

#### **421 Contents of directors' remuneration report**

- (1) The Secretary of State may make provision by regulations as to—
  - (a) the information that must be contained in a directors' remuneration report,
  - (b) how information is to be set out in the report, and
  - (c) what is to be the auditable part of the report.
- (2) Without prejudice to the generality of this power, the regulations may make any such provision as was made, immediately before the commencement of this Part, by Schedule 7A to the Companies Act 1985 (c. 6).
- (3) It is the duty of—
  - (a) any director of a company, and
  - (b) any person who is or has at any time in the preceding five years been a director of the company,to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.
- (4) A person who makes default in complying with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **422 Approval and signing of directors' remuneration report**

- (1) The directors' remuneration report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
- (2) If a directors' remuneration report is approved that does not comply with the requirements of this Act, every director of the company who—
  - (a) knew that it did not comply, or was reckless as to whether it complied, and
  - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,commits an offence.
- (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.

### **CHAPTER 7**

#### **PUBLICATION OF ACCOUNTS AND REPORTS**

##### *Duty to circulate copies of accounts and reports*

#### **423 Duty to circulate copies of annual accounts and reports**

- (1) Every company must send a copy of its annual accounts and reports for each financial year to—
  - (a) every member of the company,
  - (b) every holder of the company's debentures, and

- (c) every person who is entitled to receive notice of general meetings.
- (2) Copies need not be sent to a person for whom the company does not have a current address.
- (3) A company has a “current address” for a person if –
  - (a) an address has been notified to the company by the person as one at which documents may be sent to him, and
  - (b) the company has no reason to believe that documents sent to him at that address will not reach him.
- (4) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.
- (5) Where copies are sent out over a period of days, references in the Companies Acts to the day on which copies are sent out shall be read as references to the last day of that period.
- (6) This section has effect subject to section 426 (option to provide summary financial statement).

#### **424 Time allowed for sending out copies of accounts and reports**

- (1) The time allowed for sending out copies of the company’s annual accounts and reports is as follows.
- (2) A private company must comply with section 423 not later than –
  - (a) the end of the period for filing accounts and reports, or
  - (b) if earlier, the date on which it actually delivers its accounts and reports to the registrar.
- (3) A public company must comply with section 423 at least 21 days before the date of the relevant accounts meeting.
- (4) If in the case of a public company copies are sent out later than is required by subsection (3), they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the relevant accounts meeting.
- (5) Whether the time allowed is that for a private company or a public company is determined by reference to the company’s status immediately before the end of the accounting reference period by reference to which the financial year for the accounts in question was determined.
- (6) In this section the “relevant accounts meeting” means the accounts meeting of the company at which the accounts and reports in question are to be laid.

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

- (1) If default is made in complying with section 423 or 424, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;

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

*Option to provide summary financial statement*

**426 Option to provide summary financial statement**

- (1) A company may –
  - (a) in such cases as may be specified by regulations made by the Secretary of State, and
  - (b) provided any conditions so specified are complied with,provide a summary financial statement instead of copies of the accounts and reports required to be sent out in accordance with section 423.
- (2) Copies of those accounts and reports must, however, be sent to any person entitled to be sent them in accordance with that section and who wishes to receive them.
- (3) The Secretary of State may make provision by regulations as to the manner in which it is to be ascertained, whether before or after a person becomes entitled to be sent a copy of those accounts and reports, whether he wishes to receive them.
- (4) A summary financial statement must comply with the requirements of –
  - section 427 (form and contents of summary financial statement: unquoted companies), or
  - section 428 (form and contents of summary financial statement: quoted companies).
- (5) This section applies to copies of accounts and reports required to be sent out by virtue of section 146 to a person nominated to enjoy information rights as it applies to copies of accounts and reports required to be sent out in accordance with section 423 to a member of the company.
- (6) Regulations under this section are subject to negative resolution procedure.

**427 Form and contents of summary financial statement: unquoted companies**

- (1) A summary financial statement by a company that is not a quoted company must –
  - (a) be derived from the company’s annual accounts, and
  - (b) be prepared in accordance with this section and regulations made under it.
- (2) The summary financial statement must be in such form, and contain such information, as the Secretary of State may specify by regulations.  
The regulations may require the statement to include information derived from the directors’ report.
- (3) Nothing in this section or regulations made under it prevents a company from including in a summary financial statement additional information derived from the company’s annual accounts or the directors’ report.
- (4) The summary financial statement must –

- (a) state that it is only a summary of information derived from the company's annual accounts;
  - (b) state whether it contains additional information derived from the directors' report and, if so, that it does not contain the full text of that report;
  - (c) state how a person entitled to them can obtain a full copy of the company's annual accounts and the directors' report;
  - (d) contain a statement by the company's auditor of his opinion as to whether the summary financial statement –
    - (i) is consistent with the company's annual accounts and, where information derived from the directors' report is included in the statement, with that report, and
    - (ii) complies with the requirements of this section and regulations made under it;
  - (e) state whether the auditor's report on the annual accounts was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification;
  - (f) state whether, in that report, the auditor's statement under section 496 (whether directors' report consistent with accounts) was qualified or unqualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification;
  - (g) state whether that auditor's report contained a statement under –
    - (i) section 498(2)(a) or (b) (accounting records or returns inadequate or accounts not agreeing with records and returns), or
    - (ii) section 498(3) (failure to obtain necessary information and explanations),
 and if so, set out the statement in full.
- (5) Regulations under this section may provide that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement.
- (6) Regulations under this section are subject to negative resolution procedure.

**428 Form and contents of summary financial statement: quoted companies**

- (1) A summary financial statement by a quoted company must –
  - (a) be derived from the company's annual accounts and the directors' remuneration report, and
  - (b) be prepared in accordance with this section and regulations made under it.
- (2) The summary financial statement must be in such form, and contain such information, as the Secretary of State may specify by regulations. The regulations may require the statement to include information derived from the directors' report.
- (3) Nothing in this section or regulations made under it prevents a company from including in a summary financial statement additional information derived from the company's annual accounts, the directors' remuneration report or the directors' report.

- (4) The summary financial statement must –
- (a) state that it is only a summary of information derived from the company's annual accounts and the directors' remuneration report;
  - (b) state whether it contains additional information derived from the directors' report and, if so, that it does not contain the full text of that report;
  - (c) state how a person entitled to them can obtain a full copy of the company's annual accounts, the directors' remuneration report or the directors' report;
  - (d) contain a statement by the company's auditor of his opinion as to whether the summary financial statement –
    - (i) is consistent with the company's annual accounts and the directors' remuneration report and, where information derived from the directors' report is included in the statement, with that report, and
    - (ii) complies with the requirements of this section and regulations made under it;
  - (e) state whether the auditor's report on the annual accounts and the auditable part of the directors' remuneration report was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification;
  - (f) state whether that auditor's report contained a statement under –
    - (i) section 498(2) (accounting records or returns inadequate or accounts or directors' remuneration report not agreeing with records and returns), or
    - (ii) section 498(3) (failure to obtain necessary information and explanations),and if so, set out the statement in full;
  - (g) state whether, in that report, the auditor's statement under section 496 (whether directors' report consistent with accounts) was qualified or unqualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification.
- (5) Regulations under this section may provide that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement.
- (6) Regulations under this section are subject to negative resolution procedure.

#### **429 Summary financial statements: offences**

- (1) If default is made in complying with any provision of section 426, 427 or 428, or of regulations under any of those sections, an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (2) 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.

*Quoted companies: requirements as to website publication*

**430 Quoted companies: annual accounts and reports to be made available on website**

- (1) A quoted company must ensure that its annual accounts and reports –
  - (a) are made available on a website, and
  - (b) remain so available until the annual accounts and reports for the company's next financial year are made available in accordance with this section.
- (2) The annual accounts and reports must be made available on a website that –
  - (a) is maintained by or on behalf of the company, and
  - (b) identifies the company in question.
- (3) Access to the annual accounts and reports on the website, and the ability to obtain a hard copy of the annual accounts and reports from the website, must not be –
  - (a) conditional on the payment of a fee, or
  - (b) otherwise restricted, except so far as necessary to comply with any enactment or regulatory requirement (in the United Kingdom or elsewhere).
- (4) The annual accounts and reports –
  - (a) must be made available as soon as reasonably practicable, and
  - (b) must be kept available throughout the period specified in subsection (1)(b).
- (5) A failure to make the annual accounts and reports available on a website throughout that period is disregarded if –
  - (a) the annual accounts and reports are made available on the website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.
- (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) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Right of member or debenture holder to demand copies of accounts and reports*

**431 Right of member or debenture holder to copies of accounts and reports: unquoted companies**

- (1) A member of, or holder of debentures of, an unquoted company is entitled to be provided, on demand and without charge, with a copy of –
  - (a) the company's last annual accounts,
  - (b) the last directors' report, and
  - (c) the auditor's report on those accounts (including the statement on that report).

- (2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 423.
- (3) If a demand made under this section is not complied with within seven days of receipt by the company, 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.

**432 Right of member or debenture holder to copies of accounts and reports: quoted companies**

- (1) A member of, or holder of debentures of, a quoted company is entitled to be provided, on demand and without charge, with a copy of –
  - (a) the company's last annual accounts,
  - (b) the last directors' remuneration report,
  - (c) the last directors' report, and
  - (d) the auditor's report on those accounts (including the report on the directors' remuneration report and on the directors' report).
- (2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 423.
- (3) If a demand made under this section is not complied with within seven days of receipt by the company, 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.

*Requirements in connection with publication of accounts and reports*

**433 Name of signatory to be stated in published copies of accounts and reports**

- (1) Every copy of a document to which this section applies that is published by or on behalf of the company must state the name of the person who signed it on behalf of the board.
- (2) In the case of an unquoted company, this section applies to copies of –
  - (a) the company's balance sheet, and
  - (b) the directors' report.
- (3) In the case of a quoted company, this section applies to copies of –
  - (a) the company's balance sheet,
  - (b) the directors' remuneration report, and

- (c) the directors' report.
- (4) If a copy is published without the required statement of the signatory's name, 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 this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **434 Requirements in connection with publication of statutory accounts**

- (1) If a company publishes any of its statutory accounts, they must be accompanied by the auditor's report on those accounts (unless the company is exempt from audit and the directors have taken advantage of that exemption).
- (2) A company that prepares statutory group accounts for a financial year must not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.
- (3) A company's "statutory accounts" are its accounts for a financial year as required to be delivered to the registrar under section 441.
- (4) If a company contravenes any provision of this section, 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 this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) This section does not apply in relation to the provision by a company of a summary financial statement (see section 426).

#### **435 Requirements in connection with publication of non-statutory accounts**

- (1) If a company publishes non-statutory accounts, it must publish with them a statement indicating –
  - (a) that they are not the company's statutory accounts,
  - (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar, and
  - (c) whether an auditor's report has been made on the company's statutory accounts for any such financial year, and if so whether the report –
    - (i) was qualified or unqualified, or included a reference to any matters to which the auditor drew attention by way of emphasis without qualifying the report, or
    - (ii) contained a statement under section 498(2) (accounting records or returns inadequate or accounts or directors' remuneration report not agreeing with records and returns), or section 498(3) (failure to obtain necessary information and explanations).
- (2) The company must not publish with non-statutory accounts the auditor's report on the company's statutory accounts.



- (3) References in this section to the publication by a company of “non-statutory accounts” are to the publication of—
  - (a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company, or
  - (b) an account in any form purporting to be a balance sheet or profit and loss account for a group headed by the company relating to, or purporting to deal with, a financial year of the company, otherwise than as part of the company’s statutory accounts.
- (4) In subsection (3)(b) “a group headed by the company” means a group consisting of the company and any other undertaking (regardless of whether it is a subsidiary undertaking of the company) other than a parent undertaking of the company.
- (5) If a company contravenes any provision of this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) 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.
- (7) This section does not apply in relation to the provision by a company of a summary financial statement (see section 426).

#### **436 Meaning of “publication” in relation to accounts and reports**

- (1) This section has effect for the purposes of—
  - section 433 (name of signatory to be stated in published copies of accounts and reports),
  - section 434 (requirements in connection with publication of statutory accounts), and
  - section 435 (requirements in connection with publication of non-statutory accounts).
- (2) For the purposes of those sections a company is regarded as publishing a document 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.

### **CHAPTER 8**

#### **PUBLIC COMPANIES: LAYING OF ACCOUNTS AND REPORTS BEFORE GENERAL MEETING**

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

- (1) The directors of a public company must lay before the company in general meeting copies of its annual accounts and reports.
- (2) This section must be complied with not later than the end of the period for filing the accounts and reports in question.
- (3) In the Companies Acts “accounts meeting”, in relation to a public company, means a general meeting of the company at which the company’s annual accounts and reports are (or are to be) laid in accordance with this section.

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

- (1) If the requirements of section 437 (public companies: laying of accounts and reports before general meeting) are not complied with before the end of the period allowed, every person who immediately before the end of that period was a director of the company commits an offence.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

**CHAPTER 9****QUOTED COMPANIES: MEMBERS' APPROVAL OF DIRECTORS' REMUNERATION REPORT****439 Quoted companies: members' approval of directors' remuneration report**

- (1) A quoted company must, prior to the accounts meeting, give to the members of the company entitled to be sent notice of the meeting notice of the intention to move at the meeting, as an ordinary resolution, a resolution approving the directors' remuneration report for the financial year.
- (2) The notice may be given in any manner permitted for the service on the member of notice of the meeting.
- (3) The business that may be dealt with at the accounts meeting includes the resolution.  
This is so notwithstanding any default in complying with subsection (1) or (2).
- (4) The existing directors must ensure that the resolution is put to the vote of the meeting.
- (5) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section.
- (6) In this section –  
  - “the accounts meeting” means the general meeting of the company before which the company's annual accounts for the financial year are to be laid; and
  - “existing director” means a person who is a director of the company immediately before that meeting.

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

- (1) In the event of default in complying with section 439(1) (notice to be given of resolution for approval of directors' remuneration report), an offence is committed by every officer of the company who is in default.

- (2) If the resolution is not put to the vote of the accounts meeting, an offence is committed by each existing director.
- (3) It is a defence for a person charged with an offence under subsection (2) to prove that he took all reasonable steps for securing that the resolution was put to the vote of the meeting.
- (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.
- (5) In this section –
  - “the accounts meeting” means the general meeting of the company before which the company’s annual accounts for the financial year are to be laid; and
  - “existing director” means a person who is a director of the company immediately before that meeting.

## CHAPTER 10

### FILING OF ACCOUNTS AND REPORTS

#### *Duty to file accounts and reports*

#### **441 Duty to file accounts and reports with the registrar**

- (1) The directors of a company must deliver to the registrar for each financial year the accounts and reports required by –
  - section 444 (filing obligations of companies subject to small companies regime),
  - section 445 (filing obligations of medium-sized companies),
  - section 446 (filing obligations of unquoted companies), or
  - section 447 (filing obligations of quoted companies).
- (2) This is subject to section 448 (unlimited companies exempt from filing obligations).

#### **442 Period allowed for filing accounts**

- (1) This section specifies the period allowed for the directors of a company to comply with their obligation under section 441 to deliver accounts and reports for a financial year to the registrar.

This is referred to in the Companies Acts as the “period for filing” those accounts and reports.
- (2) The period is –
  - (a) for a private company, nine months after the end of the relevant accounting reference period, and
  - (b) for a public company, six months after the end of that period.

This is subject to the following provisions of this section.
- (3) If the relevant accounting reference period is the company’s first and is a period of more than twelve months, the period is –
  - (a) nine months or six months, as the case may be, from the first anniversary of the incorporation of the company, or

- (b) three months after the end of the accounting reference period, whichever last expires.
- (4) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the company under section 392 (alteration of accounting reference date), the period is—
  - (a) that applicable in accordance with the above provisions, or
  - (b) three months from the date of the notice under that section, whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.
- (6) Whether the period allowed is that for a private company or a public company is determined by reference to the company's status immediately before the end of the relevant accounting reference period.
- (7) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

#### **443 Calculation of period allowed**

- (1) This section applies for the purposes of calculating the period for filing a company's accounts and reports which is expressed as a specified number of months from a specified date or after the end of a specified previous period.
- (2) Subject to the following provisions, the period ends with the date in the appropriate month corresponding to the specified date or the last day of the specified previous period.
- (3) If the specified date, or the last day of the specified previous period, is the last day of a month, the period ends with the last day of the appropriate month (whether or not that is the corresponding date).
- (4) If—
  - (a) the specified date, or the last day of the specified previous period, is not the last day of a month but is the 29th or 30th, and
  - (b) the appropriate month is February,the period ends with the last day of February.
- (5) “The appropriate month” means the month that is the specified number of months after the month in which the specified date, or the end of the specified previous period, falls.

#### *Filing obligations of different descriptions of company*

#### **444 Filing obligations of companies subject to small companies regime**

- (1) The directors of a company subject to the small companies regime—
  - (a) must deliver to the registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year, and
  - (b) may also deliver to the registrar—

- (i) a copy of the company’s profit and loss account for that year, and
  - (ii) a copy of the directors’ report for that year.
- (2) The directors must also deliver to the registrar a copy of the auditor’s report on those accounts (and on the directors’ report).  
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) The copies of accounts and reports delivered to the registrar must be copies of the company’s annual accounts and reports, except that where the company prepares Companies Act accounts –
  - (a) the directors may deliver to the registrar a copy of a balance sheet drawn up in accordance with regulations made by the Secretary of State, and
  - (b) there may be omitted from the copy profit and loss account delivered to the registrar such items as may be specified by the regulations.These are referred to in this Part as “abbreviated accounts”.
- (4) If abbreviated accounts are delivered to the registrar the obligation to deliver a copy of the auditor’s report on the accounts is to deliver a copy of the special auditor’s report required by section 449.
- (5) Where the directors of a company subject to the small companies regime deliver to the registrar IAS accounts, or Companies Act accounts that are not abbreviated accounts, and in accordance with this section –
  - (a) do not deliver to the registrar a copy of the company’s profit and loss account, or
  - (b) do not deliver to the registrar a copy of the directors’ report,the copy of the balance sheet delivered to the registrar must contain in a prominent position a statement that the company’s annual accounts and reports have been delivered in accordance with the provisions applicable to companies subject to the small companies regime.
- (6) The copies of the balance sheet and any directors’ report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (7) The copy of the auditor’s report delivered to the registrar under this section 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.

#### **445 Filing obligations of medium-sized companies**

- (1) The directors of a company that qualifies as a medium-sized company in relation to a financial year (see sections 465 to 467) must deliver to the registrar a copy of –
  - (a) the company’s annual accounts, and
  - (b) the directors’ report.

- (2) They must also deliver to the registrar a copy of the auditor’s report on those accounts (and on the directors’ report).  
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) Where the company prepares Companies Act accounts, the directors may deliver to the registrar a copy of the company’s annual accounts for the financial year –
  - (a) that includes a profit and loss account in which items are combined in accordance with regulations made by the Secretary of State, and
  - (b) that does not contain items whose omission is authorised by the regulations.These are referred to in this Part as “abbreviated accounts”.
- (4) If abbreviated accounts are delivered to the registrar the obligation to deliver a copy of the auditor’s report on the accounts is to deliver a copy of the special auditor’s report required by section 449.
- (5) The copies of the balance sheet and directors’ report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (6) The copy of the auditor’s report delivered to the registrar under this section 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.
- (7) This section does not apply to companies within section 444 (filing obligations of companies subject to the small companies regime).

#### **446 Filing obligations of unquoted companies**

- (1) The directors of an unquoted company must deliver to the registrar for each financial year of the company a copy of –
  - (a) the company’s annual accounts, and
  - (b) the directors’ report.
- (2) The directors must also deliver to the registrar a copy of the auditor’s report on those accounts (and the directors’ report).  
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) The copies of the balance sheet and directors’ report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (4) The copy of the auditor’s report delivered to the registrar under this section 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.

- (5) This section does not apply to companies within—
- (a) section 444 (filing obligations of companies subject to the small companies regime), or
  - (b) section 445 (filing obligations of medium-sized companies).

#### **447 Filing obligations of quoted companies**

- (1) The directors of a quoted company must deliver to the registrar for each financial year of the company a copy of—
- (a) the company's annual accounts,
  - (b) the directors' remuneration report, and
  - (c) the directors' report.
- (2) They must also deliver a copy of the auditor's report on those accounts (and on the directors' remuneration report and the directors' report).
- (3) The copies of the balance sheet, the directors' remuneration report and the directors' report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (4) The copy of the auditor's report delivered to the registrar under this section 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.

#### **448 Unlimited companies exempt from obligation to file accounts**

- (1) The directors of an unlimited company are not required to deliver accounts and reports to the registrar in respect of a financial year if the following conditions are met.
- (2) The conditions are that at no time during the relevant accounting reference period—
- (a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited, or
  - (b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it, or
  - (c) has the company been a parent company of an undertaking which was then limited.

The references above to an undertaking being limited at a particular time are to an undertaking (under whatever law established) the liability of whose members is at that time limited.

- (3) The exemption conferred by this section does not apply if—
- (a) the company is a banking or insurance company or the parent company of a banking or insurance group, or
  - (b) the company is a qualifying company within the meaning of the Partnerships and Unlimited Companies (Accounts) Regulations 1993 (S.I. 1993/1820).

- (4) Where a company is exempt by virtue of this section from the obligation to deliver accounts –
- (a) section 434(3) (requirements in connection with publication of statutory accounts: meaning of “statutory accounts”) has effect with the substitution for the words “as required to be delivered to the registrar under section 441” of the words “as prepared in accordance with this Part and approved by the board of directors”; and
  - (b) section 435(1)(b) (requirements in connection with publication of non-statutory accounts: statement whether statutory accounts delivered) has effect with the substitution for the words from “whether statutory accounts” to “have been delivered to the registrar” of the words “that the company is exempt from the requirement to deliver statutory accounts”.
- (5) In this section the “relevant accounting reference period”, in relation to a financial year, means the accounting reference period by reference to which that financial year was determined.

*Requirements where abbreviated accounts delivered*

**449 Special auditor’s report where abbreviated accounts delivered**

- (1) This section applies where –
- (a) the directors of a company deliver abbreviated accounts to the registrar, and
  - (b) the company is not exempt from audit (or the directors have not taken advantage of any such exemption).
- (2) The directors must also deliver to the registrar a copy of a special report of the company’s auditor stating that in his opinion –
- (a) the company is entitled to deliver abbreviated accounts in accordance with the section in question, and
  - (b) the abbreviated accounts to be delivered are properly prepared in accordance with regulations under that section.
- (3) The auditor’s report on the company’s annual accounts need not be delivered, but –
- (a) if that report was qualified, the special report must set out that report in full together with any further material necessary to understand the qualification, and
  - (b) if that report contained a statement under –
    - (i) section 498(2)(a) or (b) (accounts, records or returns inadequate or accounts not agreeing with records and returns), or
    - (ii) section 498(3) (failure to obtain necessary information and explanations),
 the special report must set out that statement in full.
- (4) The provisions of –
- sections 503 to 506 (signature of auditor’s report), and
  - sections 507 to 509 (offences in connection with auditor’s report),
- apply to a special report under this section as they apply to an auditor’s report on the company’s annual accounts prepared under Part 16.



- (5) If abbreviated accounts are delivered to the registrar, the references in section 434 or 435 (requirements in connection with publication of accounts) to the auditor's report on the company's annual accounts shall be read as references to the special auditor's report required by this section.

#### **450 Approval and signing of abbreviated accounts**

- (1) Abbreviated accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.
- (2) The signature must be on the balance sheet.
- (3) The balance sheet must contain in a prominent position above the signature a statement to the effect that it is prepared in accordance with the special provisions of this Act relating (as the case may be) to companies subject to the small companies regime or to medium-sized companies.
- (4) If abbreviated accounts are approved that do not comply with the requirements of regulations under the relevant section, every director of the company who—
  - (a) knew that they did not comply, or was reckless as to whether they complied, and
  - (b) failed to take reasonable steps to prevent them from being approved, commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### *Failure to file accounts and reports*

#### **451 Default in filing accounts and reports: offences**

- (1) If the requirements of section 441 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, every person who immediately before the end of that period was a director of the company commits an offence.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

#### **452 Default in filing accounts and reports: court order**

- (1) If—

- (a) the requirements of section 441 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, and
  - (b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance,
- the court may, on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.
- (2) The court's order may provide that all costs (in Scotland, expenses) of and incidental to the application are to be borne by the directors.

### **453 Civil penalty for failure to file accounts and reports**

- (1) Where the requirements of section 441 are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company is liable to a civil penalty.  
 This is in addition to any liability of the directors under section 451.
- (2) The amount of the penalty shall be determined in accordance with regulations made by the Secretary of State by reference to—
- (a) the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements are complied with, and
  - (b) whether the company is a private or public company.
- (3) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.
- (4) It is not a defence in proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.
- (5) Regulations under this section having the effect of increasing the penalty payable in any case are subject to affirmative resolution procedure.  
 Otherwise, the regulations are subject to negative resolution procedure.

## **CHAPTER 11**

### REVISION OF DEFECTIVE ACCOUNTS AND REPORTS

#### *Voluntary revision*

### **454 Voluntary revision of accounts etc**

- (1) If it appears to the directors of a company that—
- (a) the company's annual accounts,
  - (b) the directors' remuneration report or the directors' report, or
  - (c) a summary financial statement of the company,
- did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), they may prepare revised accounts or a revised report or statement.

- (2) Where copies of the previous accounts or report have been sent out to members, delivered to the registrar or (in the case of a public company) laid before the company in general meeting, the revisions must be confined to –
  - (a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and
  - (b) the making of any necessary consequential alterations.
- (3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to –
  - (a) revised annual accounts,
  - (b) a revised directors' remuneration report or directors' report, or
  - (c) a revised summary financial statement.
- (4) The regulations may, in particular –
  - (a) make different provision according to whether the previous accounts, report or statement are replaced or are supplemented by a document indicating the corrections to be made;
  - (b) make provision with respect to the functions of the company's auditor in relation to the revised accounts, report or statement;
  - (c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been –
    - (i) sent out to members and others under section 423,
    - (ii) laid before the company in general meeting, or
    - (iii) delivered to the registrar,or where a summary financial statement containing information derived from the previous accounts or report has been sent to members under section 426;
  - (d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.
- (5) Regulations under this section are subject to negative resolution procedure.

*Secretary of State's notice*

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

- (1) This section applies where –
  - (a) copies of a company's annual accounts or directors' report have been sent out under section 423, or
  - (b) a copy of a company's annual accounts or directors' report has been delivered to the registrar or (in the case of a public company) laid before the company in general meeting,and it appears to the Secretary of State that there is, or may be, a question whether the accounts or report comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).
- (2) The Secretary of State may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise.

- (3) The notice must specify a period of not less than one month for the directors to give an explanation of the accounts or report or prepare revised accounts or a revised report.
- (4) If at the end of the specified period, or such longer period as the Secretary of State may allow, it appears to the Secretary of State that the directors have not—
  - (a) given a satisfactory explanation of the accounts or report, or
  - (b) revised the accounts or report so as to comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation),the Secretary of State may apply to the court.
- (5) The provisions of this section apply equally to revised annual accounts and revised directors' reports, in which case they have effect as if the references to revised accounts or reports were references to further revised accounts or reports.

*Application to court*

**456 Application to court in respect of defective accounts or reports**

- (1) An application may be made to the court—
  - (a) by the Secretary of State, after having complied with section 455, or
  - (b) by a person authorised by the Secretary of State for the purposes of this section,for a declaration (in Scotland, a declarator) that the annual accounts of a company do not comply, or a directors' report does not comply, with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report.
- (2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.
- (3) If the court orders the preparation of revised accounts, it may give directions as to—
  - (a) the auditing of the accounts,
  - (b) the revision of any directors' remuneration report, directors' report or summary financial statement, and
  - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts,and such other matters as the court thinks fit.
- (4) If the court orders the preparation of a revised directors' report it may give directions as to—
  - (a) the review of the report by the auditors,
  - (b) the revision of any summary financial statement,
  - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report, and
  - (d) such other matters as the court thinks fit.

- (5) If the court finds that the accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) it may order that all or part of—
- (a) the costs (in Scotland, expenses) of and incidental to the application, and
  - (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts or a revised report,

are to be borne by such of the directors as were party to the approval of the defective accounts or report.

For this purpose every director of the company at the time of the approval of the accounts or report shall be taken to have been a party to the approval unless he shows that he took all reasonable steps to prevent that approval.

- (6) Where the court makes an order under subsection (5) it shall have regard to whether the directors party to the approval of the defective accounts or report knew or ought to have known that the accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and it may exclude one or more directors from the order or order the payment of different amounts by different directors.
- (7) On the conclusion of proceedings on an application under this section, the applicant must send to the registrar for registration a copy of the court order or, as the case may be, give notice to the registrar that the application has failed or been withdrawn.
- (8) The provisions of this section apply equally to revised annual accounts and revised directors' reports, in which case they have effect as if the references to revised accounts or reports were references to further revised accounts or reports.

#### **457 Other persons authorised to apply to the court**

- (1) The Secretary of State may by order (an “authorisation order”) authorise for the purposes of section 456 any person appearing to him—
- (a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) relating to accounts and directors' reports,
  - (b) to have satisfactory procedures for receiving and investigating complaints about companies' annual accounts and directors' reports, and
  - (c) otherwise to be a fit and proper person to be authorised.
- (2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.
- (3) The Secretary of State may refuse to authorise a person if he considers that his authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.
- (4) If the authorised person is an unincorporated association, proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person may be brought by or against the association in the name of a body corporate whose constitution provides for the establishment of the association.

- (5) An authorisation order may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Secretary of State to be appropriate.  
 No such order is to be made unless it appears to the Secretary of State that the person would, if authorised, exercise his functions as an authorised person in accordance with the provisions proposed.
- (6) Where authorisation is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.
- (7) An order under this section is subject to negative resolution procedure.

#### **458 Disclosure of information by tax authorities**

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose information to a person authorised under section 457 for the purpose of facilitating—
- (a) the taking of steps by that person to discover whether there are grounds for an application to the court under section 456 (application in respect of defective accounts etc), or
  - (b) a decision by the authorised person whether to make such an application.
- (2) This section applies despite any statutory or other restriction on the disclosure of information.  
 Provided that, in the case of personal data within the meaning of the Data Protection Act 1998 (c. 29), information is not to be disclosed in contravention of that Act.
- (3) Information disclosed to an authorised person under this section—
- (a) may not be used except in or in connection with—
    - (i) taking steps to discover whether there are grounds for an application to the court under section 456, or
    - (ii) deciding whether or not to make such an application, or in, or in connection with, proceedings on such an application; and
  - (b) must not be further disclosed except—
    - (i) to the person to whom the information relates, or
    - (ii) in, or in connection with, proceedings on any such application to the court.
- (4) A person who contravenes subsection (3) commits an offence unless—
- (a) he did not know, and had no reason to suspect, that the information had been disclosed under this section, or
  - (b) 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 subsection (4) 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).

*Power of authorised person to require documents etc*

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

- (1) This section applies where it appears to a person who is authorised under section 457 that there is, or may be, a question whether a company's annual accounts or directors' report comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).
- (2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—
  - (a) discovering whether there are grounds for an application to the court under section 456, or
  - (b) deciding whether to make such an application.
- (3) Those persons are—
  - (a) the company;
  - (b) any officer, employee, or auditor of the company;
  - (c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.
- (4) If a person fails to comply with such a requirement, the authorised person may apply to the court.
- (5) If it appears to the court that the person has failed to comply with a requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.
- (6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.
- (7) Nothing in this section compels any person to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (8) In this section “document” includes information recorded in any form.

**460 Restrictions on disclosure of information obtained under compulsory powers**

- (1) This section applies to information (in whatever form) obtained in pursuance of a requirement or order under section 459 (power of authorised person to require documents etc) that relates to the private affairs of an individual or to any particular business.
- (2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

- (3) This does not apply –
  - (a) to disclosure permitted by section 461 (permitted disclosure of information obtained under compulsory powers), or
  - (b) to the disclosure of information that is or has been available to the public from another source.
- (4) A person who discloses information in contravention of this section commits an offence, unless –
  - (a) he did not know, and had no reason to suspect, that the information had been disclosed under section 459, or
  - (b) 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 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).

#### **461 Permitted disclosure of information obtained under compulsory powers**

- (1) The prohibition in section 460 of the disclosure of information obtained in pursuance of a requirement or order under section 459 (power of authorised person to require documents etc) that relates to the private affairs of an individual or to any particular business has effect subject to the following exceptions.
- (2) It does not apply to the disclosure of information for the purpose of facilitating the carrying out by the authorised person of his functions under section 456.
- (3) It does not apply to disclosure to –
  - (a) the Secretary of State,
  - (b) the Department of Enterprise, Trade and Investment for Northern Ireland,
  - (c) the Treasury,
  - (d) the Bank of England,
  - (e) the Financial Services Authority, or
  - (f) the Commissioners for Her Majesty’s Revenue and Customs.
- (4) It does not apply to disclosure –
  - (a) for the purpose of assisting a body designated by an order under section 46 of the Companies Act 1989 (c. 40) (delegation of functions of the Secretary of State) to exercise its functions under Part 2 of that Act;
  - (b) with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties;
  - (c) for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any of their functions under any of the following –
    - (i) the Companies Acts,



- (ii) Part 5 of the Criminal Justice Act 1993 (c. 36) (insider dealing),
  - (iii) the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
  - (iv) the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
  - (v) the Financial Services and Markets Act 2000 (c. 8);
- (d) for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies, directors' disqualification or insolvency;
- (e) for the purpose of enabling or assisting the Bank of England to exercise its functions;
- (f) for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions;
- (g) for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following –
- (i) the legislation relating to friendly societies or to industrial and provident societies,
  - (ii) the Building Societies Act 1986 (c. 53),
  - (iii) Part 7 of the Companies Act 1989 (c. 40),
  - (iv) the Financial Services and Markets Act 2000; or
- (h) in pursuance of any Community obligation.
- (5) It does not apply to disclosure to a body exercising functions of a public nature under legislation in any country or territory outside the United Kingdom that appear to the authorised person to be similar to his functions under section 456 for the purpose of enabling or assisting that body to exercise those functions.
- (6) In determining whether to disclose information to a body in accordance with subsection (5), the authorised person must have regard to the following considerations –
- (a) whether the use which the body is likely to make of the information is sufficiently important to justify making the disclosure;
  - (b) whether the body has adequate arrangements to prevent the information from being used or further disclosed other than –
    - (i) for the purposes of carrying out the functions mentioned in that subsection, or
    - (ii) for other purposes substantially similar to those for which information disclosed to the authorised person could be used or further disclosed.
- (7) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).

#### **462 Power to amend categories of permitted disclosure**

- (1) The Secretary of State may by order amend section 461(3), (4) and (5).
- (2) An order under this section must not –
  - (a) amend subsection (3) of that section (UK public authorities) by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);

- (b) amend subsection (4) of that section (purposes for which disclosure permitted) by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
  - (c) amend subsection (5) of that section (overseas regulatory authorities) so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (3) An order under this section is subject to negative resolution procedure.

## CHAPTER 12

### SUPPLEMENTARY PROVISIONS

#### *Liability for false or misleading statements in reports*

#### **463 Liability for false or misleading statements in reports**

- (1) The reports to which this section applies are –
  - (a) the directors' report,
  - (b) the directors' remuneration report, and
  - (c) a summary financial statement so far as it is derived from either of those reports.
- (2) A director of a company is liable to compensate the company for any loss suffered by it as a result of –
  - (a) any untrue or misleading statement in a report to which this section applies, or
  - (b) the omission from a report to which this section applies of anything required to be included in it.
- (3) He is so liable only if –
  - (a) he knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
  - (b) he knew the omission to be dishonest concealment of a material fact.
- (4) No person shall be subject to any liability to a person other than the company resulting from reliance, by that person or another, on information in a report to which this section applies.
- (5) The reference in subsection (4) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.
- (6) This section does not affect –
  - (a) liability for a civil penalty, or
  - (b) liability for a criminal offence.

*Accounting and reporting standards*

**464 Accounting standards**

- (1) In this Part “accounting standards” means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.
- (2) References in this Part to accounting standards applicable to a company’s annual accounts are to such standards as are, in accordance with their terms, relevant to the company’s circumstances and to the accounts.
- (3) Regulations under this section may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.

*Companies qualifying as medium-sized*

**465 Companies qualifying as medium-sized: general**

- (1) A company qualifies as medium-sized in relation to its first financial year if the qualifying conditions are met in that year.
- (2) A company qualifies as medium-sized in relation to a subsequent financial year –
  - (a) if the qualifying conditions are met in that year and the preceding financial year;
  - (b) if the qualifying conditions are met in that year and the company qualified as medium-sized in relation to the preceding financial year;
  - (c) if the qualifying conditions were met in the preceding financial year and the company qualified as medium-sized in relation to that year.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements –

1. Turnover	Not more than £22.8 million
2. Balance sheet total	Not more than £11.4 million
3. Number of employees	Not more than 250

- (4) For a period that is a company’s financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted.
- (5) The balance sheet total means the aggregate of the amounts shown as assets in the company’s balance sheet.
- (6) The number of employees means the average number of persons employed by the company in the year, determined as follows –
  - (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
  - (b) add together the monthly totals, and
  - (c) divide by the number of months in the financial year.

- (7) This section is subject to section 466 (companies qualifying as medium-sized: parent companies).

**466 Companies qualifying as medium-sized: parent companies**

- (1) A parent company qualifies as a medium-sized company in relation to a financial year only if the group headed by it qualifies as a medium-sized group.
- (2) A group qualifies as medium-sized in relation to the parent company's first financial year if the qualifying conditions are met in that year.
- (3) A group qualifies as medium-sized in relation to a subsequent financial year of the parent company –
- (a) if the qualifying conditions are met in that year and the preceding financial year;
  - (b) if the qualifying conditions are met in that year and the group qualified as medium-sized in relation to the preceding financial year;
  - (c) if the qualifying conditions were met in the preceding financial year and the group qualified as medium-sized in relation to that year.
- (4) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements –

1. Aggregate turnover	Not more than £22.8 million net (or £27.36 million gross)
2. Aggregate balance sheet total	Not more than £11.4 million net (or £13.68 million gross)
3. Aggregate number of employees	Not more than 250

- (5) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 465 for each member of the group.
- (6) In relation to the aggregate figures for turnover and balance sheet total –
- “net” means after any set-offs and other adjustments made to eliminate group transactions –
- (a) in the case of Companies Act accounts, in accordance with regulations under section 404,
  - (b) in the case of IAS accounts, in accordance with international accounting standards; and
- “gross” means without those set-offs and other adjustments.

A company may satisfy any relevant requirement on the basis of either the net or the gross figure.

- (7) The figures for each subsidiary undertaking shall be those included in its individual accounts for the relevant financial year, that is –
- (a) if its financial year ends with that of the parent company, that financial year, and
  - (b) if not, its financial year ending last before the end of the financial year of the parent company.

If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

#### 467 Companies excluded from being treated as medium-sized

- (1) A company is not entitled to take advantage of any of the provisions of this Part relating to companies qualifying as medium-sized if it was at any time within the financial year in question –
  - (a) a public company,
  - (b) a company that –
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, or
    - (ii) carries on insurance market activity, or
  - (c) a member of an ineligible group.
- (2) A group is ineligible if any of its members is –
  - (a) a public company,
  - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market,
  - (c) a person (other than a small company) who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity,
  - (d) a small company that is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or
  - (e) a person who carries on insurance market activity.
- (3) A company is a small company for the purposes of subsection (2) if it qualified as small in relation to its last financial year ending on or before the end of the financial year in question.

*General power to make further provision about accounts and reports*

#### 468 General power to make further provision about accounts and reports

- (1) The Secretary of State may make provision by regulations about –
  - (a) the accounts and reports that companies are required to prepare;
  - (b) the categories of companies required to prepare accounts and reports of any description;
  - (c) the form and content of the accounts and reports that companies are required to prepare;
  - (d) the obligations of companies and others as regards –
    - (i) the approval of accounts and reports,
    - (ii) the sending of accounts and reports to members and others,
    - (iii) the laying of accounts and reports before the company in general meeting,
    - (iv) the delivery of copies of accounts and reports to the registrar, and
    - (v) the publication of accounts and reports.
- (2) The regulations may amend this Part by adding, altering or repealing provisions.
- (3) But they must not amend (other than consequentially) –
  - (a) section 393 (accounts to give true and fair view), or

- (b) the provisions of Chapter 11 (revision of defective accounts and reports).
- (4) The regulations may create criminal offences in cases corresponding to those in which an offence is created by an existing provision of this Part.  
The maximum penalty for any such offence may not be greater than is provided in relation to an offence under the existing provision.
- (5) The regulations may provide for civil penalties in circumstances corresponding to those within section 453(1) (civil penalty for failure to file accounts and reports).  
The provisions of section 453(2) to (5) apply in relation to any such penalty.

*Other supplementary provisions*

**469 Preparation and filing of accounts in euros**

- (1) The amounts set out in the annual accounts of a company may also be shown in the same accounts translated into euros.
- (2) When complying with section 441 (duty to file accounts and reports), the directors of a company may deliver to the registrar an additional copy of the company's annual accounts in which the amounts have been translated into euros.
- (3) In both cases—
  - (a) the amounts must have been translated at the exchange rate prevailing on the date to which the balance sheet is made up, and
  - (b) that rate must be disclosed in the notes to the accounts.
- (4) For the purposes of sections 434 and 435 (requirements in connection with published accounts) any additional copy of the company's annual accounts delivered to the registrar under subsection (2) above shall be treated as statutory accounts of the company.  
In the case of such a copy, references in those sections to the auditor's report on the company's annual accounts shall be read as references to the auditor's report on the annual accounts of which it is a copy.

**470 Power to apply provisions to banking partnerships**

- (1) The Secretary of State may by regulations apply to banking partnerships, subject to such exceptions, adaptations and modifications as he considers appropriate, the provisions of this Part (and of regulations made under this Part) applying to banking companies.
- (2) A "banking partnership" means a partnership which has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8).  
But a partnership is not a banking partnership if it has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.
- (3) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 have the same meaning here as they do in those provisions.

See section 22 of that Act, orders made under that section and Schedule 2 to that Act.

- (4) Regulations under this section are subject to affirmative resolution procedure.

#### **471 Meaning of “annual accounts” and related expressions**

- (1) In this Part a company’s “annual accounts”, in relation to a financial year, means—
- (a) the company’s individual accounts for that year (see section 394), and
  - (b) any group accounts prepared by the company for that year (see sections 398 and 399).

This is subject to section 408 (option to omit individual profit and loss account from annual accounts where information given in group accounts).

- (2) In the case of an unquoted company, its “annual accounts and reports” for a financial year are—
- (a) its annual accounts,
  - (b) the directors’ report, and
  - (c) the auditor’s report on those accounts and the directors’ report (unless the company is exempt from audit).
- (3) In the case of a quoted company, its “annual accounts and reports” for a financial year are—
- (a) its annual accounts,
  - (b) the directors’ remuneration report,
  - (c) the directors’ report, and
  - (d) the auditor’s report on those accounts, on the auditable part of the directors’ remuneration report and on the directors’ report.

#### **472 Notes to the accounts**

- (1) Information required by this Part to be given in notes to a company’s annual accounts may be contained in the accounts or in a separate document annexed to the accounts.
- (2) References in this Part to a company’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision of this Act or international accounting standards, and required or allowed by any such provision to be given in a note to company accounts.

#### **473 Parliamentary procedure for certain regulations under this Part**

- (1) This section applies to regulations under the following provisions of this Part—
- section 396 (Companies Act individual accounts),
  - section 404 (Companies Act group accounts),
  - section 409 (information about related undertakings),
  - section 412 (information about directors’ benefits: remuneration, pensions and compensation for loss of office),
  - section 416 (contents of directors’ report: general),
  - section 421 (contents of directors’ remuneration report),

section 444 (filing obligations of companies subject to small companies regime),  
 section 445 (filing obligations of medium-sized companies),  
 section 468 (general power to make further provision about accounts and reports).

- (2) Any such regulations may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (3) Regulations that –
  - (a) restrict the classes of company which have the benefit of any exemption, exception or special provision,
  - (b) require additional matter to be included in a document of any class, or
  - (c) otherwise render the requirements of this Part more onerous,
 are subject to affirmative resolution procedure.
- (4) Otherwise, the regulations are subject to negative resolution procedure.

#### **474 Minor definitions**

- (1) In this Part –
  - “e-money issuer” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on the activity of issuing electronic money within the meaning of article 9B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
  - “group” means a parent undertaking and its subsidiary undertakings;
  - “IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;
  - “included in the consolidation”, in relation to group accounts, or “included in consolidated group accounts”, means that the undertaking is included in the accounts by the method of full (and not proportional) consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly;
  - “international accounting standards” means the international accounting standards, within the meaning of the IAS Regulation, adopted from time to time by the European Commission in accordance with that Regulation;
  - “ISD investment firm” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000;
  - “profit and loss account”, in relation to a company that prepares IAS accounts, includes an income statement or other equivalent financial statement required to be prepared by international accounting standards;
  - “regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000, except that it does not include activities of the kind specified in any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) –
    - (a) article 25A (arranging regulated mortgage contracts),
    - (b) article 25B (arranging regulated home reversion plans),



- (c) article 25C (arranging regulated home purchase plans),
- (d) article 39A (assisting administration and performance of a contract of insurance),
- (e) article 53A (advising on regulated mortgage contracts),
- (f) article 53B (advising on regulated home reversion plans),
- (g) article 53C (advising on regulated home purchase plans),
- (h) article 21 (dealing as agent), article 25 (arranging deals in investments) or article 53 (advising on investments) where the activity concerns relevant investments that are not contractually based investments (within the meaning of article 3 of that Order), or
- (i) article 64 (agreeing to carry on a regulated activity of the kind mentioned in paragraphs (a) to (h));

“turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of –

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

“UCITS management company” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000 (c. 8).

- (2) In the case of an undertaking not trading for profit, any reference in this Part to a profit and loss account is to an income and expenditure account. References to profit and loss and, in relation to group accounts, to a consolidated profit and loss account shall be construed accordingly.

## PART 16

### AUDIT

#### CHAPTER 1

##### REQUIREMENT FOR AUDITED ACCOUNTS

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

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

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

- (3) A company is not entitled to exemption under any of the provisions mentioned in subsection (1)(a) unless its balance sheet contains a statement by the directors to the effect that –
  - (a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476, and
  - (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts.
- (4) The statement required by subsection (2) or (3) must appear on the balance sheet above the signature required by section 414.

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

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

#### *Exemption from audit: small companies*

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

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

section 479 (availability of small companies exemption in case of group company).

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

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

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

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

- (1) A company is not entitled to the exemption conferred by section 477 (small companies) in respect of a financial year during any part of which it was a group company unless –
  - (a) the conditions specified in subsection (2) below are met, or
  - (b) subsection (3) applies.
- (2) The conditions are –
  - (a) that the group –
    - (i) qualifies as a small group in relation to that financial year, and
    - (ii) was not at any time in that year an ineligible group;
  - (b) that the group's aggregate turnover in that year is not more than £5.6 million net (or £6.72 million gross);
  - (c) that the group's aggregate balance sheet total for that year is not more than £2.8 million net (or £3.36 million gross).
- (3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant.
- (4) In this section –
  - (a) "group company" means a company that is a parent company or a subsidiary undertaking, and
  - (b) "the group", in relation to a group company, means that company together with all its associated undertakings.

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

- (5) For the purposes of this section –
  - (a) whether a group qualifies as small shall be determined in accordance with section 383 (companies qualifying as small: parent companies);
  - (b) "ineligible group" has the meaning given by section 384(2) and (3);

- (c) a group’s aggregate turnover and aggregate balance sheet total shall be determined as for the purposes of section 383;
  - (d) “net” and “gross” have the same meaning as in that section;
  - (e) a company may meet any relevant requirement on the basis of either the gross or the net figure.
- (6) The provisions mentioned in subsection (5) apply for the purposes of this section as if all the bodies corporate in the group were companies.

*Exemption from audit: dormant companies*

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

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

**481 Companies excluded from dormant companies exemption**

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

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

*Companies subject to public sector audit*

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

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

- (ii) by the Auditor General for Wales by virtue of section 96, or an order under section 144, of the Government of Wales Act 1998 (c. 38);
  - (b) are accounts –
    - (i) in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies, or
    - (ii) that are subject to audit by the Auditor General for Scotland by virtue of an order under section 483 (Scottish public sector companies: audit by Auditor General for Scotland); or
  - (c) are subject to audit by the Comptroller and Auditor General for Northern Ireland by virtue of an order under Article 5(3) of the Audit and Accountability (Northern Ireland) Order 2003 (S.I. 2003/418 (N.I. 5)).
- (2) In the case of a company that is a parent company or a subsidiary undertaking, subsection (1) applies only if every group undertaking is non-profit-making.
- (3) In this section “non-profit-making” has the same meaning as in Article 48 of the Treaty establishing the European Community.
- (4) This section has effect subject to section 475(2) (balance sheet to contain statement that company entitled to exemption under this section).

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

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

*General power of amendment by regulations***484 General power of amendment by regulations**

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

**CHAPTER 2**

## APPOINTMENT OF AUDITORS

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

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

This is the “period for appointing auditors”.

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

- (5) An auditor or auditors of a private company may only be appointed –
- (a) in accordance with this section, or
  - (b) in accordance with section 486 (default power of Secretary of State).
- This is without prejudice to any deemed re-appointment under section 487.

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

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

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

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

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

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

*Public companies***489 Appointment of auditors of public company: general**

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



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

- (1) If a public company fails to appoint an auditor or auditors in accordance with section 489, the Secretary of State may appoint one or more persons to fill the vacancy.
- (2) Where subsection (2) of that section applies and the company fails to make the necessary appointment before the end of the accounts meeting, the company must within one week of the end of that meeting give notice to the Secretary of State of his power having become exercisable.
- (3) If a company fails to give the notice required by this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

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

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

*General provisions*

**492 Fixing of auditor's remuneration**

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

**493 Disclosure of terms of audit appointment**

- (1) The Secretary of State may make provision by regulations for securing the disclosure of the terms on which a company's auditor is appointed, remunerated or performs his duties.  
Nothing in the following provisions of this section affects the generality of this power.
- (2) The regulations may –
  - (a) require disclosure of –
    - (i) a copy of any terms that are in writing, and
    - (ii) a written memorandum setting out any terms that are not in writing;
  - (b) require disclosure to be at such times, in such places and by such means as are specified in the regulations;
  - (c) require the place and means of disclosure to be stated –
    - (i) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
    - (ii) in the directors' report, or
    - (iii) in the auditor's report on the company's annual accounts.
- (3) The provisions of this section apply to a variation of the terms mentioned in subsection (1) as they apply to the original terms.
- (4) Regulations under this section are subject to affirmative resolution procedure.

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

- (1) The Secretary of State may make provision by regulations for securing the disclosure of –
  - (a) the nature of any services provided for a company by the company's auditor (whether in his capacity as auditor or otherwise) or by his associates;
  - (b) the amount of any remuneration received or receivable by a company's auditor, or his associates, in respect of any such services.Nothing in the following provisions of this section affects the generality of this power.
- (2) The regulations may provide –
  - (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described);
  - (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);
  - (c) for the disclosure of separate amounts so received or receivable by the company's auditor or any of his associates, or of aggregate amounts so received or receivable by all or any of those persons.
- (3) The regulations may –
  - (a) provide that "remuneration" includes sums paid in respect of expenses;

- (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
  - (c) apply to services provided for associates of a company as well as to those provided for a company;
  - (d) define “associate” in relation to an auditor and a company respectively.
- (4) The regulations may provide that any disclosure required by the regulations is to be made –
- (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
  - (b) in the directors’ report, or
  - (c) in the auditor’s report on the company’s annual accounts.
- (5) If the regulations provide that any such disclosure is to be made as mentioned in subsection (4)(a) or (b), the regulations may require the auditor to supply the directors of the company with any information necessary to enable the disclosure to be made.
- (6) Regulations under this section are subject to negative resolution procedure.

### CHAPTER 3

#### FUNCTIONS OF AUDITOR

##### *Auditor’s report*

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

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

- (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and of the profit or loss for the financial year of the undertakings included in the consolidation as a whole, so far as concerns members of the company;
- (b) have been properly prepared in accordance with the relevant financial reporting framework; and
- (c) have been prepared in accordance with the requirements of this Act (and, where applicable, Article 4 of the IAS Regulation).

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

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

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

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

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

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

### *Duties and rights of auditors*

#### **498 Duties of auditor**

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

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

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

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

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

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

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

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

- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Nothing in this section affects any right of an auditor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 499 or 500.

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

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

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

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

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

### **504 Senior statutory auditor**

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

- (4) An order appointing a body for the purpose of subsection (1)(b)(ii) is subject to negative resolution procedure.

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

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

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

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



*Offences in connection with auditor's report*

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

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

### **CHAPTER 4**

#### **REMOVAL, RESIGNATION, ETC OF AUDITORS**

##### *Removal of auditor*

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

- (1) The members of a company may remove an auditor from office at any time.
- (2) This power is exercisable only –
- (a) by ordinary resolution at a meeting, and
  - (b) in accordance with section 511 (special notice of resolution to remove auditor).
- (3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination –
- (a) of his appointment as auditor, or
  - (b) of any appointment terminating with that as auditor.

- (4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

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

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

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

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

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

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

- (1) An auditor who has been removed by resolution under section 510 has, notwithstanding his removal, the rights conferred by section 502(2) in relation to any general meeting of the company –
  - (a) at which his term of office would otherwise have expired, or
  - (b) at which it is proposed to fill the vacancy caused by his removal.
- (2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

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

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

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

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

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

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

*Resignation of auditor***516 Resignation of auditor**

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.
- (2) The notice is not effective unless it is accompanied by the statement required by section 519.
- (3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

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

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

**518 Rights of resigning auditor**

- (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation (see section 519).
- (2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
- (3) He may request the company to circulate to its members –
  - (a) before the meeting convened on his requisition, or
  - (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (4) The company must (unless the statement is received too late for it to comply) –
  - (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and
  - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

- (5) The directors must within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given.
- (6) If default is made in complying with subsection (5), every director who failed to take all reasonable steps to secure that a meeting was convened commits an offence.
- (7) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (8) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.
- (9) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the company's costs (in Scotland, expenses) on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 502(2) in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above.

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

*Statement by auditor on ceasing to hold office*

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

- (1) Where an auditor of an unquoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company.
- (2) If he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he must deposit at the company's registered office a statement to that effect.
- (3) Where an auditor of a quoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office.
- (4) The statement required by this section must be deposited –
  - (a) in the case of resignation, along with the notice of resignation;

- (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor;
  - (c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (7) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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

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

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

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



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

- (1) Unless within 21 days beginning with the day on which he deposited the statement under section 519 the auditor receives notice of an application to the court under section 520, he must within a further seven days send a copy of the statement to the registrar.
- (2) If an application to the court is made under section 520 and the auditor subsequently receives notice under subsection (5) of that section, he must within seven days of receiving the notice send a copy of the statement to the registrar.
- (3) An auditor who fails to comply with subsection (1) or (2) commits an offence.
- (4) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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

- (1) Where –
  - (a) in the case of a major audit, an auditor ceases for any reason to hold office, or
  - (b) in the case of an audit that is not a major audit, an auditor ceases to hold office before the end of his term of office,the auditor ceasing to hold office must notify the appropriate audit authority.
- (2) The notice must –
  - (a) inform the appropriate audit authority that he has ceased to hold office, and
  - (b) be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with section 519.
- (3) If the statement so deposited is to the effect that he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, the notice must also be accompanied by a statement of the reasons for his ceasing to hold office.
- (4) The auditor must comply with this section –
  - (a) in the case of a major audit, at the same time as he deposits a statement at the company's registered office in accordance with section 519;
  - (b) in the case of an audit that is not a major audit, at such time (not being earlier than the time mentioned in paragraph (a)) as the appropriate audit authority may require.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) If that person is a firm an offence is committed by –
  - (a) the firm, and

- (b) every officer of the firm who is in default.
- (7) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (8) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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

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

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

- (1) The appropriate audit authority on receiving notice under section 522 or 523 of an auditor's ceasing to hold office –
  - (a) must inform the accounting authorities, and
  - (b) may if it thinks fit forward to those authorities a copy of the statement or statements accompanying the notice.
- (2) The accounting authorities are –
  - (a) the Secretary of State, and

- (b) any person authorised by the Secretary of State for the purposes of section 456 (revision of defective accounts: persons authorised to apply to court).
- (3) If either of the accounting authorities is also the appropriate audit authority it is only necessary to comply with this section as regards any other accounting authority.
- (4) If the court has made an order under section 520(4) directing that copies of the statement need not be sent out by the company, sections 460 and 461 (restriction on further disclosure) apply in relation to the copies sent to the accounting authorities as they apply to information obtained under section 459 (power to require documents etc).

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

- (1) In sections 522, 523 and 524 “appropriate audit authority” means –
  - (a) in the case of a major audit –
    - (i) the Secretary of State, or
    - (ii) if the Secretary of State has delegated functions under section 1252 to a body whose functions include receiving the notice in question, that body;
  - (b) in the case of an audit that is not a major audit, the relevant supervisory body.“Supervisory body” has the same meaning as in Part 42 (statutory auditors) (see section 1217).
- (2) In sections 522 and this section “major audit” means a statutory audit conducted in respect of –
  - (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
  - (b) any other person in whose financial condition there is a major public interest.
- (3) In determining whether an audit is a major audit within subsection (2)(b), regard shall be had to any guidance issued by any of the authorities mentioned in subsection (1).

### *Supplementary*

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

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

**CHAPTER 5****QUOTED COMPANIES: RIGHT OF MEMBERS TO RAISE AUDIT CONCERNS AT ACCOUNTS MEETING****527 Members' power to require website publication of audit concerns**

- (1) The members of a quoted company may require the company to publish on a website a statement setting out any matter relating to –
  - (a) the audit of the company's accounts (including the auditor's report and the conduct of the audit) that are to be laid before the next accounts meeting, or
  - (b) any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting,that the members propose to raise at the next accounts meeting of the company.
- (2) A company is required to do so once it has received requests to that effect from –
  - (a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or
  - (b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.See also section 153 (exercise of rights where shares held on behalf of others).
- (3) In subsection (2) a "relevant right to vote" means a right to vote at the accounts meeting.
- (4) A request –
  - (a) may be sent to the company in hard copy or electronic form,
  - (b) must identify the statement to which it relates,
  - (c) must be authenticated by the person or persons making it, and
  - (d) must be received by the company at least one week before the meeting to which it relates.
- (5) A quoted company is not required to place on a website a statement under this section if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.
- (6) The court may order the members requesting website publication to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

**528 Requirements as to website availability**

- (1) The following provisions apply for the purposes of section 527 (website publication of members' statement of audit concerns).
- (2) The information must be made available on a website that –
  - (a) is maintained by or on behalf of the company, and
  - (b) identifies the company in question.

- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted.
- (4) The statement –
  - (a) must be made available within three working days of the company being required to publish it on a website, and
  - (b) must be kept available until after the meeting to which it relates.
- (5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if –
  - (a) the information is made available on the website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

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

- (1) A quoted company must in the notice it gives of the accounts meeting draw attention to –
  - (a) the possibility of a statement being placed on a website in pursuance of members’ requests under section 527, and
  - (b) the effect of the following provisions of this section.
- (2) A company may not require the members requesting website publication to pay its expenses in complying with that section or section 528 (requirements in connection with website publication).
- (3) Where a company is required to place a statement on a website under section 527 it must forward the statement to the company’s auditor not later than the time when it makes the statement available on the website.
- (4) The business which may be dealt with at the accounts meeting includes any statement that the company has been required under section 527 to publish on a website.

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

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

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

- (1) For the purposes of this Chapter a company is a quoted company if it is a quoted company in accordance with section 385 (quoted and unquoted companies for the purposes of Part 15) in relation to the financial year to which the accounts to be laid at the next accounts meeting relate.

- (2) The provisions of subsections (4) to (6) of that section (power to amend definition by regulations) apply in relation to the provisions of this Chapter as in relation to the provisions of that Part.

## CHAPTER 6

### AUDITORS' LIABILITY

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

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

- (1) This section applies to any provision –
- (a) for exempting an auditor of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring in the course of the audit of accounts, or
  - (b) by which a company directly or indirectly provides an indemnity (to any extent) for an auditor of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is auditor occurring in the course of the audit of accounts.
- (2) Any such provision is void, except as permitted by –
- (a) section 533 (indemnity for costs of successfully defending proceedings), or
  - (b) sections 534 to 536 (liability limitation agreements).
- (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.
- (4) For the purposes of this section companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

#### *Indemnity for costs of defending proceedings*

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

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

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

*Liability limitation agreements*

**534 Liability limitation agreements**

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

**535 Terms of liability limitation agreement**

- (1) A liability limitation agreement –
  - (a) must not apply in respect of acts or omissions occurring in the course of the audit of accounts for more than one financial year, and
  - (b) must specify the financial year in relation to which it applies.
- (2) The Secretary of State may by regulations –
  - (a) require liability limitation agreements to contain specified provisions or provisions of a specified description;
  - (b) prohibit liability limitation agreements from containing specified provisions or provisions of a specified description.“Specified” here means specified in the regulations.
- (3) Without prejudice to the generality of the power conferred by subsection (2), that power may be exercised with a view to preventing adverse effects on competition.
- (4) Subject to the preceding provisions of this section, it is immaterial how a liability limitation agreement is framed.  
In particular, the limit on the amount of the auditor’s liability need not be a sum of money, or a formula, specified in the agreement.
- (5) Regulations under this section are subject to negative resolution procedure.

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

- (1) A liability limitation agreement is authorised by the members of the company if it has been authorised under this section and that authorisation has not been withdrawn.

- (2) A liability limitation agreement between a private company and its auditor may be authorised –
  - (a) by the company passing a resolution, before it enters into the agreement, waiving the need for approval,
  - (b) by the company passing a resolution, before it enters into the agreement, approving the agreement’s principal terms, or
  - (c) by the company passing a resolution, after it enters into the agreement, approving the agreement.
- (3) A liability limitation agreement between a public company and its auditor may be authorised –
  - (a) by the company passing a resolution in general meeting, before it enters into the agreement, approving the agreement’s principal terms, or
  - (b) by the company passing a resolution in general meeting, after it enters into the agreement, approving the agreement.
- (4) The “principal terms” of an agreement are terms specifying, or relevant to the determination of –
  - (a) the kind (or kinds) of acts or omissions covered,
  - (b) the financial year to which the agreement relates, or
  - (c) the limit to which the auditor’s liability is subject.
- (5) Authorisation under this section may be withdrawn by the company passing an ordinary resolution to that effect –
  - (a) at any time before the company enters into the agreement, or
  - (b) if the company has already entered into the agreement, before the beginning of the financial year to which the agreement relates.Paragraph (b) has effect notwithstanding anything in the agreement.

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

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



**538 Disclosure of agreement by company**

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

**CHAPTER 7**

SUPPLEMENTARY PROVISIONS

**539 Minor definitions**

In this Part –

- “e-money issuer” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on the activity of issuing electronic money within the meaning of article 9B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
- “ISD investment firm” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000;
- “qualified”, in relation to an auditor’s report (or a statement contained in an auditor’s report), means that the report or statement does not state the auditor’s unqualified opinion that the accounts have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare accounts in accordance with this Act, under any corresponding legislation under which it is required to prepare accounts;
- “turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of –
  - (a) trade discounts,
  - (b) value added tax, and
  - (c) any other taxes based on the amounts so derived;
- “UCITS management company” has the meaning given by the Glossary forming part of the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000.

## PART 17

### A COMPANY'S SHARE CAPITAL

#### CHAPTER 1

##### SHARES AND SHARE CAPITAL OF A COMPANY

###### *Shares*

#### **540 Shares**

- (1) In the Companies Acts “share”, in relation to a company, means share in the company's share capital.
- (2) A company's shares may no longer be converted into stock.
- (3) Stock created before the commencement of this Part may be reconverted into shares in accordance with section 620.
- (4) In the Companies Acts—
  - (a) references to shares include stock except where a distinction between share and stock is express or implied, and
  - (b) references to a number of shares include an amount of stock where the context admits of the reference to shares being read as including stock.

#### **541 Nature of shares**

The shares or other interest of a member in a company are personal property (or, in Scotland, moveable property) and are not in the nature of real estate (or heritage).

#### **542 Nominal value of shares**

- (1) Shares in a limited company having a share capital must each have a fixed nominal value.
- (2) An allotment of a share that does not have a fixed nominal value is void.
- (3) Shares in a limited company having a share capital may be denominated in any currency, and different classes of shares may be denominated in different currencies.  
But see section 765 (initial authorised minimum share capital requirement for public company to be met by reference to share capital denominated in sterling or euros).
- (4) If a company purports to allot shares in contravention of this section, an offence is committed by every officer of the company who is in default.
- (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.

### 543 Numbering of shares

- (1) Each share in a company having a share capital must be distinguished by its appropriate number, except in the following circumstances.
- (2) If at any time –
  - (a) all the issued shares in a company are fully paid up and rank *pari passu* for all purposes, or
  - (b) all the issued shares of a particular class in a company are fully paid up and rank *pari passu* for all purposes,none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

### 544 Transferability of shares

- (1) The shares or other interest of any member in a company are transferable in accordance with the company’s articles.
- (2) This is subject to –
  - (a) the Stock Transfer Act 1963 (c. 18) or the Stock Transfer Act (Northern Ireland) 1963 (c.24 (N.I.)) (which enables securities of certain descriptions to be transferred by a simplified process), and
  - (b) regulations under Chapter 2 of Part 21 of this Act (which enable title to securities to be evidenced and transferred without a written instrument).
- (3) See Part 21 of this Act generally as regards share transfers.

### 545 Companies having a share capital

References in the Companies Acts to a company having a share capital are to a company that has power under its constitution to issue shares.

### 546 Issued and allotted share capital

- (1) References in the Companies Acts –
  - (a) to “issued share capital” are to shares of a company that have been issued;
  - (b) to “allotted share capital” are to shares of a company that have been allotted.
- (2) References in the Companies Acts to issued or allotted shares, or to issued or allotted share capital, include shares taken on the formation of the company by the subscribers to the company’s memorandum.

### *Share capital*

### 547 Called-up share capital

In the Companies Acts –  
“called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with –

- (a) any share capital paid up without being called, and
  - (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares; and
- “uncalled share capital” is to be construed accordingly.

#### **548 Equity share capital**

In the Companies Acts “equity share capital”, in relation to a company, means its issued share capital excluding any part of that capital that, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

## **CHAPTER 2**

### ALLOTMENT OF SHARES: GENERAL PROVISIONS

#### *Power of directors to allot shares*

#### **549 Exercise by directors of power to allot shares etc**

- (1) The directors of a company must not exercise any power of the company –
  - (a) to allot shares in the company, or
  - (b) to grant rights to subscribe for, or to convert any security into, shares in the company,
 except in accordance with section 550 (private company with single class of shares) or section 551 (authorisation by company).
- (2) Subsection (1) does not apply –
  - (a) to the allotment of shares in pursuance of an employees’ share scheme, or
  - (b) to the grant of a right to subscribe for, or to convert any security into, shares so allotted.
- (3) If this section applies in relation to the grant of a right to subscribe for, or to convert any security into, shares, it does not apply in relation to the allotment of shares pursuant to that right.
- (4) A director who knowingly contravenes, or permits or authorises a contravention of, this section commits an 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) Nothing in this section affects the validity of an allotment or other transaction.

#### **550 Power of directors to allot shares etc: private company with only one class of shares**

Where a private company has only one class of shares, the directors may exercise any power of the company –

- (a) to allot shares of that class, or

(b) to grant rights to subscribe for or to convert any security into such shares,  
except to the extent that they are prohibited from doing so by the company's articles.

**551 Power of directors to allot shares etc: authorisation by company**

- (1) The directors of a company may exercise a power of the company –
  - (a) to allot shares in the company, or
  - (b) to grant rights to subscribe for or to convert any security into shares in the company,if they are authorised to do so by the company's articles or by resolution of the company.
- (2) Authorisation may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.
- (3) Authorisation must –
  - (a) state the maximum amount of shares that may be allotted under it, and
  - (b) specify the date on which it will expire, which must be not more than five years from –
    - (i) in the case of authorisation contained in the company's articles at the time of its original incorporation, the date of that incorporation;
    - (ii) in any other case, the date on which the resolution is passed by virtue of which the authorisation is given.
- (4) Authorisation may –
  - (a) be renewed or further renewed by resolution of the company for a further period not exceeding five years, and
  - (b) be revoked or varied at any time by resolution of the company.
- (5) A resolution renewing authorisation must –
  - (a) state (or restate) the maximum amount of shares that may be allotted under the authorisation or, as the case may be, the amount remaining to be allotted under it, and
  - (b) specify the date on which the renewed authorisation will expire.
- (6) In relation to rights to subscribe for or to convert any security into shares in the company, references in this section to the maximum amount of shares that may be allotted under the authorisation are to the maximum amount of shares that may be allotted pursuant to the rights.
- (7) The directors may allot shares, or grant rights to subscribe for or to convert any security into shares, after authorisation has expired if –
  - (a) the shares are allotted, or the rights are granted, in pursuance of an offer or agreement made by the company before the authorisation expired, and
  - (b) the authorisation allowed the company to make an offer or agreement which would or might require shares to be allotted, or rights to be granted, after the authorisation had expired.
- (8) A resolution of a company to give, vary, revoke or renew authorisation under this section may be an ordinary resolution, even though it amends the company's articles.

- (9) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.

*Prohibition of commissions, discounts and allowances*

**552 General prohibition of commissions, discounts and allowances**

- (1) Except as permitted by section 553 (permitted commission), a company must not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his –
- (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or
  - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) It is immaterial how the shares or money are so applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section affects the payment of such brokerage as has previously been lawful.

**553 Permitted commission**

- (1) A company may, if the following conditions are satisfied, pay a commission to a person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) The conditions are that –
- (a) the payment of the commission is authorised by the company's articles; and
  - (b) the commission paid or agreed to be paid does not exceed –
    - (i) 10% of the price at which the shares are issued, or
    - (ii) the amount or rate authorised by the articles,whichever is the less.
- (3) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.

*Registration of allotment*

**554 Registration of allotment**

- (1) A company must register an allotment of shares as soon as practicable and in any event within two months after the date of the allotment.
- (2) This does not apply if the company has issued a share warrant in respect of the shares (see section 779).

- (3) 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.
- (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.
- (5) For the company's duties as to the issue of share certificates etc, see Part 21 (certification and transfer of securities).

#### *Return of allotment*

##### **555 Return of allotment by limited company**

- (1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.
- (2) The company must, within one month of making an allotment of shares, deliver to the registrar for registration a return of the allotment.
- (3) The return must –
  - (a) contain the prescribed information, and
  - (b) be accompanied by a statement of capital.
- (4) The statement of capital must state with respect to the company's share capital at the date to which the return is made up –
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

##### **556 Return of allotment by unlimited company allotting new class of shares**

- (1) This section applies to an unlimited company that allots shares of a class with rights that are not in all respects uniform with shares previously allotted.
- (2) The company must, within one month of making such an allotment, deliver to the registrar for registration a return of the allotment.
- (3) The return must contain the prescribed particulars of the rights attached to the shares.
- (4) For the purposes of this section shares are not to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.

### **557 Offence of failure to make return**

- (1) If a company makes default in complying with—  
     section 555 (return of allotment of shares by limited company), or  
     section 556 (return of allotment of new class of shares by unlimited company),  
 an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.
- (3) In the case of default in delivering to the registrar within one month after the allotment the return required by section 555 or 556—
  - (a) any person liable for the default may apply to the court for relief, and
  - (b) the court, if satisfied—
    - (i) that the omission to deliver the document was accidental or due to inadvertence, or
    - (ii) that it is just and equitable to grant relief,
 may make an order extending the time for delivery of the document for such period as the court thinks proper.

#### *Supplementary provisions*

### **558 When shares are allotted**

For the purposes of the Companies Acts shares in a company are taken to be allotted when a person acquires the unconditional right to be included in the company’s register of members in respect of the shares.

### **559 Provisions about allotment not applicable to shares taken on formation**

The provisions of this Chapter have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

## **CHAPTER 3**

### ALLOTMENT OF EQUITY SECURITIES: EXISTING SHAREHOLDERS’ RIGHT OF PRE-EMPTION

#### *Introductory*

### **560 Meaning of “equity securities” and related expressions**

- (1) In this Chapter—  
     “equity securities” means—
  - (a) ordinary shares in the company, or
  - (b) rights to subscribe for, or to convert securities into, ordinary shares in the company;



“ordinary shares” means shares other than shares that as respects dividends and capital carry a right to participate only up to a specified amount in a distribution.

- (2) References in this Chapter to the allotment of equity securities include—
- (a) the grant of a right to subscribe for, or to convert any securities into, ordinary shares in the company, and
  - (b) the sale of ordinary shares in the company that immediately before the sale are held by the company as treasury shares.

*Existing shareholders' right of pre-emption*

**561 Existing shareholders' right of pre-emption**

- (1) A company must not allot equity securities to a person on any terms unless—
- (a) it has made an offer to each person who holds ordinary shares in the company to allot to him on the same or more favourable terms a proportion of those securities that is as nearly as practicable equal to the proportion in nominal value held by him of the ordinary share capital of the company, and
  - (b) the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.
- (2) Securities that a company has offered to allot to a holder of ordinary shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening subsection (1)(b).
- (3) If subsection (1) applies in relation to the grant of such a right, it does not apply in relation to the allotment of shares in pursuance of that right.
- (4) Shares held by the company as treasury shares are disregarded for the purposes of this section, so that—
- (a) the company is not treated as a person who holds ordinary shares, and
  - (b) the shares are not treated as forming part of the ordinary share capital of the company.
- (5) This section is subject to—
- (a) sections 564 to 566 (exceptions to pre-emption right),
  - (b) sections 567 and 568 (exclusion of rights of pre-emption),
  - (c) sections 569 to 573 (disapplication of pre-emption rights), and
  - (d) section 576 (saving for certain older pre-emption procedures).

**562 Communication of pre-emption offers to shareholders**

- (1) This section has effect as to the manner in which offers required by section 561 are to be made to holders of a company's shares.
- (2) The offer may be made in hard copy or electronic form.
- (3) If the holder—
- (a) has no registered address in an EEA State and has not given to the company an address in an EEA State for the service of notices on him, or
  - (b) is the holder of a share warrant,

the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Gazette.

- (4) The offer must state a period during which it may be accepted and the offer shall not be withdrawn before the end of that period.
- (5) The period must be a period of at least 21 days beginning—
  - (a) in the case of an offer made in hard copy form, with the date on which the offer is sent or supplied;
  - (b) in the case of an offer made in electronic form, with the date on which the offer is sent;
  - (c) in the case of an offer made by publication in the Gazette, with the date of publication.
- (6) The Secretary of State may by regulations made by statutory instrument—
  - (a) reduce the period specified in subsection (5) (but not to less than 14 days), or
  - (b) increase that period.
- (7) A statutory instrument containing regulations made under subsection (6) is subject to affirmative resolution procedure.

### **563 Liability of company and officers in case of contravention**

- (1) This section applies where there is a contravention of—
  - section 561 (existing shareholders' right of pre-emption), or
  - section 562 (communication of pre-emption offers to shareholders).
- (2) The company and every officer of it who knowingly authorised or permitted the contravention are jointly and severally liable to compensate any person to whom an offer should have been made in accordance with those provisions for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.
- (3) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years—
  - (a) from the delivery to the registrar of companies of the return of allotment, or
  - (b) where equity securities other than shares are granted, from the date of the grant.

#### *Exceptions to right of pre-emption*

### **564 Exception to pre-emption right: bonus shares**

Section 561(1) (existing shareholders' right of pre-emption) does not apply in relation to the allotment of bonus shares.

### **565 Exception to pre-emption right: issue for non-cash consideration**

Section 561(1) (existing shareholders' right of pre-emption) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash.

**566 Exception to pre-emption right: securities held under employees' share scheme**

Section 561 (existing shareholders' right of pre-emption) does not apply to the allotment of securities that would, apart from any renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

*Exclusion of right of pre-emption***567 Exclusion of requirements by private companies**

- (1) All or any of the requirements of—
  - (a) section 561 (existing shareholders' right of pre-emption), or
  - (b) section 562 (communication of pre-emption offers to shareholders)
 may be excluded by provision contained in the articles of a private company.
- (2) They may be excluded—
  - (a) generally in relation to the allotment by the company of equity securities, or
  - (b) in relation to allotments of a particular description.
- (3) Any requirement or authorisation contained in the articles of a private company that is inconsistent with either of those sections is treated for the purposes of this section as a provision excluding that section.
- (4) A provision to which section 568 applies (exclusion of pre-emption right: corresponding right conferred by articles) is not to be treated as inconsistent with section 561.

**568 Exclusion of pre-emption right: articles conferring corresponding right**

- (1) The provisions of this section apply where, in a case in which section 561 (existing shareholders' right of pre-emption) would otherwise apply—
  - (a) a company's articles contain provision ("pre-emption provision") prohibiting the company from allotting ordinary shares of a particular class unless it has complied with the condition that it makes such an offer as is described in section 561(1) to each person who holds ordinary shares of that class, and
  - (b) in accordance with that provision—
    - (i) the company makes an offer to allot shares to such a holder, and
    - (ii) he or anyone in whose favour he has renounced his right to their allotment accepts the offer.
- (2) In that case, section 561 does not apply to the allotment of those shares and the company may allot them accordingly.
- (3) The provisions of section 562 (communication of pre-emption offers to shareholders) apply in relation to offers made in pursuance of the pre-emption provision of the company's articles.  
This is subject to section 567 (exclusion of requirements by private companies).
- (4) If there is a contravention of the pre-emption provision of the company's articles, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the provision for any

loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

- (5) No proceedings to recover any such loss, damage, costs or expenses may be commenced after the expiration of two years –
- (a) from the delivery to the registrar of companies of the return of allotment, or
  - (b) where equity securities other than shares are granted, from the date of the grant.

*Disapplication of pre-emption rights*

**569 Disapplication of pre-emption rights: private company with only one class of shares**

- (1) The directors of a private company that has only one class of shares may be given power by the articles, or by a special resolution of the company, to allot equity securities of that class as if section 561 (existing shareholders' right of pre-emption) –
- (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.
- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.

**570 Disapplication of pre-emption rights: directors acting under general authorisation**

- (1) Where the directors of a company are generally authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authorisation as if section 561 (existing shareholders' right of pre-emption) –
- (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.
- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.
- (3) The power conferred by this section ceases to have effect when the authorisation to which it relates –
- (a) is revoked, or
  - (b) would (if not renewed) expire.

But if the authorisation is renewed the power may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

- (4) Notwithstanding that the power conferred by this section has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the power enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

**571 Disapplication of pre-emption rights by special resolution**

- (1) Where the directors of a company are authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), whether generally or otherwise, the company may by special resolution resolve that section 561 (existing shareholders' right of pre-emption) –
  - (a) does not apply to a specified allotment of equity securities to be made pursuant to that authorisation, or
  - (b) applies to such an allotment with such modifications as may be specified in the resolution.
- (2) Where such a resolution is passed the provisions of this Chapter have effect accordingly.
- (3) A special resolution under this section ceases to have effect when the authorisation to which it relates –
  - (a) is revoked, or
  - (b) would (if not renewed) expire.But if the authorisation is renewed the resolution may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.
- (4) Notwithstanding that any such resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the resolution enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.
- (5) A special resolution under this section, or a special resolution to renew such a resolution, must not be proposed unless –
  - (a) it is recommended by the directors, and
  - (b) the directors have complied with the following provisions.
- (6) Before such a resolution is proposed, the directors must make a written statement setting out –
  - (a) their reasons for making the recommendation,
  - (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
  - (c) the directors' justification of that amount.
- (7) The directors' statement must –
  - (a) if the resolution is proposed as a written resolution, be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) if the resolution is proposed at a general meeting, be circulated to the members entitled to notice of the meeting with that notice.

**572 Liability for false statement in directors' statement**

- (1) This section applies in relation to a directors' statement under section 571 (special resolution disapplying pre-emption rights) that is sent, submitted or circulated under subsection (7) of that section.
- (2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.

- (3) A person guilty of an offence under this section 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).

### **573 Disapplication of pre-emption rights: sale of treasury shares**

- (1) This section applies in relation to a sale of shares that is an allotment of equity securities by virtue of section 560(2)(b) (sale of shares held by company as treasury shares).
- (2) The directors of a company may be given power by the articles, or by a special resolution of the company, to allot equity securities as if section 561 (existing shareholders' right of pre-emption) –
  - (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.
- (3) The provisions of section 570(2) and (4) apply in that case as they apply to a case within subsection (1) of that section.
- (4) The company may by special resolution resolve that section 561 –
  - (a) shall not apply to a specified allotment of securities, or
  - (b) shall apply to the allotment with such modifications as may be specified in the resolution.
- (5) The provisions of section 571(2) and (4) to (7) apply in that case as they apply to a case within subsection (1) of that section.

### *Supplementary*

### **574 References to holder of shares in relation to offer**

- (1) In this Chapter, in relation to an offer to allot securities required by –
  - (a) section 561 (existing shareholders' right of pre-emption), or
  - (b) any provision to which section 568 applies (articles conferring corresponding right),
 a reference (however expressed) to the holder of shares of any description is to whoever was the holder of shares of that description at the close of business on a date to be specified in the offer.
- (2) The specified date must fall within the period of 28 days immediately before the date of the offer.

**575 Saving for other restrictions on offer or allotment**

- (1) The provisions of this Chapter are without prejudice to any other enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.
- (2) Where a company cannot by virtue of such an enactment offer or allot equity securities to a holder of ordinary shares of the company, those shares are disregarded for the purposes of section 561 (existing shareholders' right of pre-emption), so that—
  - (a) the person is not treated as a person who holds ordinary shares, and
  - (b) the shares are not treated as forming part of the ordinary share capital of the company.

**576 Saving for certain older pre-emption requirements**

- (1) In the case of a public company the provisions of this Chapter do not apply to an allotment of equity securities that are subject to a pre-emption requirement in relation to which section 96(1) of the Companies Act 1985 (c. 6) or Article 106(1) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) applied immediately before the commencement of this Chapter.
- (2) In the case of a private company a pre-emption requirement to which section 96(3) of the Companies Act 1985 or Article 106(3) of the Companies (Northern Ireland) Order 1986 applied immediately before the commencement of this Chapter shall have effect, so long as the company remains a private company, as if it were contained in the company's articles.
- (3) A pre-emption requirement to which section 96(4) of the Companies Act 1985 or Article 106(4) of the Companies (Northern Ireland) Order 1986 applied immediately before the commencement of this section shall be treated for the purposes of this Chapter as if it were contained in the company's articles.

**577 Provisions about pre-emption not applicable to shares taken on formation**

The provisions of this Chapter have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

**CHAPTER 4****PUBLIC COMPANIES: ALLOTMENT WHERE ISSUE NOT FULLY SUBSCRIBED****578 Public companies: allotment where issue not fully subscribed**

- (1) No allotment shall be made of shares of a public company offered for subscription unless—
  - (a) the issue is subscribed for in full, or
  - (b) the offer is made on terms that the shares subscribed for may be allotted—
    - (i) in any event, or
    - (ii) if specified conditions are met (and those conditions are met).

- (2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first making of the offer, all money received from applicants for shares must be repaid to them forthwith, without interest.
- (3) If any of the money is not repaid within 48 days after the first making of the offer, the directors of the company are jointly and severally liable to repay it, with interest at the rate for the time being specified under section 17 of the Judgments Act 1838 (c. 110) from the expiration of the 48th day.  
A director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription.
- (5) In that case –
  - (a) the references in subsection (1) to subscription shall be construed accordingly;
  - (b) references in subsections (2) and (3) to the repayment of money received from applicants for shares include –
    - (i) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
    - (ii) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received;
  - (c) references to interest apply accordingly.
- (6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

**579 Public companies: effect of irregular allotment where issue not fully subscribed**

- (1) An allotment made by a public company to an applicant in contravention of section 578 (public companies: allotment where issue not fully subscribed) is voidable at the instance of the applicant within one month after the date of the allotment, and not later.
- (2) It is so voidable even if the company is in the course of being wound up.
- (3) A director of a public company who knowingly contravenes, or permits or authorises the contravention of, any provision of section 578 with respect to allotment is liable to compensate the company and the allottee respectively for any loss, damages, costs or expenses that the company or allottee may have sustained or incurred by the contravention.
- (4) Proceedings to recover any such loss, damages, costs or expenses may not be brought more than two years after the date of the allotment.



## CHAPTER 5

### PAYMENT FOR SHARES

#### *General rules*

#### **580 Shares not to be allotted at a discount**

- (1) A company’s shares must not be allotted at a discount.
- (2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

#### **581 Provision for different amounts to be paid on shares**

A company, if so authorised by its articles, may –

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

#### **582 General rule as to means of payment**

- (1) Shares allotted by a company, and any premium on them, may be paid up in money or money’s worth (including goodwill and know-how).
- (2) This section does not prevent a company –
  - (a) from allotting bonus shares to its members, or
  - (b) from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).
- (3) This section has effect subject to the following provisions of this Chapter (additional rules for public companies).

#### **583 Meaning of payment in cash**

- (1) The following provisions have effect for the purposes of the Companies Acts.
- (2) A share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration received for the allotment or payment up is a cash consideration.
- (3) A “cash consideration” means –
  - (a) cash received by the company,
  - (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid,
  - (c) a release of a liability of the company for a liquidated sum,
  - (d) an undertaking to pay cash to the company at a future date, or

- (e) payment by any other means giving rise to a present or future entitlement (of the company or a person acting on the company's behalf) to a payment, or credit equivalent to payment, in cash.
- (4) The Secretary of State may by order provide that particular means of payment specified in the order are to be regarded as falling within subsection (3)(e).
- (5) In relation to the allotment or payment up of shares in a company –
  - (a) the payment of cash to a person other than the company, or
  - (b) an undertaking to pay cash to a person other than the company,
 counts as consideration other than cash.  
 This does not apply for the purposes of Chapter 3 (allotment of equity securities: existing shareholders' right of pre-emption).
- (6) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, "cash" includes foreign currency.
- (7) An order under this section is subject to negative resolution procedure.

*Additional rules for public companies*

**584 Public companies: shares taken by subscribers of memorandum**

Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, must be paid up in cash.

**585 Public companies: must not accept undertaking to do work or perform services**

- (1) A public company must not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.
- (2) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable –
  - (a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
  - (b) to pay interest at the appropriate rate on the amount payable under paragraph (a).
- (3) The reference in subsection (2) to the holder of shares includes a person who has an unconditional right –
  - (a) to be included in the company's register of members in respect of those shares, or
  - (b) to have an instrument of transfer of them executed in his favour.

**586 Public companies: shares must be at least one-quarter paid up**

- (1) A public company must not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

- (2) This does not apply to shares allotted in pursuance of an employees' share scheme.
- (3) If a company allots a share in contravention of this section –
  - (a) the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received, and
  - (b) the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it), with interest at the appropriate rate.
- (4) Subsection (3) does not apply to the allotment of bonus shares, unless the allottee knew or ought to have known the shares were allotted in contravention of this section.

#### **587 Public companies: payment by long-term undertaking**

- (1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than five years after the date of the allotment.
- (2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.
- (3) Where a contract for the allotment of shares does not contravene subsection (1), any variation of the contract that has the effect that the contract would have contravened the subsection, if the terms of the contract as varied had been its original terms, is void.

This applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.
- (4) Where –
  - (a) a public company allots shares for a consideration which consists of or includes (in accordance with subsection (1)) an undertaking that is to be performed within five years of the allotment, and
  - (b) the undertaking is not performed within the period allowed by the contract for the allotment of the shares,the allottee is liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.
- (5) References in this section to a contract for the allotment of shares include an ancillary contract relating to payment in respect of them.

#### *Supplementary provisions*

#### **588 Liability of subsequent holders of shares**

- (1) If a person becomes a holder of shares in respect of which –

- (a) there has been a contravention of any provision of this Chapter, and
  - (b) by virtue of that contravention another is liable to pay any amount under the provision contravened,
- that person is also liable to pay that amount (jointly and severally with any other person so liable), subject as follows.
- (2) A person otherwise liable under subsection (1) is exempted from that liability if either –
    - (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned, or
    - (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1).
  - (3) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right –
    - (a) to be included in the company's register of members in respect of those shares, or
    - (b) to have an instrument of transfer of the shares executed in his favour.
  - (4) This section applies in relation to a failure to carry out a term of a contract as mentioned in section 587(4) (public companies: payment by long-term undertaking) as it applies in relation to a contravention of a provision of this Chapter.

### **589 Power of court to grant relief**

- (1) This section applies in relation to liability under –
  - section 585(2) (liability of allottee in case of breach by public company of prohibition on accepting undertaking to do work or perform services),
  - section 587(2) or (4) (liability of allottee in case of breach by public company of prohibition on payment by long-term undertaking), or
  - section 588 (liability of subsequent holders of shares),
 as it applies in relation to a contravention of those sections.
- (2) A person who –
  - (a) is subject to any such liability to a company in relation to payment in respect of shares in the company, or
  - (b) is subject to any such liability to a company by virtue of an undertaking given to it in, or in connection with, payment for shares in the company,
 may apply to the court to be exempted in whole or in part from the liability.
- (3) In the case of a liability within subsection (2)(a), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
  - (a) whether the applicant has paid, or is liable to pay, any amount in respect of –
    - (i) any other liability arising in relation to those shares under any provision of this Chapter or Chapter 6, or
    - (ii) any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount;

- (c) whether the applicant or any other person –
  - (i) has performed in whole or in part, or is likely so to perform any such undertaking, or
  - (ii) has done or is likely to do any other thing in payment or part payment for the shares.
- (4) In the case of a liability within subsection (2)(b), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
  - (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Chapter or Chapter 6;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount.
- (5) In determining whether it should exempt the applicant in whole or in part from any liability, the court must have regard to the following overriding principles –
  - (a) a company that has allotted shares should receive money or money’s worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;
  - (b) subject to that, where a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (6) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any provision of this Chapter or Chapter 6 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to it just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings –
  - (a) exempt the contributor in whole or in part from his liability to make such a contribution, or
  - (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.

#### **590 Penalty for contravention of this Chapter**

- (1) If a company contravenes any of the provisions of this Chapter, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **591 Enforceability of undertakings to do work etc**

- (1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 6.
- (2) This is without prejudice to section 589 (power of court to grant relief etc in respect of liabilities).

### **592 The appropriate rate of interest**

- (1) For the purposes of this Chapter the “appropriate rate” of interest is 5% per annum or such other rate as may be specified by order made by the Secretary of State.
- (2) An order under this section is subject to negative resolution procedure.

## **CHAPTER 6**

### PUBLIC COMPANIES: INDEPENDENT VALUATION OF NON-CASH CONSIDERATION

#### *Non-cash consideration for shares*

### **593 Public company: valuation of non-cash consideration for shares**

- (1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless –
  - (a) the consideration for the allotment has been independently valued in accordance with the provisions of this Chapter,
  - (b) the valuer’s report has been made to the company during the six months immediately preceding the allotment of the shares, and
  - (c) a copy of the report has been sent to the proposed allottee.
- (2) For this purpose the application of an amount standing to the credit of –
  - (a) any of a company’s reserve accounts, or
  - (b) its profit and loss account,
 in paying up (to any extent) shares allotted to members of the company, or premiums on shares so allotted, does not count as consideration for the allotment.  
 Accordingly, subsection (1) does not apply in that case.
- (3) If a company allots shares in contravention of subsection (1) and either –
  - (a) the allottee has not received the valuer’s report required to be sent to him, or
  - (b) there has been some other contravention of the requirements of this section or section 596 that the allottee knew or ought to have known amounted to a contravention,
 the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

- (4) This section has effect subject to—  
 section 594 (exception to valuation requirement: arrangement with another company), and  
 section 595 (exception to valuation requirement: merger).

#### **594 Exception to valuation requirement: arrangement with another company**

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company (“company A”) in connection with an arrangement to which this section applies.
- (2) This section applies to an arrangement for the allotment of shares in company A on terms that the whole or part of the consideration for the shares allotted is to be provided by—  
 (a) the transfer to that company, or  
 (b) the cancellation,  
 of all or some of the shares, or of all or some of the shares of a particular class, in another company (“company B”).
- (3) It is immaterial whether the arrangement provides for the issue to company A of shares, or shares of any particular class, in company B.
- (4) This section applies to an arrangement only if under the arrangement it is open to all the holders of the shares in company B (or, where the arrangement applies only to shares of a particular class, to all the holders of shares of that class) to take part in the arrangement.
- (5) In determining whether that is the case, the following shall be disregarded—  
 (a) shares held by or by a nominee of company A;  
 (b) shares held by or by a nominee of a company which is—  
 (i) the holding company, or a subsidiary, of company A, or  
 (ii) a subsidiary of such a holding company;  
 (c) shares held as treasury shares by company B.
- (6) In this section—  
 (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with—  
 (i) Part 26 (arrangements and reconstructions), or  
 (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company property)), and  
 (b) “company”, except in reference to company A, includes any body corporate.

#### **595 Exception to valuation requirement: merger**

- (1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company in connection with a proposed merger with another company.
- (2) A proposed merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other

securities of that one to shareholders of the other, with or without any cash payment to shareholders.

- (3) In this section “company”, in reference to the other company, includes any body corporate.

**596 Non-cash consideration for shares: requirements as to valuation and report**

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 593 (public company: valuation of non-cash consideration for shares).
- (2) The valuer's report must state –
- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
  - (b) the amount of any premium payable on the shares;
  - (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;
  - (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up –
    - (i) by the consideration;
    - (ii) in cash.
- (3) The valuer's report must contain or be accompanied by a note by him –
- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,
  - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
  - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and
  - (d) that, on the basis of the valuation, the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (4) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 593 and the preceding provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration that is properly attributable to the payment up of that value and any premium.
- (5) In such a case –
- (a) the valuer must carry out, or arrange for, such other valuations as will enable him to determine that proportion, and
  - (b) his report must state what valuations have been made under this subsection and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.



**597 Copy of report to be delivered to registrar**

- (1) A company to which a report is made under section 593 as to the value of any consideration for which, or partly for which, it proposes to allot shares must deliver a copy of the report to the registrar for registration.
- (2) The copy must be delivered at the same time that the company files the return of the allotment of those shares under section 555 (return of allotment by limited company).
- (3) If default is made in complying with subsection (1) or (2), an offence is committed by every officer of the company who is in default.
- (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 and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.
- (5) In the case of default in delivering to the registrar any document as required by this section, any person liable for the default may apply to the court for relief.
- (6) The court, if satisfied –
  - (a) that the omission to deliver the document was accidental or due to inadvertence, or
  - (b) that it is just and equitable to grant relief,may make an order extending the time for delivery of the document for such period as the court thinks proper.

*Transfer of non-cash asset in initial period*

**598 Public company: agreement for transfer of non-cash asset in initial period**

- (1) A public company formed as such must not enter into an agreement –
  - (a) with a person who is a subscriber to the company’s memorandum,
  - (b) for the transfer by him to the company, or another, before the end of the company’s initial period of one or more non-cash assets, and
  - (c) under which the consideration for the transfer to be given by the company is at the time of the agreement equal in value to one-tenth or more of the company’s issued share capital,unless the conditions referred to below have been complied with.
- (2) The company’s “initial period” means the period of two years beginning with the date of the company being issued with a certificate under section 761 (trading certificate).
- (3) The conditions are those specified in –
  - section 599 (requirement of independent valuation), and
  - section 601 (requirement of approval by members).
- (4) This section does not apply where –
  - (a) it is part of the company’s ordinary business to acquire, or arrange for other persons to acquire, assets of a particular description, and
  - (b) the agreement is entered into by the company in the ordinary course of that business.

- (5) This section does not apply to an agreement entered into by the company under the supervision of the court or of an officer authorised by the court for the purpose.

**599 Agreement for transfer of non-cash asset: requirement of independent valuation**

- (1) The following conditions must have been complied with—
- (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued in accordance with the provisions of this Chapter,
  - (b) the valuer's report must have been made to the company during the six months immediately preceding the date of the agreement, and
  - (c) a copy of the report must have been sent to the other party to the proposed agreement not later than the date on which copies have to be circulated to members under section 601(3).
- (2) The reference in subsection (1)(a) to the consideration to be received by the company is to the asset to be transferred to it or, as the case may be, to the advantage to the company of the asset's transfer to another person.
- (3) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).  
If he has received a copy of the report under section 601 in his capacity as a member of the company, it is not necessary to send another copy under this section.
- (4) This section does not affect any requirement to value any consideration for purposes of section 593 (valuation of non-cash consideration for shares).

**600 Agreement for transfer of non-cash asset: requirements as to valuation and report**

- (1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 599 (public company: transfer of non-cash asset).
- (2) The valuer's report must state—
- (a) the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash), and
  - (b) the method and date of valuation.
- (3) The valuer's report must contain or be accompanied by a note by him—
- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,
  - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,
  - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and

- (d) that, on the basis of the valuation, the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.
- (4) Any reference in section 599 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer.
- (5) In such a case—
  - (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer,
  - (b) the valuer must carry out or arrange for such valuations of anything else as will enable him to determine that proportion, and
  - (c) his report must state what valuations have been made for that purpose and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

#### **601 Agreement for transfer of non-cash asset: requirement of approval by members**

- (1) The following conditions must have been complied with—
  - (a) the terms of the agreement must have been approved by an ordinary resolution of the company,
  - (b) the requirements of this section must have been complied with as respects the circulation to members of copies of the valuer's report under section 599, and
  - (c) a copy of the proposed resolution must have been sent to the other party to the proposed agreement.
- (2) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 598(1)(a).
- (3) The requirements of this section as to circulation of copies of the valuer's report are as follows—
  - (a) if the resolution is proposed as a written resolution, copies of the valuer's report must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) if the resolution is proposed at a general meeting, copies of the valuer's report must be circulated to the members entitled to notice of the meeting not later than the date on which notice of the meeting is given.

#### **602 Copy of resolution to be delivered to registrar**

- (1) A company that has passed a resolution under section 601 with respect to the transfer of an asset must, within 15 days of doing so, deliver to the registrar a copy of the resolution together with the valuer's report required by that section.
- (2) If a company fails to comply with subsection (1), 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 on summary conviction to a fine not exceeding level 3 on the standard scale and, for

continued contravention, to a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **603 Adaptation of provisions in relation to company re-registering as public**

The provisions of sections 598 to 602 (public companies: transfer of non-cash assets) apply with the following adaptations in relation to a company re-registered as a public company –

- (a) the reference in section 598(1)(a) to a person who is a subscriber to the company's memorandum shall be read as a reference to a person who is a member of the company on the date of re-registration;
- (b) the reference in section 598(2) to the date of the company being issued with a certificate under section 761 (trading certificate) shall be read as a reference to the date of re-registration.

### **604 Agreement for transfer of non-cash asset: effect of contravention**

- (1) This section applies where a public company enters into an agreement in contravention of section 598 and either –
  - (a) the other party to the agreement has not received the valuer's report required to be sent to him, or
  - (b) there has been some other contravention of the requirements of this Chapter that the other party to the agreement knew or ought to have known amounted to a contravention.
- (2) In those circumstances –
  - (a) the company is entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement, and
  - (b) the agreement, so far as not carried out, is void.
- (3) If the agreement is or includes an agreement for the allotment of shares in the company, then –
  - (a) whether or not the agreement also contravenes section 593 (valuation of non-cash consideration for shares), this section does not apply to it in so far as it is for the allotment of shares, and
  - (b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

#### *Supplementary provisions*

### **605 Liability of subsequent holders of shares**

- (1) If a person becomes a holder of shares in respect of which –
  - (a) there has been a contravention of section 593 (public company: valuation of non-cash consideration for shares), and
  - (b) by virtue of that contravention another is liable to pay any amount under the provision contravened,

that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.

- (2) If a company enters into an agreement in contravention of section 598 (public company: agreement for transfer of non-cash asset in initial period) and –
- (a) the agreement is or includes an agreement for the allotment of shares in the company,
  - (b) a person becomes a holder of shares allotted under the agreement, and
  - (c) by virtue of the agreement and allotment under it another person is liable to pay an amount under section 604,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability under subsection (3) below.

This applies whether or not the agreement also contravenes section 593.

- (3) A person otherwise liable under subsection (1) or (2) is exempted from that liability if either –
- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned, or
  - (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (2).
- (4) References in this section to a holder, in relation to shares in a company, include any person who has an unconditional right –
- (a) to be included in the company's register of members in respect of those shares, or
  - (b) to have an instrument of transfer of the shares executed in his favour.

## 606 Power of court to grant relief

- (1) A person who –
- (a) is liable to a company under any provision of this Chapter in relation to payment in respect of any shares in the company, or
  - (b) is liable to a company by virtue of an undertaking given to it in, or in connection with, payment for any shares in the company,
- may apply to the court to be exempted in whole or in part from the liability.
- (2) In the case of a liability within subsection (1)(a), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
- (a) whether the applicant has paid, or is liable to pay, any amount in respect of –
    - (i) any other liability arising in relation to those shares under any provision of this Chapter or Chapter 5, or
    - (ii) any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount;
  - (c) whether the applicant or any other person –

- (i) has performed in whole or in part, or is likely so to perform any such undertaking, or
  - (ii) has done or is likely to do any other thing in payment or part payment for the shares.
- (3) In the case of a liability within subsection (1)(b), the court may exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to –
- (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Chapter or Chapter 5;
  - (b) whether any person other than the applicant has paid or is likely to pay, whether in pursuance of any order of the court or otherwise, any such amount.
- (4) In determining whether it should exempt the applicant in whole or in part from any liability, the court must have regard to the following overriding principles –
- (a) that a company that has allotted shares should receive money or money’s worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;
  - (b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (5) If a person brings proceedings against another (“the contributor”) for a contribution in respect of liability to a company arising under any provision of this Chapter or Chapter 5 and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to it, just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings –
- (a) exempt the contributor in whole or in part from his liability to make such a contribution, or
  - (b) order the contributor to make a larger contribution than, but for this subsection, he would be liable to make.
- (6) Where a person is liable to a company under section 604(2) (agreement for transfer of non-cash asset: effect of contravention), the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court to be just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that subsection.

### **607 Penalty for contravention of this Chapter**

- (1) This section applies where a company contravenes –
- section 593 (public company allotting shares for non-cash consideration),
  - or
  - section 598 (public company entering into agreement for transfer of non-cash asset).
- (2) 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.

### 608 Enforceability of undertakings to do work etc

- (1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Chapter, is so enforceable notwithstanding that there has been a contravention in relation to it of a provision of this Chapter or Chapter 5.
- (2) This is without prejudice to section 606 (power of court to grant relief etc in respect of liabilities).

### 609 The appropriate rate of interest

- (1) For the purposes of this Chapter the “appropriate rate” of interest is 5% per annum or such other rate as may be specified by order made by the Secretary of State.
- (2) An order under this section is subject to negative resolution procedure.

## CHAPTER 7

### SHARE PREMIUMS

#### *The share premium account*

### 610 Application of share premiums

- (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to an account called “the share premium account”.
- (2) Where, on issuing shares, a company has transferred a sum to the share premium account, it may use that sum to write off—
- (a) the expenses of the issue of those shares;
  - (b) any commission paid on the issue of those shares.
- (3) The company may use the share premium account to pay up new shares to be allotted to members as fully paid bonus shares.
- (4) Subject to subsections (2) and (3), the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the share premium account were part of its paid up share capital.
- (5) This section has effect subject to—
- section 611 (group reconstruction relief);
  - section 612 (merger relief);
  - section 614 (power to make further provisions by regulations).

- (6) In this Chapter “the issuing company” means the company issuing shares as mentioned in subsection (1) above.

*Relief from requirements as to share premiums*

**611 Group reconstruction relief**

- (1) This section applies where the issuing company –
- (a) is a wholly-owned subsidiary of another company (“the holding company”), and
  - (b) allots shares –
    - (i) to the holding company, or
    - (ii) to another wholly-owned subsidiary of the holding company, in consideration for the transfer to the issuing company of non-cash assets of a company (“the transferor company”) that is a member of the group of companies that comprises the holding company and all its wholly-owned subsidiaries.
- (2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 610 to transfer any amount in excess of the minimum premium value to the share premium account.
- (3) The minimum premium value means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of the shares.
- (4) The base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.
- (5) For the purposes of this section –
- (a) the base value of assets transferred is taken as –
    - (i) the cost of those assets to the transferor company, or
    - (ii) if less, the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer;
  - (b) the base value of the liabilities assumed is taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

**612 Merger relief**

- (1) This section applies where the issuing company has secured at least a 90% equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided –
- (a) by the issue or transfer to the issuing company of equity shares in the other company, or
  - (b) by the cancellation of any such shares not held by the issuing company.
- (2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity



shares in the other company are issued at a premium, section 610 does not apply to the premiums on those shares.

- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided –
- (a) by the issue or transfer to the issuing company of non-equity shares in the other company, or
  - (b) by the cancellation of any such shares in that company not held by the issuing company,
- relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.
- (4) This section does not apply in a case falling within section 611 (group reconstruction relief).

### **613 Merger relief: meaning of 90% equity holding**

- (1) The following provisions have effect to determine for the purposes of section 612 (merger relief) whether a company (“company A”) has secured at least a 90% equity holding in another company (“company B”) in pursuance of such an arrangement as is mentioned in subsection (1) of that section.
- (2) Company A has secured at least a 90% equity holding in company B if in consequence of an acquisition or cancellation of equity shares in company B (in pursuance of that arrangement) it holds equity shares in company B of an aggregate amount equal to 90% or more of the nominal value of that company's equity share capital.
- (3) For this purpose –
- (a) it is immaterial whether any of those shares were acquired in pursuance of the arrangement; and
  - (b) shares in company B held by the company as treasury shares are excluded in determining the nominal value of company B's share capital.
- (4) Where the equity share capital of company B is divided into different classes of shares, company A is not regarded as having secured at least a 90% equity holding in company B unless the requirements of subsection (2) are met in relation to each of those classes of shares taken separately.
- (5) For the purposes of this section shares held by –
- (a) a company that is company A's holding company or subsidiary, or
  - (b) a subsidiary of company A's holding company, or
  - (c) its or their nominees,
- are treated as held by company A.

### **614 Power to make further provision by regulations**

- (1) The Secretary of State may by regulations make such provision as he thinks appropriate –
- (a) for relieving companies from the requirements of section 610 (application of share premiums) in relation to premiums other than cash premiums;

- (b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.
- (2) Regulations under this section are subject to affirmative resolution procedure.

### **615 Relief may be reflected in company’s balance sheet**

An amount corresponding to the amount representing the premiums, or part of the premiums, on shares issued by a company that by virtue of any relief under this Chapter is not included in the company’s share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company’s balance sheet.

#### *Supplementary provisions*

### **616 Interpretation of this Chapter**

- (1) In this Chapter –
  - “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with –
    - (a) Part 26 (arrangements and reconstructions), or
    - (b) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company property));
  - “company”, except in reference to the issuing company, includes any body corporate;
  - “equity shares” means shares comprised in a company’s equity share capital, and “non-equity shares” means shares (of any class) that are not so comprised;
  - “the issuing company” has the meaning given by section 610(6).
- (2) References in this Chapter (however expressed) to –
  - (a) the acquisition by a company of shares in another company, and
  - (b) the issue or allotment of shares to, or the transfer of shares to or by, a company,
 include (respectively) the acquisition of shares by, and the issue or allotment or transfer of shares to or by, a nominee of that company.  
 The reference in section 611 to the transferor company shall be read accordingly.
- (3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company’s register of members in respect of those shares.

## CHAPTER 8

### ALTERATION OF SHARE CAPITAL

#### *How share capital may be altered*

#### **617 Alteration of share capital of limited company**

- (1) A limited company having a share capital may not alter its share capital except in the following ways.
- (2) The company may –
  - (a) increase its share capital by allotting new shares in accordance with this Part, or
  - (b) reduce its share capital in accordance with Chapter 10.
- (3) The company may –
  - (a) sub-divide or consolidate all or any of its share capital in accordance with section 618, or
  - (b) reconvert stock into shares in accordance with section 620.
- (4) The company may redenominate all or any of its shares in accordance with section 622, and may reduce its share capital in accordance with section 626 in connection with such a redenomination.
- (5) Nothing in this section affects –
  - (a) the power of a company to purchase its own shares, or to redeem shares, in accordance with Part 18;
  - (b) the power of a company to purchase its own shares in pursuance of an order of the court under –
    - (i) section 98 (application to court to cancel resolution for re-registration as a private company),
    - (ii) section 721(6) (powers of court on objection to redemption or purchase of shares out of capital),
    - (iii) section 759 (remedial order in case of breach of prohibition of public offers by private company), or
    - (iv) Part 30 (protection of members against unfair prejudice);
  - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares;
  - (d) the cancellation of shares under section 662 (duty to cancel shares held by or for a public company);
  - (e) the power of a company –
    - (i) to enter into a compromise or arrangement in accordance with Part 26 (arrangements and reconstructions), or
    - (ii) to do anything required to comply with an order of the court on an application under that Part.

#### *Subdivision or consolidation of shares*

#### **618 Sub-division or consolidation of shares**

- (1) A limited company having a share capital may –

- (a) sub-divide its shares, or any of them, into shares of a smaller nominal amount than its existing shares, or
  - (b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.
- (2) In any sub-division, consolidation or division of shares under this section, the proportion between the amount paid and the amount (if any) unpaid on each resulting share must be the same as it was in the case of the share from which that share is derived.
- (3) A company may exercise a power conferred by this section only if its members have passed a resolution authorising it to do so.
- (4) A resolution under subsection (3) may authorise a company –
- (a) to exercise more than one of the powers conferred by this section;
  - (b) to exercise a power on more than one occasion;
  - (c) to exercise a power at a specified time or in specified circumstances.
- (5) The company's articles may exclude or restrict the exercise of any power conferred by this section.

#### **619 Notice to registrar of sub-division or consolidation**

- (1) If a company exercises the power conferred by section 618 (sub-division or consolidation of shares) it must within one month after doing so give notice to the registrar, specifying the shares affected.
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital immediately following the exercise of the power –
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) 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.
- (5) 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.