made available to--
- (a) the person to whom the inspection relates, and
  - (b) the body.
- (9) The body must, at least once in every calendar year, deliver to the Secretary of State a summary of the results of inspections conducted under this paragraph.

~~(10) In this paragraph--~~

~~"major audit" means a statutory audit conducted in respect of--~~

~~(a) a public interest entity, or~~

~~(b) any other person in whose financial condition there is a major public interest;~~

"statutory audit function" means any function performed as a statutory auditor;

"third country audit function" means any function related to the audit of a UK-traded non-EEA company or of an equivalent body corporate whose transferable securities are admitted to trading on a regulated market situated or operating in another EEA state.

### ***Membership, eligibility and discipline***

14

The rules and practices of the body relating to--

- (a) the admission and expulsion of members,

(b) the grant and withdrawal of eligibility for appointment as a statutory auditor **by the body when this task has been delegated to the body by the competent authority under the Statutory Auditors and Third Country Auditors Regulations 2016**, and

(c) the discipline it exercises over its members **where the task of applying systems of investigatory and administrative sanctions has been delegated to the body under those Regulations**,

must be fair and reasonable and include adequate provision for appeals.

### ***Investigation of complaints***

15

- (1) The body must have effective arrangements for the investigation of complaints against--
- (a) persons who are eligible under its rules for appointment as a statutory auditor, and
  - (b) the body in respect of matters arising out of its functions as a supervisory body.

(2) The arrangements mentioned in sub-paragraph (1) ~~may~~ **must** make provision for the whole or part of that function to be performed by ~~and to be the responsibility of a body or person independent of the body itself~~ **the competent authority under the Statutory Auditors and Third Country Auditors Regulations 2016**.

### ***Independent investigation for disciplinary purposes of public interest cases***

16

(1) The body must—

~~(a) participate in arrangements within paragraph 24(1), and~~

(b) have rules and practices designed to ensure that, where the ~~designated persons have~~ **competent authority has** decided that any particular disciplinary action should be taken against a member of the body following the conclusion of an investigation under ~~such arrangements~~ **the Statutory Auditors and Third Country Auditors Regulations 2016**, that decision is to be treated as if it were a decision made by the body in disciplinary proceedings against the member..

~~(2) In sub-paragraph (1) “the designated persons” means the persons who, under the arrangements, have the function of deciding whether (and if so, what) disciplinary action should be taken against a member of the body in the light of an investigation carried out under the arrangements.~~

### ***Transfer of papers to third countries***

16A

(1) The body must have adequate rules and practices designed to ensure that a person eligible under its rules for appointment as a statutory auditor transfers audit working papers to a third country competent authority only in accordance with the requirements of--

- (a) paragraph 16AA (transfer to approved third country competent authority), or
- (b) paragraph 16AB (transfer for purposes of investigation).

(2) The body must also have adequate rules and practices designed to ensure that a person eligible under its rules for appointment as a statutory auditor must refuse to transfer audit working papers to a third country competent authority if the Secretary of State directs under section 1253E(6) that such a transfer should not take place.

***Transfer to approved third country competent authority***

**16AA**

The requirements of this paragraph are that--

- (a) the transfer is to an approved third country competent authority, and
- (b) the Secretary of State has approved the transfer.

***Transfer for purposes of investigation of auditor***

**16AB**

(1) The requirements of this paragraph are that--

- (a) the transfer to the third country competent authority is made for the purposes of an investigation of an auditor or audit firm, and
- (b) the following conditions are met.

(2) The first condition is that the authority has requested the audit working papers for the purposes of an investigation which has been initiated by itself or another third country competent authority established in the same third country.

(3) The second condition is that the audit working papers relate to audits of companies that--

- (a) have issued securities in that third country, or
- (b) form part of a group issuing statutory consolidated accounts in that third country.

(4) The third condition is that, where the authority has made the request for the audit working papers directly to the statutory auditor, the authority has given the Secretary of State advance notice of the request, indicating the reasons for it.

(5) The fourth condition is that the authority has entered into arrangements with the Secretary of State in accordance with section 1253E.

***Meeting of claims arising out of audit work***

**17**

(1) The body must have adequate rules or arrangements designed to ensure that persons eligible under its rules for appointment as a statutory auditor take such steps as may reasonably be expected of them to secure that they are able to meet claims against them arising out of statutory audit work.

- (2) This may be achieved by professional indemnity insurance or other appropriate arrangements.

***Register of auditors and other information to be made available***

**18**

The body must have rules requiring persons eligible under its rules for appointment as a statutory auditor to comply with any obligations imposed on them by--

- (a) requirements under section 1224 (Secretary of State's power to call for information);
- (b) regulations under section 1239 (the register of auditors);
- (c) regulations under section 1240 (information to be made available to the public).

***Taking account of costs of compliance***

**19**

The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

***Promotion and maintenance of standards***

**20**

The body must be able and willing--

- (a) to promote and maintain high standards of integrity in the conduct of statutory audit work, and
- (b) to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility in the United Kingdom for the qualification, supervision or regulation of auditors.

***Interpretation***

**20A**

In this Part of this Schedule--

“audit reporting requirements” means the requirements of sections 495 to 498 and 503 to 506 of the Companies Act 2006 and, in the case of a public interest entity, also means the requirements of Articles 10 and 11 of the EU Audit Regulation,

“the EU Audit Regulation” means Regulation (EU) 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC,

“the competent authority” means the Financial Reporting Council Limited,

“public interest entity” means ~~an issuer~~--

- (a) ~~an issuer~~ ~~(a)~~ whose transferable securities are admitted to trading on a regulated market;  
~~and~~
- (b) ~~the audit of which is a statutory audit (see section 1210(1));~~

(b) a credit institution within the meaning given by Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, other than one listed in Article 2 of Directive

2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and investment firms;

- (c) an insurance undertaking within the meaning given by Article 2(1) of Council Directive 1991/674/EEC of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings,

"issuer" and "regulated market" have the same meaning as in Part 6 of the Financial Services and Markets Act 2000 (see sections 102A to 103); and

"transferable securities" means anything which is a transferable security for the purposes of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments.

### Part 3

#### Arrangements in which Recognised Supervisory Bodies are Required to Participate

##### ~~Arrangements for setting standards relating to professional integrity and independence~~

###### ~~21~~

~~The arrangements referred to in paragraph 9(2) are appropriate arrangements--~~

- ~~(a) — for the determining of standards for the purposes of the rules and practices mentioned in paragraph 9(1), and~~  
~~(b) — for ensuring that the determination of those standards is done independently of the body.~~

##### ~~Arrangements for setting technical standards~~

###### ~~22~~

~~The arrangements referred to in paragraphs 10(2) and 10A(2) are appropriate arrangements--~~

- ~~(a) — for the determining of standards for the purposes of the rules and practices mentioned in paragraphs 10(1) and 10A(1) respectively, and~~  
~~(b) — for ensuring that the determination of those standards is done independently of the body.~~

##### ~~Arrangements for setting standards relating to public interest entity reporting requirements~~

###### ~~22A~~

~~The arrangements referred to in paragraph 10B(3) are appropriate arrangements--~~

- ~~(a) — for the determining of standards for the purposes of the rules and practices mentioned in paragraph 10B(1), and~~  
~~(b) — for ensuring that the determination of those standards is done independently of the body.~~

##### ~~Arrangements for setting standards relating to public interest entity independence requirements~~

###### ~~22B~~

~~The arrangements referred to in paragraph 10C(2) are appropriate arrangements--~~

- (a) — for the determining of standards for the purposes of the rules and practices mentioned in paragraph 10C(1), and
- (b) — for ensuring that the determination of those standards is done independently of the body.

***Arrangements for independent monitoring of audits of listed companies and other major bodies***

23

- (1) — The arrangements referred to in paragraph 13(1)(b)(i) are appropriate arrangements—
  - (a) — for enabling the performance by members of the supervisory body of statutory audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements;
  - (b) — for enabling the body performing the inspections to determine sanctions (including those mentioned in paragraph 12(3)(a)) against members of the supervisory body where, pursuant to an inspection, it concludes that the members have not complied with the supervisory body's rules in so far as they are relevant to the performance of statutory audit functions; and
  - (c) — for ensuring that the carrying out of such inspections and the determination of such sanctions are done independently of the supervisory body.
- (1A) — Subject to sub-paragraph (1C), the arrangements referred to in sub-paragraph (1) must include provision for an inspection conducted in relation to each person eligible for appointment as a statutory auditor at least once every three years.
- (1B) — Sub-paragraphs (4) to (9) of paragraph 13 apply in relation to inspections under sub-paragraph (1A) as they apply in relation to inspections under that paragraph.
- (1C) — The arrangements referred to in sub-paragraph (1) may provide that the body performing the inspections may decide that all or part of the inspection referred to in sub-paragraph (1A) is not required in the case of a member of a supervisory body who performs statutory audit functions in respect of ten or fewer major audits per year.
- (1D) — If—
  - (a) — the arrangements make the provision referred to in sub-paragraph (1C), and
  - (b) — the body performing the inspections decides that all of an inspection is not required in relation to a member,the supervisory body must ensure that the arrangements referred to in paragraph 13(1)(a) apply in relation to that member, subject to the modification specified in sub-paragraph (1F).
- (1E) — If—
  - (a) — the arrangements make the provision referred to in sub-paragraph (1C), and
  - (b) — the body performing the inspections decides that part of an inspection is not required in relation to a member,the supervisory body must ensure that the arrangements referred to in paragraph 13(1)(a) apply in relation to that part of the inspection of that member, subject to the modification specified in sub-paragraph (1F).
- (1F) — For the purposes of sub-paragraphs (1D) and (1E), paragraph 13(3) applies with the substitution of "three years" for "six years".
- (2) — In this paragraph "major audit" and "statutory audit function" have the same meaning as in paragraph 13.

***Arrangements for independent monitoring of third country audits***

**23A**

- (1) ~~— The arrangements referred to in paragraph 13(1)(ba)(i) are appropriate arrangements--~~
- ~~(a) — for enabling the performance by members of the supervisory body of third country audit functions to be monitored by means of inspections carried out under the arrangements;~~
  - ~~(b) — for enabling the body performing the inspections to determine sanctions (including those mentioned in paragraph 12(3)(a)) against members of the supervisory body where, pursuant to an inspection, it concludes that the members have not complied with the supervisory body's rules in so far as they are relevant to the performance of third country audit functions; and~~
  - ~~(c) — for ensuring that the carrying out of such inspections and the determination of such sanctions are done independently of the supervisory body.~~
- (2) ~~— Those arrangements must provide that the body performing the inspections--~~
- ~~(a) — may decide that an inspection referred to in sub-paragraph (1) is not required, or that part of an inspection is not required, in relation to a member, and~~
  - ~~(b) — may direct that the arrangements referred to in sub-paragraph (3) apply in relation to the member or apply to such extent as may be specified in the direction.~~
- (3) ~~— The supervisory body must have adequate arrangements for enabling the performance by its members of third country audit functions to be monitored by means of inspections for cases where a direction is given under sub-paragraph (2)(b).~~
- (4) ~~— In this paragraph "third country audit function" means any function related to the audit of a UK-traded non-EEA company.~~

***Arrangements for independent investigation for disciplinary purposes of public interest cases***

**24**

- (1) ~~— The arrangements referred to in paragraph 16(1) are appropriate arrangements--~~
- ~~(a) — for the carrying out of investigations into public interest cases arising in connection with the performance of statutory audit functions or third country audit functions by members of the body,~~
  - ~~(b) — where it appears to be desirable following the conclusion of such investigations--~~
    - ~~(i) — for the holding, subject to sub-paragraph (1A), of disciplinary hearings relating to members of the body,~~
    - ~~(ii) — unless the interests of justice otherwise require, for any such hearings to be held in public, and~~
    - ~~(iii) — for decisions to be made as to whether (and, if so, what) disciplinary action should be taken against the members of the body, and~~
  - ~~(c) — for ensuring that the carrying out of those investigations, the holding of those hearings and the making of those decisions are done independently of the body.~~
- (1A) ~~— The arrangements may provide that decisions to take disciplinary action, and decisions as to what that action should be, may be made in respect of a member of the body without the holding of a dis-~~



~~iplinary hearing relating to that member where the member agrees in writing that such a hearing need not be held.~~

~~(2) — In this paragraph—~~

~~"public interest cases" means matters which raise or appear to raise important issues affecting the public interest;~~

~~"statutory audit function" means any function performed as a statutory auditor;~~

~~"third country audit function" means any function related to the audit of a UK-traded non-EEA company.~~

***Supplementary: arrangements to operate independently of body***

**25**

~~(1) — This paragraph applies for the purposes of—~~

~~(a) — paragraph 21(b);~~

~~(b) — paragraph 22(b);~~

~~(c) — paragraph 23(1)(c), . . .~~

~~(ca) — paragraph 23A(1)(c), or~~

~~(d) — paragraph 24(1)(c).~~

~~(2) — Arrangements are not to be regarded as appropriate for the purpose of ensuring that a thing is done independently of the body unless they are designed to ensure that the body—~~

~~(a) — will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing that thing, and~~

~~(b) — will not otherwise be involved in the doing of that thing.~~

~~(3) — Sub-paragraph (2) imposes a minimum requirement and does not preclude the possibility that additional criteria may need to be satisfied in order for the arrangements to be regarded as appropriate for the purpose in question.~~

***Supplementary: funding of ~~arrangements~~ tasks performed by the competent authority***

**26**

(1) The body must pay

(a) any of the costs of the competent authority for the performance of tasks that it has not delegated to the body or another recognised supervisory body;

(b) any of the costs of another recognised supervisory body for the performance of tasks on behalf of the body where those tasks have been reclaimed from the body by the competent authority and delegated to that other recognised supervisory body by the competent authority.

~~(c) any of the costs of maintaining any arrangements within paragraph 21, 22, 23, 23A or 24 which the arrangements provide are to be paid by it.~~

(2) In the determination of the costs of the competent authority or other recognised supervisory body, the costs shall be limited to such reasonable amount as the competent authority may determine upon reclaiming the task from the body or excepting it from delegation to the body or upon delegating it to the other recognised supervisory body.

***Supplementary: scope of arrangement***

**27**

~~Arrangements may qualify as arrangements within any of paragraphs 21, 22, 23, 23A and 24 even though the matters for which they provide are more extensive in any respect than those mentioned in the applicable paragraph.~~

Draft

# Mark-up of proposed amendments to the Companies Act 2006

## Part 16 - AUDIT

### Note:

- Text in **red** is used to mark up amendments being proposed for the purposes of this consultation on the implementation of Article 38(3) of the 2006 Directive as amended by the new Directive.
- Text in **blue** is used to mark up amendments made by section 18 of the Deregulation Act 2015 and Schedule 5 to that Act. These amendments have now commenced for accounting years beginning on or after 1 October 2015.

### 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—
  - (a) by resolution under this section, or
  - (b) in accordance with section 510A.

#### **510A Public Interest entities: application to court to remove auditor from office**

- (1) This section applies only to a public interest company.
- (2) The competent authority may apply to the court for an order under this section on the ground that there are proper grounds for removing an auditor of the company from office.
- (3) The members of the company (or any of them) may apply to the court for an order under this section on the grounds that there are proper grounds for removing an auditor of the company from office.

(4) If the court is satisfied, on hearing an application under subsection (2), that there are proper grounds for removing from office an auditor of the company to which the application relates, it may make an order removing that auditor from office.

(5) If the court is satisfied, on hearing an application under subsection (3), that—

(a) the applicants represent in total-

(i) not less than 5% of the voting rights of all the members having a right to vote at a general meeting of the company, or

(ii) not less than 5% in nominal value of the company's share capital, and

(b) there are proper grounds for removing from office an auditor of the company to which the application relates,

the court may make an order removing that auditor from office.

(6) For the purposes of this section, divergence of opinions on accounting treatments or audit procedures shall not be proper grounds for removing auditor from office.

(7) In this section "the competent authority" has the same meaning as in the Statutory Auditors and Third Country Auditors Regulations 2016.

#### **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 **or by order of the court under section 510A** 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.

(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.~~

(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") who, at the time the resolution is proposed, is an auditor of the company and who is to cease to hold office at the end of a period for appointing auditors.

But this section does not apply if the auditor is to cease to hold office by virtue of section 510, 510A or 516.

(2) This section also applies where a resolution is proposed as a written resolution of a private company whose effect would be to appoint a person as auditor where, at the time the resolution is proposed, the company does not have an auditor and the person proposed to be appointed is not a person (the "outgoing auditor") who was an auditor of the company when the company last had an auditor.

But this is subject to subsection (2A).

(2A) This section does not apply (by virtue of subsection (2)) if--

- (a) a period for appointing auditors has ended since the outgoing auditor ceased to hold office,
- (b) the outgoing auditor ceased to hold office by virtue of section 510, 510A or 516, or
- (c) the outgoing auditor has previously had the opportunity to make representations with respect to a proposed resolution under subsection (4) of this section or an intended resolution under section 515(4).

(3) ~~The~~ Where this section applies, 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--

- (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.

(1) Special notice is required for a resolution at a general meeting of a private company whose effect would be to appoint a person as auditor in place of a person (the "outgoing auditor") who, at the time the notice is given, is an auditor of the company and who is to cease to hold office at the end of a period for appointing auditors.

But special notice is not required under this subsection if the auditor is to cease to hold office by virtue of section 510, 510A or 516.

(1A) Special notice is required for a resolution at a general meeting of a public company whose effect would be to appoint a person as auditor in place of a person (the "outgoing auditor") who, at the time the notice is given, is an auditor of the company and who is to cease to hold office at the end of an accounts meeting.

But special notice is not required under this subsection if the auditor is to cease to hold office by virtue of section 510, 510A or 516.

(2) Special notice is required for a resolution at a general meeting of a company whose effect would be to appoint a person as auditor where, at the time the notice is given, the company does not have an auditor and the person proposed to be appointed is not a person (the "outgoing auditor") who was an auditor of the company when the company last had an auditor.

But this is subject to subsection (2A).

(2A) Special notice is not required under subsection (2) if--

- (a) a period for appointing auditors has ended or (as the case may be) an accounts meeting of the company has been held since the outgoing auditor ceased to hold office,
- (b) the outgoing auditor ceased to hold office by virtue of section 510, 510A or 516, or
- (c) the outgoing auditor has previously had the opportunity to make representations with respect to an intended resolution under subsection (4) of this section or a proposed resolution under section 514(4).

(3) On receipt of notice of *such* an intended resolution mentioned in subsection (1), (1A) or (2) 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.

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### **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 sending a notice to that effect to the company.~~

(2) ~~The~~ Where the company is a public interest company, the notice is not effective unless it is accompanied by the statement required by section 519.

(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~~ received 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 greater of £5,000 or the amount corresponding to level 4 on the standard scale for summary offences.~~

#### **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)~~ auditor's (A's) notice of resignation is accompanied by a statement under section 519 except where--

(a) the company is a non-public interest company, and



(b) the statement includes a statement to the effect that A considers that none of the reasons for A's ceasing to hold office, and no matters (if any) connected with A's ceasing to hold office, need to be brought to the attention of members or creditors of the company (as required by section 519(3B)).

(2) He may ~~deposit~~ send with the notice a *signed and authenticated* 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 reasons for, and matters 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 reasons for, and matters 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 on which the company receives~~ 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.

(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~~ sent to 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.~~

(1) An auditor of a public interest company who is ceasing to hold office (at any time and for any reason) must send to the company a statement of the reasons for doing so.

(2) An auditor ("A") of a non-public interest company who is ceasing to hold office must send to the company a statement of the reasons for doing so unless A satisfies the first or second condition.

(2A) The first condition is that A is ceasing to hold office--

- (a) in the case of a private company, at the end of a period for appointing auditors;
- (b) in the case of a public company, at the end of an accounts meeting.

(2B) The second condition is that--

- (a) A's reasons for ceasing to hold office are all exempt reasons (as to which see section 519A(3)), and
- (b) there are no matters connected with A's ceasing to hold office that A considers need to be brought to the attention of members or creditors of the company.

(3) A statement under this section must include--

- (a) the auditor's name and address;
- (b) the number allocated to the auditor on being entered in the register of auditors kept under section 1239;
- (c) the company's name and registered number.

(3A) Where there are matters connected with an auditor's ceasing to hold office that the auditor considers need to be brought to the attention of members or creditors of the company, the statement under this section must include details of those matters.

(3B) Where--

- (a) an auditor ("A") of a non-public interest company is required by subsection (2) to send a statement, and
- (b) A considers that none of the reasons for A's ceasing to hold office, and no matters (if any) connected with A's ceasing to hold office, need to be brought to the attention of members or creditors of the company,

A's statement under this section must include a statement to that effect.

- (4) ~~The statement required by this section~~ A statement under this section must be deposited sent--
- (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;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (8) Where an offence under this section is committed by a body corporate, every officer of the body who is in default also commits the offence.

For this purpose--

- (a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and
- (b) if the body is a company, any shadow director is treated as an officer of the company.

#### **519A Meaning of "public interest company", "non-public interest company" and "exempt reasons"**

(1) In this Chapter--

"public interest company" means a company which is

- (a) an issuer whose transferable securities are admitted to trading on a regulated market;
- (b) a credit institution within the meaning given by Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council<sup>(1)</sup>, other than one listed in Article 2 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and investment firms<sup>(2)</sup>; or
- (c) an insurance undertaking within the meaning given by Article 2(1) of Council Directive 1991/674/EEC of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings<sup>(3)</sup>;

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~~(a) any of whose transferable securities are included in the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000), or~~

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(1) OJ L 176/1 27.06.13.  
(2) OJ L 176/338 27.06.13.  
(3) OJ L 374/7 31.12.91.

~~(b) any of whose equity share capital is officially listed in an EEA state;~~

"non-public interest company" means a company that is not a public interest company.

(2) For the purposes of the definition of "public interest company"—

(a) "transferable securities" means anything which is a transferable security for the purposes of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments;

(b) "issuer" and "regulated market" have the same meaning as in Part 6 of the Financial Services and Markets Act 2000(4)

(3) In the application of this Chapter to an auditor ("A") of a company ceasing to hold office, the following are "exempt reasons"--

(a) A is no longer to carry out statutory audit work within the meaning of Part 42 (see section 1210(1));

(b) the company is, or is to become, exempt from audit under section 477, 479A or 480, or from the requirements of this Part under section 482, and intends to include in its balance sheet a statement of the type described in section 475(2);

(c) the company is a subsidiary undertaking of a parent undertaking that is incorporated in the United Kingdom and--

(i) the parent undertaking prepares group accounts, and

(ii) A is being replaced as auditor of the company by the auditor who is conducting, or is to conduct, an audit of the group accounts;

(d) the company is being wound up under Part 4 of the Insolvency Act 1986 or Part 5 of the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (N.I. 19)), whether voluntarily or by the court, or a petition under Part 4 of that Act or Part 5 of that Order for the winding up of the company has been presented and not finally dealt with or withdrawn.

(4) But the reason described in subsection (3)(c) is only an exempt reason if the auditor who is conducting, or is to conduct, an audit of the group accounts is also conducting, or is also to conduct, the audit (if any) of the accounts of each of the subsidiary undertakings (of the parent undertaking) that is incorporated in the United Kingdom and included in the consolidation.

(5) The Secretary of State may by order amend the definition of "public interest company" in subsection (1).

(6) An order under subsection (5) is subject to negative resolution procedure.

## 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~~ a company receives from an auditor ("A") who is ceasing to hold office a statement under section 519 except where--

(a) the company is a non-public interest company, and

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(4) 2000 c. 8.

(b) the statement includes a statement to the effect that A considers that none of the reasons for A's ceasing to hold office, and no matters (if any) connected with A's ceasing to hold office, need to be brought to the attention of members or creditors of the company (as required by section 519(3B)).

(2) ~~The~~ Where this section applies, the company must within 14 days of the *deposit* [receipt] 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

(A1) This section applies where an auditor ("A") of a company sends a statement to the company under section 519 except where--

- (a) the company is a non-public interest company, and
- (b) the statement includes a statement to the effect that A considers that none of the reasons for A's ceasing to hold office, and no matters (if any) connected with A's ceasing to hold office, need to be brought to the attention of members or creditors of the company (as required by section 519(3B)).

(1) ~~Unless~~ Where this section applies, ~~unless~~ within 21 days beginning with the day on which he ~~deposited~~ sent 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.

(6) Where an offence under this section is committed by a body corporate, every officer of the body who is in default also commits the offence.

For this purpose--

(a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and

(b) if the body is a company, any shadow director is treated as an officer of the company.

## **522 Duty of auditor to ~~notify~~ send statement to 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.~~

(1) Where an auditor of a company sends a statement under section 519, the auditor must at the same time send a copy of the statement to the appropriate audit authority.

- (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~~

~~(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.~~

(1) This section applies if an auditor is ceasing to hold office--

(a) in the case of a private company, at any time other than at the end of a period for appointing auditors;

(b) in the case of a public company, at any time other than at the end of an accounts meeting.

(1A) But this section does not apply if the company reasonably believes that the only reasons for the auditor's ceasing to hold office are exempt reasons (as to which see section 519A(3)).

(2) Where this section applies, the company must give notice to the appropriate audit authority that the auditor is ceasing to hold office.

(2A) The notice is to take the form of a statement by the company of what the company believes to be the reasons for the auditor's ceasing to hold office and must include the information listed in section 519(3).

This is subject to subsection (2C).

(2B) Subsection (2C) applies where--

- (a) the company receives a statement from the auditor under section 519,
- (b) the statement is sent at the time required by section 519(4), and
- (c) the company agrees with the contents of the statement.

(2C) Where this subsection applies, the notice may instead take the form of a copy of the statement endorsed by the company to the effect that it agrees with the contents of the statement.

(3) A notice under this section must be given within the period of 28 days beginning with the day on which the auditor ceases to hold office.

(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 ~~Provision of information~~ 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.~~

(1) Where the appropriate audit authority receives a statement under section 522 or a notice under section 523, the authority may forward to the accounting authorities--

- (a) a copy of the statement or notice, and
- (b) any other information the authority has received from the auditor or the company concerned in connection with the auditor's ceasing to hold office.

(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 (other than one conducted by an Auditor General) in relation to an auditor of a public interest company (other than an Auditor General)--~~
  - (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 ~~statement or~~ notice in question, that body;
- (b) ~~in the case of an audit (other than one conducted by an Auditor General)] that is not a major audit~~ in relation to an auditor of a non-public interest company (other than an Auditor General), the relevant supervisory body;
- (c) ~~in the case of an audit conducted by~~ in relation to an Auditor General, the Independent Supervisor.

"Supervisory body" and "Independent Supervisor" have the same meaning as in Part 42 (statutory auditors) (see sections 1217 and 1228).

~~(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.

## Mark-up of proposed amendments to the Companies Act 2006

### Part 42 - Statutory Auditors

**Note:** This mark-up has been published at the end of the period for responses to the Government's formal technical consultation on auditor regulation. This is part of the commitment in the consultation paper to publish all of the proposed amendments that are intended to be made as part of the implementation of the new EU Audit Directive and Regulation (excluding consequential amendments).

Though comments on these draft amendments are not being requested as part of responses to that consultation, BIS would be happy to receive comments on these changes after the consultation period has ended.

#### *Cooperation with Foreign Competent Authorities*

##### **1253A Requests to foreign competent authorities**

The Secretary of State may request from an EEA competent authority or a third country competent authority such assistance, information or investigation as he may reasonably require in connection with the exercise of his functions under this Part.

##### **1253B Requests from EEA competent authorities**

[(1) The Secretary of State must take all necessary steps to--

- (a) ensure that an investigation is carried out, or
- (b) provide any other assistance or information,

if requested to do so by an EEA competent authority **or by one of the European Supervisory Authorities ("the requesting authority")** in accordance with Article 36 of the Audit Directive (**regulatory cooperation between Member States authorities**).

(2) Within 28 days following the date on which he receives the request, the Secretary of State must--

- (a) provide the assistance or information required by the ~~EEA-competent~~ **requesting** authority under subsection (1)(b), or
- (b) notify the ~~EEA-competent~~ **requesting** authority ~~which made the request~~ of the reasons why he has not done so.

(3) But the Secretary of State need not take steps to comply with a request under subsection (1) if--

- (a) he considers that complying with the request may prejudice the sovereignty, security or public order of the United Kingdom;

- (b) legal proceedings have been brought in the United Kingdom (whether continuing or not) in relation to the persons and matters to which the request relates; or
- (c) disciplinary action has been taken by a recognised supervisory body in relation to the persons and matters to which the request relates.

(4) In this section "European Supervisory Authorities" means the European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority.

### **1253C Notification to competent authorities of other EEA States**

- (1) The Secretary of State must notify the relevant EEA competent authority if he receives notice from a recognised supervisory body under section 1223A(1) (notification of withdrawal of eligibility for appointment) of the withdrawal of a person's eligibility for appointment as a statutory auditor.
- (2) In subsection (1) "the relevant EEA competent authority" means the EEA competent authority which has approved the person concerned in accordance with the Audit Directive to carry out audits of annual accounts or consolidated accounts required by [EU] law.
- (3) The notification under subsection (1) must include the name of the person concerned and the reasons for the withdrawal of his eligibility for appointment as statutory auditor.
- (4) The Secretary of State must notify the relevant EEA competent authority if he has reasonable grounds for suspecting that--
  - (a) a person has contravened the law of the United Kingdom, or any other EEA State or part of an EEA State, implementing the Audit Directive, and
  - (b) the act or omission constituting that contravention took place on the territory of an EEA State other than the United Kingdom.,
- (5) In subsection (4) "the relevant EEA competent authority" means the EEA competent authority for the EEA State in which the suspected contravention took place.
- (6) The notification under subsection (4) must include the name of the person concerned and the grounds for the Secretary of State's suspicion.

### ***Transfer of Papers to Third Countries***

#### **1253D Restriction on transfer of audit working papers to third countries**

- (1) Audit working papers must not be transferred to a third country competent authority except in accordance with--
  - (a) section 1253DA (transfer by Secretary of State),
  - (b) section 1253DB (transfer by statutory auditor with approval of Secretary of State), or
  - (c) section 1253DC (transfer by statutory auditor for purposes of investigation of auditor).
- (2) The following are approved third country competent authorities for the purposes of this Part--
  - (a) the Australian Securities and Investments Commission;

- (b) the Canadian Public Accountability Board;
- (c) the Certified Public Accountants and Auditing Oversight Board of Japan;
- (d) the Financial Services Agency of Japan;
- (e) the Federal Audit Oversight Authority of Switzerland;
- (f) the Public Company Accounting Oversight Board of the United States of America;
- (g) the Securities and Exchange Commission of the United States of America.

(3) Nothing in the sections referred to in subsection (1) authorises the making of a disclosure in contravention of the Data Protection Act 1998.

#### **1253DA Transfer by Secretary of State**

- (1) The Secretary of State may transfer audit working papers to an approved third country competent authority if the following conditions are met (but see also section 1253DD).
- (2) The first condition is that the authority has made a request to the Secretary of State for the transfer of the audit working papers.
- (3) The second condition is that the audit working papers relate to audits of companies that--
  - (a) have issued securities in the third country in which the authority is established, or
  - (b) form part of a group issuing statutory consolidated accounts in that third country.
- (4) The third condition is that the authority has entered into arrangements with the Secretary of State in accordance with section 1253E.

#### **1253DB Transfer by statutory auditor with approval of Secretary of State**

- (1) A statutory auditor may transfer audit working papers to an approved third country competent authority if the transfer is made--
  - (a) with the prior approval of the Secretary of State, and
  - (b) in accordance with rules of a recognised supervisory body meeting the requirements of paragraph 16AA of Schedule 10.
- (2) The Secretary of State must not approve a transfer of audit working papers to an approved third country competent authority for the purposes of this section unless the following conditions are met (see also section 1253DD).
- (3) The first condition is that the authority has made a request to the Secretary of State for the transfer of the audit working papers.
- (4) The second condition is that the audit working papers relate to audits of companies that--
  - (a) have issued securities in the third country in which the authority is established, or
  - (b) form part of a group issuing statutory consolidated accounts in that third country.
- (5) The third condition is that the authority has entered into arrangements with the Secretary of State in accordance with section 1253E.

### **1253DC Transfer by statutory auditor for purposes of investigation of auditor]**

A statutory auditor may transfer audit working papers to a third country competent authority if the transfer is made--

- (a) for the purposes of an investigation of an auditor or audit firm, and
- (b) in accordance with rules of a recognised supervisory body meeting the requirements of paragraph 16AB of Schedule 10.

### **1253DD Agreement of EEA competent authority**

(1) This section applies where--

- (a) an approved third country competent authority makes a request to the Secretary of State for the transfer of audit working papers which relate to the audit of the consolidated accounts of a group, and
- (b) the audit working papers that are the subject of the request--
  - (i) have been created by the auditor of a subsidiary that is located in another EEA State in relation to the audit of that subsidiary, and
  - (ii) are in the possession of a statutory auditor.

(2) In the case of a transfer by the Secretary of State under section 1253DA, the transfer must not take place unless the EEA competent authority responsible for the auditor of the subsidiary has given its express agreement to the transfer.

(3) In the case of a transfer by a statutory auditor under section 1253DB, the Secretary of State must not approve the transfer unless the EEA competent authority responsible for the auditor of the subsidiary has given its express agreement to the transfer.

### **1253DE Transfer by means of inspection**

(1) This section applies in the case of a transfer of audit working papers if--

- (a) it is a transfer to an approved third country competent authority listed in section 1253D(2)(a), (f) or (g),
- (b) it is a transfer under section 1253DA or 1253DB, and
- (c) it is to take place by means of an inspection in the United Kingdom by the authority.

(2) The Secretary of State must participate in the inspection.

(3) The inspection must be under the leadership of the Secretary of State unless the Secretary of State otherwise permits.

### **1253E Working arrangements for transfer of papers**

(1) The Secretary of State may enter into arrangements with a third country competent authority relating to the transfer of audit working papers **or audit investigation reports--**

- (a) from the third country competent authority or a third country auditor regulated by that authority to the Secretary of State, and

- (b) from the Secretary of State or a statutory auditor to the third country competent authority.
- (2) The arrangements must provide that a request by the Secretary of State or the third country competent authority for a transfer mentioned in subsection (1) must be accompanied by a statement explaining the reasons for the request.
- (3) The arrangements must--
- (a) provide that the Secretary of State may not use audit working papers obtained from the third country competent authority or a third country auditor regulated by that authority except in connection with one or more of the functions mentioned in subsection (4), and
  - (b) include comparable provision in relation to audit working papers obtained by the third country competent authority from the Secretary of State or a statutory auditor.
- (4) Those functions are--
- (a) quality assurance functions which meet requirements equivalent to those of Article 29 of the Audit Directive (quality assurance);
  - (b) investigation or disciplinary functions which meet requirements equivalent to those of Article 30 of the Audit Directive (investigations and penalties);
  - (c) public oversight functions which meet requirements equivalent to those of Article 32 of the Audit Directive (principles of public oversight).
- (5) The arrangements must--
- (a) provide that the Secretary of State, a person exercising the functions of the Secretary of State and persons employed or formerly employed in discharging those functions must be subject to obligations of confidentiality as to personal data, professional secrets and sensitive commercial information contained in audit working papers transferred to the Secretary of State, ~~and~~
  - (b) provide that the third country competent authority and persons involved in exercising its functions are subject to comparable obligations in relation to audit working papers transferred to the authority, ~~and~~
  - (c) ensure that the protection of the commercial interests of any audited person, including its industrial and intellectual property, is not undermined.
- (6) The arrangements must--
- (a) provide that the Secretary of State may refuse, or direct a statutory auditor to refuse, a request from the third country competent authority for a transfer of audit working papers in a case mentioned in subsection (7)(a) or (b), and
  - (b) provide that the third country competent authority has comparable rights in relation to a request from the Secretary of State.
- (7) Those cases are--
- (a) where the transfer of the papers would adversely affect the sovereignty, security or public order of the European Union or of the United Kingdom;
  - (b) where legal proceedings have been brought in the United Kingdom (whether continuing or not) in relation to the persons and matters to which the request relates.

(7A) The arrangements must—

(a) provide that the Secretary of State may only disclose confidential information received from the third country competent authority-

- (i) with the agreement of that authority or for purposes for which that authority has given its agreement,
- (ii) where disclosure is required by law, or
- (iii) where disclosure is necessary in connection with legal proceedings, and

(b) provide that the third country competent authority may only disclose confidential information received from the Secretary of State-

- (i) with the Secretary of State's agreement or for purposes for which the Secretary of State has given agreement,
- (ii) where disclosure is required by law, or
- (iii) where disclosure is necessary in connection with legal proceedings.

(8) Arrangements with *an approved* third country competent authority listed in section 1253D(2)(a), (f) or (g) must--

- (a) provide that any contact between a statutory auditor and the authority relating to a relevant transfer of audit working papers to the authority must take place via the Secretary of State, and
- (b) include comparable provision in relation to transfers of audit working papers to the Secretary of State.

(9) "Relevant transfer" means any transfer other than a transfer by a statutory auditor under section 1253DC.

(10) "Audit investigation reports" means-

- (a) any report of an inspection of statutory audit work or third country audit work by a statutory auditor or a third country auditor, or
- (b) any report of an investigation of the conduct of a statutory auditor or a third country auditor, which is related to the conduct of an audit by that auditor.

### **1253F Publication of working arrangements**

If the Secretary of State enters into working arrangements in accordance with section 1253E, he must publish on a website without undue delay--

- (a) the name of the third country competent authority with which he has entered into such arrangements, and
- (b) the country or territory in which it is established.

## ***International obligations***

### **1254 Directions to comply with international obligations**

(1) If it appears to the Secretary of State--

- (a) that any action proposed to be taken by a recognised supervisory body or a recognised qualifying body, [the Independent Supervisor] or a body designated by order under section 1252, would be incompatible with EU obligations or any other international obligations of the United Kingdom, or

(b) that any action which that body has power to take is required for the purpose of implementing any such obligations,

he may direct the body not to take or, as the case may be, to take the action in question.

(2) A direction may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.

(3) A direction under this section given to the Independent Supervisor or a body designated by order under section 1252 is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c 36).

DRAFT



# Mark-up of proposed amendments to the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 (SI 2008/489)

**Note:** This mark-up has been published at the end of the period for responses to the Government's formal technical consultation on auditor regulation. This is part of the commitment in the consultation paper to publish all of the proposed amendments that are intended to be made as part of the implementation of the new EU Audit Directive and Regulation.

Though comments on these draft amendments are not being requested as part of responses to that consultation, BIS would be happy to receive comments on these changes after the consultation period has ended.

## Part 2

### Disclosure of Remuneration

#### 4 Disclosure of remuneration: small and medium-sized companies

(1) A note to the annual accounts of a ~~small or~~ medium-sized company must disclose the amount of any remuneration receivable by the company's auditor for the auditing of those accounts.

(2) Where the remuneration includes benefits in kind, the nature and estimated money-value of those benefits must also be disclosed in a note.

(3) Where more than one person has been appointed as a company's auditor in respect of the period to which the accounts relate, separate disclosure is required in respect of the remuneration of each such person.

~~(4) For the purposes of section 1224 of the Act, the functions of the Secretary of State under Part 42 of the Act include (without prejudice to the generality of that section) consideration of the total remuneration receivable by the auditor of a medium-sized company for the supply by the auditor to the company of each of the following types of service where that remuneration is not disclosed in a note to the company's annual accounts--~~

~~(a) assurance services other than the auditing of the company's accounts;~~

~~(b) tax advisory services;~~

~~(c) other services.~~

#### 5 Disclosure of remuneration: other companies

(1) A note to the annual accounts of a company which is not a small or medium-sized company must disclose the amount of--

(a) any remuneration receivable by the company's auditor, or an associate of the company's auditor, for the auditing of those accounts; and

(b) subject to paragraph (6) and regulation 6(2), any remuneration receivable in respect of the period to which the accounts relate by--

(i) the company's auditor; or

(ii) any person who was, at any time during the period to which the accounts relate, an associate of the company's auditor,

for the supply of other services to the company or any associate of the company.

- (2) Where the remuneration includes benefits in kind, the nature and estimated money-value of those benefits must also be disclosed in a note.
- (3) Separate disclosure is required in respect of the auditing of the accounts in question and of each type of service specified in Schedule 2A, but not in respect of each service falling within a type of service.
- (4) Separate disclosure is required in respect of services supplied to the company and its subsidiaries on the one hand and to associated pension schemes on the other.
- (5) Where more than one person has been appointed as a company's auditor in respect of the period to which the accounts relate, separate disclosure is required in respect of the remuneration of each such person and his associates.
- (6) Disclosure is not required of remuneration receivable for the supply of services falling within paragraph 8 of Schedule 2A supplied by a distant associate of the company's auditor where the total remuneration receivable for all of those services supplied by that associate does not exceed either--
- (a) £10,000, or
  - (b) 1% of the total audit remuneration received by the company's auditor in the most recent financial year of the auditor which ended no later than the end of the financial year of the company to which the accounts relate.
- (7) In paragraph (6)(b)--
- (a) "financial year of the auditor" means--
    - (i) the period of not more than 18 months in respect of which the auditor's profit and loss account is required to be made up (whether by law or by or in accordance with the auditor's constitution (if any)), or
    - (ii) failing any such requirement, the period of 12 months beginning with 1st April;
  - (b) "total audit remuneration received" means the total remuneration received for the auditing pursuant to legislation (including that of countries and territories outside the United Kingdom) of any accounts of any person.

## 6 Group Accounts

- (1) Group accounts must comply with regulation 5(1)(b) as if the undertakings included in the consolidation were a single company except where the group--
- (a) qualifies as small or medium-sized under section 383 or 466 of the Act; and
  - (b) is not an ineligible group under section 384(2) or 467(2) of the Act.
- (2) A note to the individual accounts of--
- (a) a parent company which is required to prepare and does prepare group accounts in accordance with the Act; and
  - (b) a subsidiary company where—
    - (i) its parent is required to prepare and does prepare group accounts in accordance with the Act,
    - (ii) the company is included in the consolidation and
    - (iii) the statutory auditor is the same for both the company and its parent;

does not have to disclose the information required by regulation 5(1)(b) if the conditions in paragraph (3) are satisfied.

(3) Those conditions are that--

- (a) the group accounts are required to comply with paragraph (1); and
- (b) the individual accounts state that the group accounts are so required.

## **7 Duty of auditor to supply information**

The auditor of a company must supply the directors of the company with such information as is necessary to enable the disclosure required by regulation 5(1)(b) or 6(1) to be made.