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STATUTORY INSTRUMENTS

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**1994 No. 1935**

**COMPANIES**

**The Companies Act 1985 (Audit Exemption) Regulations 1994**

<i>Made</i>	- - - -	<i>19th July 1994</i>
<i>Laid before Parliament</i>		<i>21st July 1994</i>
<i>Coming into force</i>	- -	<i>11th August 1994</i>

The Secretary of State, in exercise of the powers conferred on him by sections 245(3) to (5) and 257 of the Companies Act 1985<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Companies Act 1985 (Audit Exemption) Regulations 1994 and shall come into force on 11th August 1994.

(2) In these Regulations “the 1985 Act” means the Companies Act 1985.

**Audit exemption for certain categories of small companies**

2. After section 249 of the 1985 Act<sup>(2)</sup> there shall be inserted the following sections—

*“Exemptions from audit for certain categories of small company*

**Exemptions from audit for certain categories of small company**

**249A.**—(1) Subject to section 249B, a company which meets the total exemption conditions set out below in respect of a financial year is exempt from the provisions of this Part relating to the audit of accounts in respect of that year.

(2) Subject to section 249B, a company which meets the report conditions set out below in respect of a financial year is exempt from the provisions of this Part relating to the audit of accounts in respect of that year if the directors cause a report in respect of the company's individual accounts for that year to be prepared in accordance with section 249C and made to the company's members.

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(1) 1985 c. 6; section 245 was substituted by section 12 of the Companies Act 1989 (c. 40), and section 257 by section 20 of that Act.  
(2) Section 249 was substituted by section 13 of the Companies Act 1989.

- (3) The total exemption conditions are met by a company in respect of a financial year if—
- (a) it qualifies as a small company in relation to that year for the purposes of section 246,
  - (b) its turnover in that year is not more than £90,000, and
  - (c) its balance sheet total for that year is not more than £1.4 million.
- (4) The report conditions are met by a company in respect of a financial year if—
- (a) it qualifies as a small company in relation to that year for the purposes of section 246,
  - (b) its turnover in that year is more than £90,000 but not more than £350,000, and
  - (c) its balance sheet total for that year is not more than £1.4 million.
- (5) In relation to any company which is a charity—
- (a) subsection (3)(b) shall have effect with the substitution for the reference to turnover of a reference to gross income, and
  - (b) subsection (4)(b) shall have effect with the substitution—
    - (i) for the reference to turnover of a reference to gross income, and
    - (ii) for the reference to 350,00 of a reference to £250,000.
- (6) For a period which is a companys financial year but not in fact a year the maximum figures for turnover or gross income shall be proportionately adjusted.
- (7) In this section—
- “balance sheet total” has the meaning given by section 247(5), and
  - “gross income” means the companys income from all sources, as shown in the companys income and expenditure account

### **Cases where exemptions not available**

- 249B.**—(1) A company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A in respect of a financial year if at any time within that year—
- (a) it was a public company,
  - (b) it was a banking or insurance company
  - (c) it was enrolled in the list maintained by the Insurance Brokers Registration Council under section 4 of the Insurance Brokers (Registration) Act 1977,
  - (d) it was an authorised person or an appointed representative under the Financial Services Act 1986,
  - (e) it was a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 or an employers' association as defined in section 122 of that Act, or
  - (f) it was a parent company or a subsidiary undertaking.
- (2) Any member or members holding not less in the aggregate than 10 per cent in nominal value of the companys issued share capital or any class of it or, if the company does not have a share capital, not less than 10 per cent in number of the members of the company, may, by notice in writing deposited at the registered office of the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year

(3) Where a notice has been deposited under subsection (2), the company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A in respect of the financial year to which the notice relates

(4) A company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A unless its balance sheet contains a statement by the directors—

- (a) that for the year in question the company was entitled to exemption under subsection (1) or (2) (as the case may be) of section 249A,
- (b) that no notice has been deposited under subsection (2) of this section in relation to its accounts for the financial year, and
- (c) that the directors acknowledge their responsibilities for—
  - (i) ensuring that the company keeps accounting records which comply with section 221, and
  - (ii) preparing accounts which give a true and fair view of the state of affairs of the company as at the end of the financial year and of its profit or loss for the financial year in accordance with the requirements of section 226, and which otherwise comply with the requirements of this Act relating to accounts, so far as applicable to the company.

(5) The statement required by subsection (4) shall appear in the balance sheet immediately above the signature required by section 233 or, as the case may be, above any statement required by section 246(1A) or by paragraph 23 of Schedule 8.

**The report required for the purposes of section 249A(2).**

**249C.**—(1) The report required for the purposes of section 249A(2) shall be prepared by a person (referred to in this Part as “the reporting accountant”) who is eligible under section 249D

- (2) The report shall state whether in the opinion of the reporting accountant making it—
- (a) the accounts of the company for the financial year in question are in agreement with the accounting records kept by the company under section 221, and
  - (b) having regard only to, and on the basis of, the information contained in those accounting records, those accounts have been drawn up in a manner consistent with the provisions of this Act specified in subsection (6), so far as applicable to the company.

(3) The report shall also state that in the opinion of the reporting accountant, having regard only to, and on the basis of, the information contained in the accounting records kept by the company under section 221, the company satisfied the requirements of subsection (4) of section 249A (or, where the company is a charity, of that subsection as modified by subsection (5) of that section) for the financial year in question, and did not fall within section 249B(1)(a) to (f) at any time within that financial year

(4) The report shall state the name of the reporting accountant and be signed by him

(5) Where the reporting accountant is a body corporate or partnership, any reference to signature of the report, or any copy of the report, by the reporting accountant is a reference to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf

(6) The provisions referred to in subsection (2)(b) are—

- (a) section 226(3) and Schedule 4,

- (b) section 231 and paragraphs 7 to 9A and 13(1), (3) and (4) of Schedule 5, and
- (c) section 232 and Schedule 6,

where appropriate as modified by section 246(1)(a) and (1A) and Section A of Part I of Schedule 8.

### **The reporting accountant**

**249D.**—(1) The reporting accountant shall be a person who is a member of a body listed in subsection (3) and who, under the rules of the body is either—

- (a) entitled to engage in public practice and not ineligible for appointment as a reporting accountant, or
- (b) eligible for appointment as a company auditor.

(2) An individual, a body corporate or a partnership may be appointed as a reporting accountant, and section 26 of the Companies Act 1989 (effect of appointment of partnership) shall apply to the appointment as reporting accountant of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any other country or territory in which a partnership is not a legal person

(3) The bodies referred to in subsection (1) are—

- (a) the Institute of Chartered Accountants in England and Wales,
- (b) the Institute of Chartered Accountants of Scotland,
- (c) the Institute of Chartered Accountants in Ireland,
- (d) the Chartered Association of Certified Accountants, and
- (e) the Association of Authorised Public Accountants.

(4) A person is ineligible for appointment by a company as reporting accountant if he would be ineligible for appointment as an auditor of that company under section 27 of the Companies Act 1989 (ineligibility on ground of lack of independence).

### **Effect of exemptions**

**249E.**—(1) Where the directors of a company have taken advantage of the exemption conferred by section 249A(1)—

- (a) sections 238 and 239 (right to receive or demand copies of accounts and reports) shall have effect with the omission of references to the auditors report;
- (b) no copy of an auditors report need be delivered to the registrar or laid before the company in general meeting;
- (c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply.

(2) Where the directors of a company have taken advantage of the exemption conferred by section 249A(2)—

- (a) subsections (2) to (4) of section 236 (which require copies of the auditors report to state the names of the auditors) shall have effect with the substitution for references to the auditors and the auditors' report of references to the reporting accountant and the report made for the purposes of section 249A(2) respectively;
- (b) sections 238 and 239 (right to receive or demand copies of accounts and reports), section 241 (accounts and reports to be laid before company in general meeting) and section 242 (accounts and reports to be delivered to the registrar) shall have

effect with the substitution for references to the auditors report of references to the report made for the purposes of section 249A(2);

- (c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply;
- (d) section 389A(1) and (2) (rights to information) shall have effect with the substitution for references to the auditors of references to the reporting accountant.”

### **Exemption from requirement to appoint auditors**

**3.—(1)** For section 388A of the 1985 Act<sup>(3)</sup> there shall be substituted the following section—

#### **“Certain companies exempt from obligation to appoint auditors**

**388A.—(1)** A company which by virtue of section 249A (certain categories of small company) or section 250 (dormant companies) is exempt from the provisions of Part VII relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if a company which has been exempt from those provisions ceases to be so exempt.

(3) Where section 385 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where section 385A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—

- (a) the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under section 238, or
- (b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.”

### **Consequential amendments of enactments**

**4.** Schedule 1 to these Regulations (which makes consequential amendments of the 1985 Act and the Charities Act 1993) shall have effect.

### **Consequential amendments of Companies (Revision of Defective Accounts and Report) Regulations 1990**

**5.** The Companies (Revision of Defective Accounts and Report) Regulations 1990<sup>(4)</sup> shall be amended in accordance with Schedule 2 to these Regulations.

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<sup>(3)</sup> Section 388A was inserted by section 119 of the Companies Act 1989.

<sup>(4)</sup> S.I.1990/2570.

### **Application and transitional provisions**

6.—(1) Subject to paragraphs (2) to (4) below, the provisions of these Regulations shall apply to any annual accounts of a company which are approved by the board of directors on or after the day on which these Regulations come into force (“the commencement date”).

(2) Where—

- (a) the accounts for a financial year which has ended have not been approved by the board of directors before the commencement date, or
- (b) the financial year to which any accounts relate ends less than one month after the commencement date,

the provisions of these Regulations do not apply unless a copy of those accounts is delivered to the registrar before the end of the period allowed for laying and delivering them.

(3) In any case falling within paragraph (2)

above, any member or members holding not less in the aggregate than 10 per cent in nominal value of the company’s issued share capital or any class of it or, if the company does not have a share capital, not less than 10 per cent in number of the members of the company, may by notice in writing deposited at the registered office of the company before the end of the period of one month beginning with the commencement date require that the company obtains an audit of its accounts for the financial year in question.

(4) Where a notice is deposited under paragraph (3)

above, the company shall not be exempt from the provisions of Part VII of the 1985 Act relating to the audit of accounts in respect of the financial year to which the notice relates.

Department of Trade and Industry  
19th July 1994

*Neil Hamilton*  
Parliamentary Under-Secretary of State for  
Corporate Affairs,

SCHEDULE 1

Regulation 4

CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

PART I

AMENDMENTS OF COMPANIES ACT 1985

1.—(1) Section 240 of the 1985 Act<sup>(5)</sup>(requirements in connection with publication of accounts) shall be amended as follows.

(2) At the end of subsection (1) there shall be added the words “or, as the case may be, the relevant report made for the purposes of section 249A(2)”.

(3) In subsection (3)—

(a) in paragraph (c), after the word “year” there shall be inserted the words “and, if no such report has been made, whether the companys reporting accountant has made a report for the purposes of section 249A(2) on the statutory accounts for any such financial year”,

(b) in paragraph (d), before the word “report” there shall be inserted the word “auditors” and at the end of that paragraph there shall be added the words “or whether any report made for the purposes of section 249A(2) was qualified”, and

(c) at the end of the subsection there shall be added the words “or any report made for the purposes of section 249A(2)”.

2. In section 245 of the 1985 Act<sup>(6)</sup> (voluntary revision of annual accounts or directors' report), in subsection (4)(b), after the words “the companys auditors” there shall be inserted the words “or reporting accountant”.

3. In section 262A of the 1985 Act<sup>(7)</sup> (index of defined expressions), the following entry shall be inserted at the appropriate place—

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“reporting accountant	section 249C(1)”
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4. In section 384(1) of the 1985 Act (duty to appoint auditors) for the words “dormant company” there shall be substituted the words “certain companies”.

5. In Schedule 8 to the 1985 Act<sup>(8)</sup>, after paragraph 25 there shall be inserted the following paragraph—

“Other companies exempt from audit

25A. Paragraph 24 above does not apply where the company is exempt by virtue of section 249A (certain categories of small companies) from the obligation to appoint auditors.”

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(5) Section 240 was substituted by section 10 of the Companies Act 1989.

(6) Section 245 was substituted by section 12 of the Companies Act 1989.

(7) Section 262A was inserted into the 1985 Act by section 22 of the Companies Act 1989, and was amended by paragraph 3 of Schedule 2 to S.I. 1991/2705, and by paragraph 5 of Schedule 2 to S.I. 1993/3246.

(8) Schedule 8 was substituted by section 13(2) of the Companies Act 1989 and amended by S.I. 1992/2452.

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## PART II

### AMENDMENTS OF CHARITIES ACT 1993

6. In section 45 of the Charities Act 1993<sup>(9)</sup>(annual reports), in subsection (5), for the words “the auditors report” there shall be substituted the words “any auditors report or report made for the purposes of section 249A(2) of that Act”.

7. In section 47 of that Act (public inspection of annual reports etc.), in subsection (3) for paragraph (c) there shall be substituted the following paragraph—

“(c) in the case of a charity which is a company, a reference to the most recent annual accounts of the company prepared under Part VII of the Companies Act 1985 in relation to which any of the following conditions is satisfied—

- (i) they have been audited
- (ii) a report required for the purposes of section 249A(2) of that Act has been made in respect of them; or
- (iii) they relate to a year in respect of which the company is exempt from audit by virtue of section 249A(1) of that Act; and”.

### SCHEDULE 2

Regulation 5

#### CONSEQUENTIAL AMENDMENTS OF THE COMPANIES (REVISION OF DEFECTIVE ACCOUNTS AND REPORT) REGULATIONS 1990

1. The Companies (Revision of Defective Accounts and Report) Regulations 1990 shall be amended as follows

2. The following regulations shall be inserted after regulation 6—

“6A.—(1) Subject to the next paragraph, where a companys reporting accountant has, prior to the preparation of the revised accounts, made a report for the purposes of section 249A(2) of the Act on the original annual accounts, he shall make a further report to the companys members under this Regulation on any revised accounts prepared under section 245 of the Act and section 249C of the Act shall apply mutatis mutandis.

(2) The directors of the company may resolve that the further report is to be made by a person who was not the original reporting accountant, but is qualified to act as the reporting accountant of the company.

(3) Subsections (2)

to (4) of section 236 of the Act shall apply to a report under this Regulation as they apply, by virtue of section 249E(2)(a) of the Act, to a report made for the purposes of section 249A(2) of the Act.

(4) A report under this Regulation shall, upon being signed by the reporting accountant, be, as from the date of the signature, the report on the annual accounts of the company for the purposes of section 249A(2) of the Act in place of the report on the original annual accounts.

6B.—(1) Where as a result of the revisions to the accounts a company which, in respect of the original accounts, was exempt from audit by virtue of subsection (1) of section 249A of the Act, becomes a company which is eligible for exemption from audit only by virtue

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(9) 1993 c. 10.



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of subsection (2) of that section, it shall cause a report to be prepared in accordance with section 249C of the Act in respect of the revised accounts.

(2) Where as a result of the revisions to the accounts, the company is no longer entitled to exemption from audit under section 249A(1) or (2) of the Act, the company shall cause an auditors' report on the revised accounts to be prepared.

(3) The report made in accordance with section 249C of the Act or auditors report shall be delivered to the registrar within 28 days after the date of revision of the revised accounts

(4) Subsections (2)

to (5) of section 242 of the Act shall apply with respect to a failure to comply with the requirements of this Regulation as they apply with respect to a failure to comply with the requirements of subsection (1) of that section but as if—

- (a) the references in subsections (2) and (4) of that section to “the period allowed for laying and delivering accounts and reports” were references to the period of 28 days referred to in paragraph (3); and
- (b) the references in subsection (5) to “the documents in question” and “this Part” were, respectively, a reference to the documents referred to in paragraph (3) and to the provisions of Part VII of the Act as applied by these Regulations.”

**3.** The following regulation shall be inserted after Regulation 14—

“Companies exempt from audit by virtue of section 249A of Companies Act 1985

**14A.—**(1) Where a company is exempt by virtue of section 249A(1)

of the Act from the provisions of Part VII of the Act relating to the audit of accounts, these Regulations shall have effect as if any reference to an auditors report, or to the making of such a report, were omitted.

(2) Where a company is exempt by virtue of section 249A(2)

of the Act from the provisions of Part VII of the Act relating to the audit of accounts, regulations 10 to 13 shall have effect as if—

- (a) references to the auditors report on any accounts were references to the report made for the purposes of section 249A(2) in respect of those accounts, and
- (b) references to the auditors report on a revised directors report were omitted.”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the provisions of Part VII of the Companies Act 1985 (accounts and audit) by inserting new sections 249A to 249E into that Part (regulation 2).

The new provisions exempt small companies which satisfy specified conditions from the obligation to have their annual accounts audited (section 249A). Slightly different criteria apply to small companies which are charities (section 249A(5)). Section 249B sets out the cases where the exemptions are not available.

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In certain circumstances the audit report is to be replaced by a report to be made by a suitably qualified person (defined as a “reporting accountant”) (sections 249C and 249D).

Section 249E sets out the effect of the exemption from the audit requirement on other provisions of Part VII of the 1985 Act.

Regulation 3 substitutes a new section 388A which provides that a company exempt from the audit requirements is also exempt from the obligation to appoint auditors, and gives power to the directors to appoint auditors if that exemption ceases.

Regulation 4 and Schedule 1 make consequential amendments of the 1985 Act and the Charities Act 1993. Regulation 5 and Schedule 2 make consequential amendments of the Companies (Revision of effective Accounts and Report) Regulations 1990.

Regulation 6 determines the application of the regulations and contains transitional provisions.