

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

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 16: Audit

#### Chapter 3: Functions of Auditors

#### Sections 495 to 497: Auditor's report

755. These sections restate, with modifications, the provisions of section 235 of the 1985 Act as to what the auditor should include in his report on the accounts.
756. [Section 495](#) imposes the basic duty to produce an audit report and requires that it should set out the way the auditor has approached the audit. Subsection (3) requires the auditor in his report to state his opinion on three matters: (i) whether the accounts provide a true and fair view, (ii) whether they comply with the appropriate reporting framework, and (iii) whether the accounts comply with the requirements in Part 15 of the Act (and, where applicable, with article 4 of the IAS Regulation (Regulation (EC) 1606/2002 on the application of international accounting standards)). *Subsection (4)* requires the audit report to be either qualified or unqualified, though it is open to the auditor to draw attention to aspects of his audit without qualifying the report.
757. [Sections 496](#) and [497](#) restate the law on what the auditor should include in relation to the directors' report and the directors' remuneration report.

#### Sections 498 to 502: Duties and rights of auditors

758. These sections bring together and restate the existing law on the auditor's duties (currently in section 237 of the 1985 Act) in investigating, forming an opinion, and making his report; and on the auditor's rights (sections 389A to 390 of that Act) to be provided with appropriate information.
759. [Section 498](#) lists areas where an auditor must investigate and report on any problems: the company's accounting records, and whether there is consistency between these and (i) the accounts and (ii) – where there is one – the appropriate part of the directors' remuneration report. The auditor is also to report if he has not been able to get all the information he needs. If possible, he is to make good any gaps in the information relating to payments to directors. And he is to report if he believes that the company is taking advantage of the small companies accounts regime without being entitled to do so.
760. [Section 499](#) restates the auditor's rights to obtain information and explanations from the company and its UK subsidiaries, and from appropriate associated individuals. [Section 500](#) sets out the corresponding right to require the company to obtain information or explanations from any subsidiaries that are not incorporated in the UK.
761. [Section 501](#) sets out offences for those who supply inaccurate information to auditors or fail to respond to auditors' requests for information without delay.

762. **Section 502** requires a private company to send to its auditor all the information about any written resolutions that it sends to its shareholders. It also gives the auditor of any company – public or private – the right to attend any general meetings it may have, and to be allowed to speak on anything relevant to the audit. The auditor must also receive all communications relating to general meetings.

***Section 503: Signature of auditor's report***

763. This section specifies who must sign the audit report submitted to a company by its auditor. The report must state the name of the audit firm, or if an individual has been appointed as auditor, his name. This is as currently required by section 236 of the 1985 Act.
764. For cases where the auditor is a firm, the section makes a change from the 1985 Act by requiring the senior statutory auditor, as defined in section 504, to sign the report in his own name on behalf of the firm. This implements a requirement of the Audit Directive (2006/43/EC). If the auditor is an individual, he must sign as under the 1985 Act.

***Section 504: Senior statutory auditor***

765. This section defines a new term – “the senior statutory auditor” – for the individual who will be asked to sign his name to an audit report carried out by a firm. The firm will identify this individual according to standards to be issued by the European Commission, or if there are no standards, to guidance issued either by the Secretary of State or by a body appointed by him by order subject to negative resolution. *Subsection (2)* specifies that to be identified as a senior statutory auditor of a company, an individual must be eligible himself to be appointed as auditor of the company. *Subsection (3)* ensures that for an individual to be nominated as senior statutory auditor will not affect his exposure to liability in any way.

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

766. This section requires a company to ensure that the copies of its auditor's report it sends out include the name of the auditor and of the senior statutory auditor if there is one, or to say that it is taking advantage of the exemption in the following section. *Subsection (2)* provides that this includes copies circulated to shareholders, as well as any others that would be expected to be seen by members of the public. It does not, however, cover copies sent to the registrar: these are dealt with by sections 444(7), 445(6), 446(4) and 447(4). *Subsections (3) and (4)* restate the offence, currently in section 236 of the 1985 Act, of not including the auditor's name – and now also the senior statutory auditor's name – as required.

***Section 506: Circumstances in which names may be omitted***

767. This section provides an exemption from the requirements to include the names of the auditor in both the published and filed copies of the audit report. This is available if the company passes a resolution not to reveal the names because it considers on reasonable grounds that revealing them would lead to a serious risk of violence or intimidation. It is also a condition of using the exemption that the company must inform the Secretary of State, giving details of the name of the auditor, and of the senior statutory auditor if there is one.

***Section 507: Offences in connection with auditors' report***

768. This section creates a new criminal offence in relation to inaccurate auditors' reports. The offence consists of knowingly or recklessly causing a report to include anything that is misleading, false or deceptive, or omitting a required statement of a problem with the accounts or audit.

769. *Subsection (1)* sets out the offence of commission, and *subsection (2)* that of omission. The items whose omission can be an offence are listed in paragraphs (a) to (c) of *subsection (2)*: statements about accounting records not being properly reflected in the accounts, about the auditor having been unable to obtain all necessary information and explanations, and about the directors wrongly claiming the company is exempt from the requirement for group accounts.
770. *Subsection (3)* defines the individuals potentially caught by the offence as the auditor, if a sole practitioner, and his employees and agents; and the directors, members, employees and agents of an audit firm. But the offence only applies to such an individual if he is an accountant who would be qualified to act as auditor of the company in his own right. *Subsection (4)* sets out the maximum penalty as an unlimited fine.

***Section 508: Guidance for regulatory and prosecuting authorities: England, Wales and Northern Ireland***

771. This section enables the Secretary of State to issue guidance about handling matters where the same behaviour by an auditor could give rise both to disciplinary proceedings by a regulatory body, and to prosecution for the new offence. *Subsection (2)* requires the Secretary of State to obtain the Attorney's General agreement to any guidance. *Subsection (3)* lists the regulatory and prosecuting authorities the guidance would be intended to help. The list comprises the accountancy supervisory bodies, recipients of grants under section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (currently the Financial Reporting Council and its subsidiaries), the Director of the Serious Fraud Office and the Director of Public Prosecutions, as well as the Secretary of State himself. Under *subsection (4)*, the Secretary of State's guidance is limited to England, Wales and Northern Ireland.
772. It is likely that one of the most important aspects of the guidance would be to enable prosecutors to decide not to prosecute in a particular case that would be better handled through disciplinary proceedings.

***Section 509: Guidance for regulatory authorities: Scotland***

773. This section enables the Lord Advocate to issue guidance about handling matters in Scotland where the same auditor's report could give rise both to disciplinary proceedings by a regulatory body, and to prosecution for the new offence. *Subsection (2)* requires the Lord Advocate to consult the Secretary of State before issuing guidance. *Subsection (3)* lists the regulatory bodies the guidance is intended to help. The list comprises the accountancy supervisory bodies, recipients of grants under section 16 of the C(AICE) Act 2004 (currently the Financial Reporting Council and its subsidiaries) and the Secretary of State.