

# COMPANIES ACT 2006

---

## EXPLANATORY NOTES

### COMMENTARY

#### *Schedule 11: Recognised Professional Qualifications*

##### **Part 2: Requirements for recognition of a professional qualification**

1561. *Paragraph 6* sets the minimum academic standards that a person must have attained before he can attempt to gain the professional qualification. *Paragraph 7* requires that the qualification is restricted to persons who have either completed a relevant academic course or have seven years' professional experience. *Paragraph 8* requires that an examination must be passed (part of which has to be in writing) for the person to achieve the qualification. This examination must be in subjects of theoretical knowledge prescribed by the Secretary of State; or a university or equivalent level examination; or by practical demonstration of knowledge to examination or diploma level that is recognised by the Secretary of State. *Paragraph 9* requires persons to carry out at least three years' practical training.

##### *Section 1221: Approval of overseas qualifications*

1562. This section restates section 33 of the 1989 Act as regards the approval of overseas qualifications from non-EU countries. It sets out the conditions that will need to be satisfied, relating to the assurance of professional competence. The section provides for approval of all those in a specified country who are qualified to audit accounts, or only those who hold specified qualifications in that country. In the case of the latter, the Secretary of State may specify any additional requirements to be satisfied. The section allows the Secretary of State to recognise an overseas qualification only if there is comparability of treatment of UK qualifications in the country in question.

##### *Section 1222: Eligibility of individuals retaining only 1967 Act authorisation*

1563. This section restates section 34 of the 1989 Act. Prior to 1967 auditors of an unquoted company were exempt from the statutory qualification requirements placed on other company auditors. The Companies Act 1967 abolished this exemption but allowed an auditor with sufficient practical experience to apply to the Secretary of State for authorisation to practise. Past authorisations will continue to be valid by virtue of the transitional provision in section 1219(1)(b). Section 1222 provides that auditors authorised under the 1967 Act may not be treated as statutory auditors for any purpose other than to perform the statutory audit of an unquoted company (as defined in section 385(2)).

##### *Section 1223: Matters to be notified to the Secretary of State*

1564. This section is a restatement of section 37 of the 1989 Act and allows the Secretary of State to identify events that must be notified to him if they occur. It requires that recognised supervisory and qualifying bodies must provide information, either in writing or some other specified manner, that is reasonably required for the Secretary

of State to carry out his functions – this might include annual reports, or notification of rule or bye-law changes. This information might relate to specific time periods or specific occurrences.

***Section 1224: The Secretary of State's power to call for information***

1565. This section restates section 38 of the 1989 Act. It provides the Secretary of State with the power to require information from a recognised supervisory body, a recognised qualifying body or an individual statutory auditor. For example, as a result of a report provided under section 1223, the Secretary of State may request further information on a specific point to clarify if a recognised supervisory body is complying with the requirements in Schedule 10. The Secretary of State can specify the time period in which this information has to be provided.

***Section 1225: Compliance orders***

1566. This section is a restatement of section 39 of the 1989 Act. If a recognised supervisory or qualifying body fails to meet the requirements in Schedule 10 or 11, or it fails to comply with another requirement contained in this Part of the Act, then the Secretary of State may apply to the court for an order to make the body comply. The ultimate sanction for non-compliance by a body would be revocation of its status as a recognised body under Schedule 10 or 11.

***Chapter 3: Auditors General***

***Section 1226: Auditors General: eligibility for appointment as a statutory auditor***

1567. *Subsection (1)* defines an “Auditor General” for the purposes of this Part as the Comptroller and Auditor General, the Auditor General for Scotland, the Auditor General for Wales or the Comptroller and Auditor General for Northern Ireland. *Subsections (2) and (3)* explain that an Auditor General is eligible for appointment as a statutory auditor, unless his eligibility has been suspended by the Independent Supervisor under section 1234.

***Section 1227: Individuals responsible for audit work on behalf of Auditors General***

1568. This section provides that an Auditor General must ensure that the individuals within his charge, who are carrying out statutory audits on the Auditor General's behalf, are, in their own right, eligible for appointment as a statutory auditor by virtue of the qualifications and requirements that are set out in Chapter 2.

***Section 1228: Appointment of the Independent Supervisor***

1569. *Subsections (1) and (2)* provide that the Secretary of State must appoint a body to be the Independent Supervisor of Auditors General in respect of the exercise of statutory audit functions. *Subsection (3)* provides for the appointment of the Independent Supervisor to have the effect of making it subject to the obligations of the Freedom of Information Act 2000. *Subsections (4), (5) and (6)* provide that a body may be appointed as Independent Supervisor of an Auditor General if it is a corporate body or unincorporated association that is willing to carry out the function, that has arrangements in place that will ensure the supervision is carried out effectively, and that will exercise such functions and requirements that may be laid down in the Secretary of State's order appointing it. The appointed Independent Supervisor must perform its function on a UK-wide basis for all four Auditors General in accordance with section 1229(1).

***Section 1229: Supervision of Auditors General by the Independent Supervisor***

1570. This section sets the framework for the supervision arrangements to be carried out by the Independent Supervisor. *Subsection (2)* provides that the Independent Supervisor must establish arrangements with one or more third parties to carry out aspects of the

supervisory function. *Subsection (3)* provides that the arrangements with a third party cover standards on professional integrity and independence, as well as the technical standards for statutory audit work; monitoring performance; investigating matters arising from that performance; and as necessary holding disciplinary hearings and deciding whether any disciplinary action should be taken. *Subsections (6) and (7)* make provisions relating to the payment of fines under the disciplinary arrangements.

***Section 1230: Duties of Auditors General in relation to supervision arrangements***

1571. *Subsection (1)* makes it a duty for each Auditor General to comply with the standards set by, as well as the monitoring arrangements and decisions of, the independent supervision arrangements. It also provides in *subsection (2)* for each Auditor General to pay the proportion of the costs of the independent supervisory arrangements that may be notified to the Auditor General in writing. *Subsection (3)* provides that the payment of such costs is to be regarded as expenditure of the National Audit Office in the case of the Comptroller and Auditor General, and as expenditure of the Northern Ireland Audit Office in the case of the Comptroller and Auditor General for Northern Ireland. In the case of the Auditor General for Scotland, under section 13 of the [Public Finance and Accountability \(Scotland\) Act 2000 \(asp 1\)](#) the expenses of the Auditor General are paid by Audit Scotland. In the case of the Auditor General for Wales, under section 93 of the Government of Wales Act 1998 the expenses of the Auditor General are met by the Assembly.

***Section 1231: Reports by the Independent Supervisor***

1572. This section provides that the Independent Supervisor must provide at least one report each calendar year to the Secretary of State and to the First Minister in Scotland, The First Minister and the Deputy First Minister in Northern Ireland and the Assembly First Minister in Wales. The Secretary of State must then lay the report before each House of Parliament.

***Section 1232: Matters to be notified to the Independent Supervisor***

1573. This section makes it a legal requirement for an Auditor General to notify the Independent Supervisor in writing of events that the Independent Supervisor may specify and is consistent with the requirement for other statutory auditors as contained in section 1223.

***Section 1233: The Independent Supervisor's power to call for information***

1574. This section makes provision enabling the Independent Supervisor to require an Auditor General to provide information. It enables the Independent Supervisor to specify the period within which the information must be provided and how the information must be verified. This section is consistent with the requirement for other statutory auditors as contained in section 1224.

***Section 1234: Suspension notices***

1575. This section provides the Independent Supervisor with the power to suspend an Auditor General's eligibility for appointment as a statutory auditor if, for example, he falls short of the standards laid down for performance of statutory audit work. It also sets out the provisions as to how the suspension will be effected, and the considerations pertaining to the decision to suspend. It provides for a process leading up to the issuing of a suspension notice, including the hearing of representations from the Auditor General in question.

***Section 1235: Effect of suspension notices***

1576. This section provides that an Auditor General must not act as a statutory auditor of a particular person if he is suspended in relation to that person. If the suspension

starts during his term of office, the Auditor General must resign as a statutory auditor immediately, and tell the audited person that he has resigned. *Subsection (3)* makes it clear that the criminal offences in section 1213 (ineligibility for appointment as a statutory auditor) do not apply to an Auditor General who is ineligible by virtue of a suspension notice.

#### ***Section 1236: Compliance orders***

1577. This section provides the power for the Independent Supervisor to take an Auditor General to court if he fails to comply with any obligation imposed by or by virtue of this Part of the Act. The court may direct the Auditor General to take such steps as it thinks fit to ensure compliance.

#### ***Section 1237: Proceedings involving the Independent Supervisor***

1578. This section provides that where the Independent Supervisor is an unincorporated association it may take proceedings in the name of the body corporate under which it is constituted.

#### ***Section 1238: Grants to the Independent Supervisor***

1579. This section amends section 16(2) of the C(AICE) Act 2004. The effect of the amendment is that the body that carries out the functions of the Independent Supervisor is eligible for grants from the Secretary of State under section 16 of that Act to meet the expenditure of the body and any subsidiary. It also means that the body may be exempt from liability in damages under section 18 of the Act.

### ***Chapter 4: the Register of Auditors Etc***

#### ***Section 1239: The register of auditors***

1580. This section restates section 35 of the 1989 Act but extends the provision to cover other statutory auditors (as defined in section 1210) and third country auditors (as defined in section 1241). It requires the Secretary of State to make regulations that require the keeping of a register of those persons eligible to be a statutory auditor and third country auditors. *Subsection (2)* sets out the information that must be included on the register and includes the person's name and address and the name of the relevant supervisory body for the person. If an individual statutory auditor works for a firm that is a statutory auditor, both must be entered separately on the register and cross-referenced. In *subsection (3)* additional information, namely the name and address of directors, members or partners, is required from bodies corporate (including limited liability partnerships), corporations sole and partnerships. The section allows for certain parts of the register to be kept by different persons, for example an oversight body may keep the information regarding third country auditors, whilst the recognised supervisory bodies may keep information regarding other statutory auditors. *Subsection (6)* confers a power to provide that information in the register, or a certified copy of it, is to be made available to the public upon request. A charge for access to this information is permitted. *Subsection (7)* allows the Secretary of State to disapply some or all of the requirements of *subsections (2)(e) and (3)* in relation to third country auditors (for example, if they are already subject to equivalent supervision in their home country).

#### ***Section 1240: Information to be made available to public***

1581. This new provision gives the Secretary of State the power to make regulations placing an obligation on statutory auditors to make information regarding their ownership, governance, internal controls with respect to quality and independence of audit work, turnover and names of persons for whom the person has acted as statutory auditor, available to the public. Any such obligations are additional to those referred to in section 1239.

## **Chapter 5: Registered Third Country Auditors**

### **Section 1241: Meaning of “third country auditor”, “registered third country auditor” etc**

1582. This is a new provision that sets out the definition of a third country auditor and a registered third country auditor. The section provides that a third country auditor is an auditor (whether based in the UK or not) of the accounts of a company incorporated or formed in a non-EU country, whose shares are admitted for trading on a UK market such as the London Stock Exchange.

### **Section 1242: Duties of registered third country auditors**

1583. *Subsections (1) to (3)* require registered third country auditors to be subject to systems of independent monitoring and discipline in the UK in accordance with Schedule 12. These provisions are similar to supervision arrangements for statutory auditors contained in section 1212(1) (membership of a Recognised Supervisory Body) and section 1217 (Supervisory Bodies) and Schedule 10. *Subsection (4)* empowers the Secretary of State to disapply the requirements in subsections (1) to (3). For example, he may disapply the requirements if satisfied that the third country auditor is already subject to equivalent supervision arrangements in his home country.