

## COMPANIES ACT 2006

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### EXPLANATORY NOTES

#### COMMENTARY

##### *Schedule 5: Communications by a company*

1469. This Schedule sets out provisions on how companies are to communicate with their members, debenture holders etc. These rules are subject to, for example, additional rules which the FSA may require of companies traded on a regulated market.
1470. *Part 2* of the Schedule sets out standard rules for communications in hard copy. *Paragraph 4* lists the addresses to which the company may send or supply documents or information. Where the company has no address for the intended recipient, the company may use the recipient's last known address. By virtue of section 310(4), this provision does not prevent a company making provision in its articles not to send notice of a general meeting to members for whom the company no longer has a valid address. Section 423(2) makes similar provision for the annual report and accounts.
1471. *Part 3* of the Schedule relates to communications by e-mail or other electronic methods. *Paragraph 6* allows a company to send a document or information in electronic form to a person who has agreed (either generally for all communications or specifically for a particular document or piece of information) and where such person has not revoked that agreement.
1472. *Part 4* deals with publication of documents or information on a website. *Paragraph 10* allows a company to pass a members' resolution or make provision in its articles about website communication. If it has done so, members (or their nominees) are taken to have agreed to receiving information from the company via a website if they have also been asked individually for their acceptance and have either agreed or not responded within 28 days of the company's request. Where a member has not agreed to communications in this way, the company may not ask the member again within a period of twelve months. In addition, section 1145 (right to hard copy version) gives a member the right to request a hard copy of the communication. *Paragraph 11* and section 1145 make equivalent provision for debenture holders. *Paragraph 13* requires companies to notify intended recipients each time material is published on a website. *Paragraph 15* enables the company and a member to agree alternative methods of communication, for example other than website communication where a company has defaulted to website communications.

##### *Section 1145: Right to hard copy version*

1473. This section provides individual members or debenture holders the right to require information to be sent in paper copy form. A company is required to send a paper copy of the document or information within 21 days of receiving a member's request at no charge to the member. *Subsections (4) and (5)* impose a penalty on every officer in default if the company fails to comply.

***Section 1146: Requirement of authentication***

1474. This section operates where provisions of the Companies Acts require information sent or supplied to a company to be authenticated. This is chiefly the case in the context of written resolutions and requests (formerly requisitions) for meetings, etc. The rule is that a signature on a document in hard copy form by the person sending it is always sufficient authentication. The company can make its own rules in respect of documents in electronic form (but there is a default where no such rules exist). *Subsection (4)* makes it clear that, where someone purports to authenticate a document on another's behalf, the company can require proof of the former's authority to do so.

***Section 1147: Deemed delivery of documents and information***

1475. This section sets out when communications from the company are deemed to have been delivered, but it can be excluded by contrary provision elsewhere (for example, in other legislation, in contracts or in the articles). *Subsection (5)* provides that the 48-hour period for deemed delivery is counted during normal working days only. For example, a document posted on a Friday at 3.00 pm is deemed to have been delivered the following Tuesday at 3.00 pm, unless it is a bank holiday weekend, in which case deemed delivery is the Wednesday at 3.00 pm.

***Section 1148: Interpretation of company communications provisions***

1476. This section sets out defined terms used in the company communications provisions and, in particular, makes clear that references in the Companies Acts to "sending" and "supplying" documents or information include all such similar expressions.

***Sections 1149 to 1153: Requirements as to independent valuation***

1477. These sections restate the requirements in sections 108 and 110 of the 1985 Act for the independent valuation of non-cash assets accepted by a public company. The independence requirements in sections 1151 and 1152 correspond to the independence requirements for a statutory auditor (see section 1214). They include a new specific power for the Secretary of State to define a disallowed connection for the purposes of determining whether a person is sufficiently independent to be a valuer. This is consistent with the approach taken in sections 344 and 936 of the Act.

***Sections 1154 and 1155: Duty to notify registrar of certain appointments etc and failure to give such notice***

1478. These sections are new provisions. The requirement to give notice of the appointment of a judicial factor (in Scotland) gives effect to a recommendation by the CLR (Final Report, paragraph 11.39). The section also requires the Charity Commissioners to notify their appointment of a receiver and manager and the regulator of community interest companies to give notice of the appointment of a manager. These officers displace directors. Section 1155 makes failure by a judicial factor to give notice an offence.

***Section 1156: Meaning of "the court"***

1479. This section defines the term "the court" for the purposes of the Companies Acts. The effect of this definition is that, except where an enactment or rule of law provides otherwise, cases under the Companies Acts can be heard either in the High Court or the county court in England and Wales, in the Court of Session or the sheriff court in Scotland, and, in Northern Ireland, in the High Court of Northern Ireland.

1480. The allocation of cases between the county court (or sheriff court) and the High Court (or Court of Session) will be determined partly by the courts' general powers and partly by subordinate legislation. The allocation of cases between county courts will, as now, be determined by orders made by the Lord Chancellor (see *subsection (3)*).

***Section 1157: Power of court to grant relief in certain cases***

1481. Under this section, which restates section 727 of the 1985 Act without substantive amendment, an officer of a company (such as a director) or a person employed by a company as auditor may apply to the court for relief from liability for negligence, default, breach of duty or breach of trust. A court may grant relief if it appears to the court that:

- the director (or other officer or auditor) has acted honestly and reasonably; and
- having regard to all the circumstances, he ought fairly to be excused.

**Part 38: Companies: Interpretation**

1482. This Part gives an interpretation of definitions used throughout the Act. Most are based on corresponding definitions in the 1985 Act. Those that are changed or new are described below.

***Section 1158: Meaning of “UK-registered company”***

1483. The expression “UK-registered company” is used as a drafting device to refer to any company registered under this Act. The expression includes companies treated as so registered (for instance, by virtue of having been registered under earlier legislation). It does not include an overseas company that is not itself registered in the UK but has registered particulars in the UK under section 1046.

***Section 1168: Hard copy and electronic form and related expressions***

1484. *Subsections (2) to (4)* of this section contain new definitions of the terms “hard copy”, “electronic form” and related expressions for all purposes of the Companies Acts. *Subsection (5)* requires that documents or information be sent in electronic form must be in a form that is capable of being read and retained for future reference.

***Section 1171: The former Companies Acts***

1485. This section defines “former Companies Acts”. The list includes the companies legislation listed in section 735 of the 1985 Act and the later enactments repealed by the Act.

***Section 1172: References to requirements of this Act***

1486. This section provides that requirements to be imposed *under* the Act (by regulations or orders to be made under a power contained in the Act) are included in references in the company law provisions of the Act to “the requirements of this Act”.

***Section 1173: Minor definitions: general***

1487. The definitions in *subsection (1)* that are new or changed are as follows.

1488. The definitions of “body corporate” and “corporation”, and of “firm”, are new in part. They clarify the position of corporations sole and of partnerships that are legal persons but are not regarded as bodies corporate (as under Scots law).

1489. The definitions of “credit institution” and “regulated market” are changed to follow the definitions in more recent EU Directives. *Subsection (2)* makes provision to deal with the postponement of the Directive on markets in financial instruments and the fact that it may be implemented in different member States on different dates.

1490. The definition of “working day” is new. This expression replaces a variety of expressions in the existing legislation; there is no change of substance.

***Section 1174 and Schedule 8: Index of defined expressions***

1491. **Section 1174** introduces Schedule 8 to the Act, which provides an index setting out where the definitions of terms used in the Companies Acts are to be found.

**Part 39: Companies: Minor Amendments**

***Section 1175 and Schedule 9: Removal of special provisions about accounts and audit of charitable companies***

1492. This section and Schedule remove from company law special rules about the audit of companies that are charities. Under section 249A of the 1985 Act, certain companies are subject to audit, or to an accountant's report, because they are charities, when they would be exempt as small companies if they were not charities.
1493. This section is part of achieving the objective of changing the treatment of small charitable companies so that, as far as their accounts scrutiny is concerned, they will be required to comply with the requirements of charity law rather than those of company law. The Charities Act 2006 introduced a power (section 77 of that Act) to enable the Office of the Third Sector to bring forward regulations, subject to the affirmative resolution procedure, applying charity law rules about scrutiny of financial records to charitable companies.

***Section 1176: Power of Secretary of State to bring civil proceedings on company's behalf***

1494. This section repeals the power of the Secretary of State, under section 438 of the 1985 Act, to bring civil proceedings on behalf of a company. *Subsections (2) and (3)* are consequential amendments to sections 439 and 453 of the 1985 Act respectively. This repeal does not affect any proceedings begun before this section comes into force.

***Section 1177: Repeal of certain provisions about company directors***

1495. This section repeals various provisions of Part 10 of the 1985 Act.
1496. Section 311 of the 1985 Act prohibits a company from paying director remuneration free of income tax. The Law Commissions recommended its repeal as the tax which the company agreed to pay is itself taxed as part of the emoluments of a director, and as the company is required to disclose in its annual accounts an estimate of the tax which it has undertaken to pay.
1497. Section 323 of the 1985 Act prohibits directors (including shadow directors) from buying "put" and "call" options in listed shares or debentures in the company or another in the same group. This prohibition is extended to spouses and minor children of directors by section 327 of the 1985 Act. The Law Commissions recommended its repeal.
1498. **Sections 324 to 326** and **328 to 329** of, and **Parts 2 to 4** of Schedule 13 to, the 1985 Act deal with the duty of a director to notify interests in shareholdings to his company and impose an obligation on the company to record those interests in a register and to disclose them to the relevant exchanges. They are repealed.
1499. Sections 343 and 344 of the 1985 Act make special provision for banking companies and the holding companies of credit institutions, allowing them to disclose in their annual accounts abbreviated particulars of loans, quasi-loans and credit transactions with directors or their connected persons. Section 413 of the Act, which replaces the annual accounts disclosure requirements of the 1985 Act in respect of loans, quasi-loans and credit transactions, makes its own special provision in *subsection (8)* of that section for banking companies and the holding companies of credit institutions.

***Section 1178: Repeal of requirement that certain companies publish periodical statement***

1500. This section repeals section 720 of, and the related Schedule 23 to, the 1985 Act. Section 720 requires certain insurers and deposit, provident or benefit societies to publish a periodical statement in the form set out in the Schedule. The statement contains basic information about certain liabilities and assets and, in the case of a company with shares, basic information about its share capital and issued shares. This general disclosure requirement has been superseded by specialised regulatory developments in particular fields of financial services. The application of the section is now very limited as it does not apply to any UK insurance company which is regulated by the FSA under FSMA and which complies with its rules as to the publication of annual accounts and balance sheet. Nor does it apply to any insurer authorised in any other EEA State carrying on business in the UK if it complies with equivalent rules of its home State.

***Section 1179: Repeal of requirement that Secretary of State prepare annual report***

1501. This section repeals the requirement, under section 729 of the 1985 Act, for the Secretary of State to cause a “general annual report on matters within the Companies Acts” to be prepared and laid before both Houses of Parliament.

***Section 1180: Repeal of certain provisions about company charges***

1502. This section repeals the provisions in Part 4 of the 1989 Act relating to company charges. These provisions have not been brought into force.

***Section 1181: Access to constitutional documents of RTE and RTM companies***

1503. This section enables the Secretary of State to make an order amending certain provisions of the Commonhold and Leasehold Reform Act 2002 and the Leasehold Reform, Housing and Urban Development Act 1993 so as to make it easier to ascertain the contents of the articles and other constitutional documents of Right To Manage (“RTM”) and Right to Enfranchise (“RTE”) companies (two new types of company provided for in the 2002 Act – in the case of RTE companies, by amendment to the 1993 Act).

1504. Under the Commonhold and Leasehold Reform Act 2002 and the Leasehold Reform, Housing and Urban Development Act 1993 as amended by it, the Secretary of State may make regulations prescribing model memoranda and articles of association for RTM and RTE companies, and the provisions of the model memoranda and articles so prescribed may have effect notwithstanding contrary provision in the memoranda and articles of such companies as registered at Companies House. As the legislation stands currently, a person consulting the Companies House record of an RTM or RTE company’s memorandum or articles may not be aware of the company’s RTM or RTE status, and therefore may also be unaware that its registered memorandum and articles have to be read in the light of any relevant regulations prescribing model memoranda and articles for RTM or RTE companies. Since the prescribed memoranda and articles may invalidate provisions of the registered documents and apply in place of them, this may cause problems.

1505. The RTM and RTE legislation is likely to be adjusted to reflect the new status of the memorandum under sections 8 and 28 in particular. Reference is made to “other constitutional documents” because it is possible that under the new constitutional arrangements, the RTM and RTE legislation should make provision about the contents of constitutional documents other than articles.

***Part 40: Company Directors: Foreign Disqualification Etc***

1506. **Part 40** addresses a gap in the present law. Persons who have been disqualified from being a director, or from holding an equivalent position, or engaging in the management

of a company in another State, are currently able to form a company in the UK, to appoint themselves a director of that company and then operate that company either in the UK or in the State where they have been disqualified. The provisions in this Part give the Secretary of State a power to close the gap by making regulations to disqualify from being a director of a UK company, persons who have been disqualified in another State.

1507. **Part 40** is the first Part which is outside the company law provisions of the Act. It does not, therefore, form part of the Companies Acts. This is due to the fact that the provisions in this Part are linked with those of the Company Directors' Disqualification Act 1986. That Act is not part of the Companies Acts because it has implications beyond companies to other bodies (such as NHS foundation trusts) and extends beyond persons covered by the Companies Acts to persons such as insolvency practitioners. The fact that Part 40 is not part of the Companies Acts has the consequence that the definitions in the earlier Parts of the Act do not apply – hence the need to define the term “the court” in section 1183. Similarly, the definitions for Part 40 are not listed in Schedule 8 to the Act.

### ***Section 1182: Persons subject to foreign restrictions***

1508. **Section 1182** defines what is meant by “a person being subject to foreign restrictions.” Only persons falling into this category may be disqualified by regulations made under this Part. This category is intended to include those who have been disqualified under (or otherwise fallen foul of) a foreign law equivalent to that in the Company Directors' Disqualification Act 1986.

### ***Section 1183: Meaning of “the court” and “UK company”***

1509. **Section 1183** sets out the meaning of “the court” and “UK company” for the purposes of this Part.

### ***Section 1184: Disqualification of persons subject to foreign restrictions***

1510. **Section 1184** provides a power for the Secretary of State to make regulations disqualifying a person subject to foreign restrictions from being the director of a UK company, acting as a receiver of a UK company's property, or, in any way, taking part in the promotion, formation or management of a UK company.
1511. The power is subject to affirmative resolution procedure.

### ***Section 1185: Disqualification regulations: supplementary***

1512. **Section 1185** states that the regulations under section 1184 may make different provision for different types of case, and sets out some examples. If the regulations provide for application to the court (either by the Secretary of State for a disqualification order under section 1184(2)(b), or by a disqualified person seeking relief under section 1184(5)), the section requires the regulations to specify the grounds on which an application to the court may be made. It also allows the regulations to set out matters to which the court should have regard when considering an application.

### ***Section 1186: Offence of breach of disqualification***

1513. **Section 1186** provides that regulations made under section 1184 may provide that a person disqualified under this Part who acts in breach of the disqualification commits an offence.

### ***Section 1187: Personal liability for debts of company***

1514. **Section 1187** provides for the Secretary of State to make regulations to the effect that a person disqualified under this part who acts as a director of a UK company, or is involved in the management of a UK company is personally responsible for all debts

and liabilities of the company incurred during the time that he or she is subject to foreign restrictions.

***Section 1188: Statements from persons subject to foreign restrictions***

1515. **Section 1188** provides a power for the Secretary of State to make regulations providing that a person not disqualified under this Part but subject to foreign restrictions must send a statement to the registrar if he or she does anything that, if done by a person disqualified under this Part, would be a breach of the disqualification.

1516. The power is subject to affirmative resolution procedure.

***Section 1189: Statements from persons disqualified***

1517. **Section 1189** provides a power for the Secretary of State to make provisions by regulation that would require a disqualified director to provide an additional statement where he or she has received approval from the court to act in a capacity that would otherwise be in breach of the disqualification.

1518. The power is subject to affirmative resolution procedure.

***Section 1190: Statements: whether to be made public***

1519. **Section 1190** provides for regulations under sections 1188 and 1189 to state whether statements made under those regulations shall be on the public register, and the circumstances in which they may withheld from public inspection or removed from the register.

***Section 1191: Offences***

1520. **Section 1191** provides for regulations to apply criminal sanctions for a failure to comply with any requirements on statements under sections 1188 and 1189.

**Part 41: Business Names**

1521. The provisions of this Part replace the Business Names Act 1985.

***Chapter 1: Restricted Or Prohibited Names***

***Section 1192: Application of this Chapter***

1522. This section partly replaces section 1 of the Business Names Act 1985. It ensures that the restrictions on the use of names in the course of business apply to all persons carrying on business in the UK, other than certain individuals or partnerships (see below). In particular, the restrictions:

- apply to all companies (and not as in the Business Names Act, just to any company capable of being wound up under the Insolvency Act 1986 which trades under a name other than that under which it is registered); and
- apply to any partnership whose members include a company (and not, as in the Business Names Act, only if the name under which such a partnership does business includes names for the corporate partners other than those under which they are registered).

1523. As in the Business Names Act, the restrictions do not apply to individuals if they trade either alone or in partnership under their surnames augmented only by their forenames and/or initials. Sole traders and individuals carrying on business in partnership are also excluded from the scope of the Chapter if the only addition to their name shows the business's previous ownership

1524. The main effect of the wider coverage is that controls apply to all overseas companies carrying on business in the UK. It also removes any uncertainty as to whether the controls apply to business entities other than companies incorporated under the Companies Acts.

***Section 1193 to 1196: Sensitive words or expressions***

1525. Sections 1193 to 1195 replace sections 2, 3, 6 and 7 of the Business Names Act 1985. Section 1199 (see below) contains savings equivalent to those currently in section 2(2) of the Business Names Act.
1526. These sections require prior approval for the use of any name for carrying on business for which a company would require approval before it could be registered under it. (Sections 54 to 56, replacing sections 26(2) and 29 of the 1985 Act, apply corresponding restrictions to company names.) The differences between the requirements under these sections and the requirements under the Business Names Act are:
- Section 1193(1)(a) requires prior approval for names likely to give the impression that the business is connected with Her Majesty's Government in Northern Ireland;
  - Section 1193(1)(c) provides a power for the Secretary of State to specify in regulations the public authorities such that prior approval will be required for names likely to give the impression that the business is connected with it;
  - The definition of local authority in section 1193(2) is brought up to date for Scotland and includes a district council in Northern Ireland;
  - Section 1195(4) provides that the Secretary of State may refuse to consider an application for approval that is not compliant with the statutory requirements.
1527. Section 1196 provides that approval for the use of a name may be withdrawn in appropriate circumstances.

***Section 1197: Name containing inappropriate indication of company type or legal form***

1528. This section replaces sections 33, 34 and 34A of the 1985 Act. Rather than making it an offence on the face of the Act to use prohibited words, this section provides that the Secretary of State may by regulations make it an offence to carry on business under names using indicators of particular legal status, or similar words, unless entitled to do so. It complements sections 58 and 59, which control the use of statutory indicators of legal status (eg "ltd." and "p.l.c.") in companies' registered names.

***Section 1198: Name giving misleading indication of activities***

1529. This section makes it an offence to use a business name that gives so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public. This section complements section 76 which gives the Secretary of State power to direct a company to change its registered name in these circumstances.

***Section 1199: Savings for existing lawful business names***

1530. This section provides exemptions for those continuing to use a name that was lawful before the Act comes into force. The exemption is both from the requirement for prior approval and from using names that include a protected indicator of company status. It also retains the existing provision for when a business is transferred: providing the name was previously lawful, the business may continue under that name for 12 months even if otherwise it would not be lawful for whoever is now carrying on the business (see *subsection (3)*).



## ***Chapter 2: Disclosure Required in Case of Individual Or Partnership***

1531. This Chapter re-enacts for individuals and partnerships the Business Names Act provisions relating to information which must be displayed at places of business and in correspondence. These sections ensure that a business's suppliers and customers can discover the legal identity of the person with whom they are doing business and can serve documents upon it. Section 1203 makes special provision for large partnerships so that not all the partners' names are required in all business documents, provided certain conditions are met.

### ***Section 1200: Application of this Chapter***

1532. This section partly replaces section 1 of the Business Names Act 1985. It provides that Chapter 2 applies to:

- sole traders if they trade under any name other than their true surnames augmented only by their forenames and/or initials. (Section 1208 defines initial to include any recognised abbreviation of a name);
- partnerships unless their name is the surnames of all its human partners (augmented only by their forenames and/or initials) and the registered names of its other partners.

1533. It also excludes sole traders and partnerships if the only addition to their name shows the business's previous ownership.

1534. This section ensures that the coverage of this Chapter is the same as the Business Names Act except that, unlike that Act, it does not apply to any companies. The comparable requirements for companies are in Part 5, Chapter 6.

### ***Section 1201: Information required to be disclosed***

1535. This section replaces section 4(1)(a)(i), (ii) and (iv) of the Business Names Act 1985. It specifies the information that is to be the subject of disclosure under this Chapter (ie names and addresses for service).

### ***Sections 1202 to 1204: Disclosure requirements***

1536. Sections 1202 and 1203 replace section 4(1)(a) and (2) to (7) of the Business Names Act 1985. They are designed to ensure that customers and suppliers:

- of sole traders know the true identity of the person with whom they are dealing and have an address for him/her which is effective for the service of documents relating to the business;
- of partnerships with 20 or fewer partners know the identity of every partner and the address which is effective for the service of documents relating to the business;
- of larger partnerships know the address which is effective for the service of documents relating to the business and either the identity of every partner or the address at which they can discover the identity of every partner.

1537. Large partnerships are not permitted to choose which partners' names are included in documents: they must either include the names of all the partners or none (except in the text or as a signatory) (see *subsection (2)(b)*).

1538. Section 1202 also provides power for regulations relating to the form of a notice giving the trader's or partners' name(s) and address in response to any person who asks for the information in the course of business. For companies' registered names, equivalent provision may be made in regulations under section 82.

1539. **Section 1204** replaces section 4(1)(b) of the Business Names Act 1985 so far as it applies to sole traders and partnerships. It makes provision to enable customers and suppliers to discover the name(s) and the address for service of documents when visiting any business premises of the trader or partners.

***Section 1205: Criminal consequences of failure to make required disclosure***

1540. This section provides that certain provisions in Part 36 (offences under the Companies Acts) also apply to offences under this Part. It replaces and expands upon section 7 of the Business Names Act 1985 so far as it applies to sole traders and partnerships. It retains the existing offences of failure to comply with the requirements relating to disclosure of name and address in documents and notices.

***Section 1206: Civil consequences of failure to make required disclosure***

1541. This section replaces section 5 of the Business Names Act 1985 so far as it applies to sole traders and partnerships. It provides legal rights to anyone who has sustained losses as a result of failure to comply with this Chapter's requirements by a sole trader or partnership.

***Chapter 3: Supplementary***

***Section 1207: Application of general provisions about offences***

1542. This section replaces section 7(6) of the Business Names Act 1985.

***Section 1208: Interpretation***

1543. This section replaces section 8 of the Business Names Act 1985. In particular, the definition of "initial" means that the restrictions on names in Chapter 1 not only would not apply to James Alexander Scotland if he were to trade as "James Alexander Scotland" or "J. A. Scotland" but also if he were to trade as "Jimmy Scotland" or "Jim A. Scotland". However, the restrictions would apply if he were to trade as "Scotland Bakers" or "John Scotland".

**Part 42: Statutory Auditors**

1544. The provisions of this Part concern the regulation of auditors. The effects of this Part are:
- To replace Part 2 of the 1989 Act and equivalent Northern Ireland provisions, by restating those provisions with some modifications.
  - To extend the category of auditors that are subject to regulation and to make provision for the registration and regulation of auditors (whether based in the UK or not) who audit companies which are incorporated outside the EU but listed in the UK;
  - To provide that the Comptroller and Auditor General and the regional Auditors General are eligible to be appointed to perform statutory audits and provide a mechanism for the regulation and supervision of their functions as statutory auditor.
1545. Many of the provisions in this Part implement obligations contained in the Updated Eighth Company Law Directive on Audit (2006/43/EC) that was published on 9 June 2006. The provisions relating to Auditors General implement recommendations contained in Lord Sharman's report, "Holding to Account, The Review of Audit and Accountability for Central Government", published in 2001.

## **Chapter 1: Introductory**

### **Sections 1209 to 1211: Introductory**

1546. Part 2 of the 1989 Act regulates only the auditors of companies. Section 1210(1) defines the meaning of statutory auditor more broadly. Persons within *subsection (1)(a) to (g)* are 'statutory auditors'. This list includes those persons who audit companies (as required under Part 16 of the Act) and those who audit building societies, insurers and banks. In addition, the Secretary of State has a power to add auditors of other persons to this list. Section 1211 cross-refers the eligibility for appointment as a statutory auditor to the requirements contained in Chapter 2 or Chapter 3 of this Part of the Act.

## **Chapter 2: Individuals and Firms**

### **Sections 1212 and 1213: Eligibility for appointment**

1547. These sections are restatements of sections 25 and 28 of the 1989 Act adapted so as to apply in relation to statutory auditors. The sections provide that for a person or firm (defined in section 1261) to be eligible for appointment as a statutory auditor, the person must be a member of a recognised supervisory body and be eligible for appointment under the rules of that body. Section 1217(2) clarifies that references to such members include references to persons who are not members but who are subject to the body's rules. (Section 1217 and Schedule 10 address the recognition of supervisory bodies, and lay down the requirements they must meet to be recognised.)

1548. **Section 1213** provides that no person may act as a statutory auditor if he is ineligible. It specifies that, on becoming ineligible, the auditor must resign his office and give notice in writing. Failure to comply with this requirement is an offence, conviction of which can result in a fine (*subsections (3) and (4)*). If the auditor continues to act as a statutory auditor after conviction (*subsection (5)*), or continues to fail to give notice that he is ineligible for appointment as a statutory auditor (*subsection (6)*), he commits a further offence for which a daily fine may be imposed after conviction (*subsection (7)*). *Subsection (8)* provides a defence if the person did not know or had no reason to believe that he was, or had become, ineligible.

### **Section 1214: Independence requirement**

1549. This section restates section 27 of the 1989 Act and indicates circumstances where a person may not act as a statutory auditor on grounds of lack of independence. Under *subsection (2)* this includes persons who are officers or employees of the audited entity, or the partner or employee of such a person. Under *subsection (3)*, this includes where the person is an officer or employee of a subsidiary of the audited entity. *Subsection (4)* allows the Secretary of State to make regulations regarding other connections between the audited entity and the statutory auditor by virtue of which a person will be regarded as lacking independence.

### **Section 1215: Effect of lack of independence**

1550. This section sets out the consequences of the prohibition from acting as a statutory auditor on grounds of lack of independence, as defined in section 1214. They replicate the effect of ineligibility as explained for section 1213.

### **Section 1216: Effect of appointment of a partnership**

1551. This section is a restatement of section 26 of the 1989 Act. The effect of the section is to ensure that when a partnership constituted in England and Wales, Northern Ireland, or any other country or territory in which a partnership is not a legal person, is appointed as a statutory auditor under this Part, the appointment may continue even if a partner leaves the partnership. For a partnership or other person to be considered as appropriate for the appointment to continue, they must be eligible for appointment as a statutory

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

auditor and not be prohibited (as indicated in section 1214(1)). Without this provision, the appointment would cease every time the membership of the partnership changed.

***Section 1217: Supervisory bodies***

1552. This section restates section 30 of the 1989 Act and defines a supervisory body as a body established in the UK which maintains and enforces rules regarding the eligibility of persons appointed as statutory auditors and the conduct of statutory audit work. *Subsection (4)* introduces Schedule 10, which specifies the requirements supervisory bodies must meet in order to be recognised, and the process for doing so.