

Draft Regulations laid before Parliament under section 257(2) of the Companies Act 1985 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2000 No.

COMPANIES

The Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000

<i>Made</i>	- - - -	<i>2000</i>
<i>Coming into force</i>	- -	<i>2000</i>

The Secretary of State, in exercise of the powers conferred on him by section 257 of the Companies Act 1985(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Introduction

Citation, application and interpretation

1.—(1) These Regulations may be cited as the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000 and come into force on the day after the day on which they are made.

(2) These Regulations apply to annual accounts and reports in respect of financial years ending two months or more after the date of coming into force of these Regulations.

(3) In these Regulations, references to sections (or Schedules) are to sections of (or Schedules to) the Companies Act 1985.

Audit Exemption

Modification of section 249AA

2.—(1) Section 249A (exemptions from audit for certain categories of small company)(2) is modified as follows.

(2) In subsections (3)(b) and (3A)(b), for “£350,000” substitute “£1 million”.

(3) In subsection (6A), for “section 250(1)”, substitute “section 249AA(1)”.

(1) 1985 c. 6; section 257 was substituted by section 20 of the Companies Act 1989 (c. 40).

(2) Section 249A was inserted by regulation 2 of S.I.1994/1935, and amended by regulation 2 of S.I.1997/936.

Insertion of new section 249AA

3. The following section shall be inserted after section 249A—

“Dormant companies

249AA.—(1) Subject to section 249B(2) to (5), a company is exempt from the provisions of this Part 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 subsection (2) applies.

(2) This subsection applies if the company—

- (a) is entitled in respect of its individual accounts for the financial year in question to prepare accounts in accordance with section 246, or would be so entitled but for the application of section 247A(1)(a)(i) or (b), and
- (b) is not required to prepare group accounts for that year.

(3) Subsection (1) does not apply if at any time in the financial year in question the company was—

- (a) a banking or insurance company, or
- (b) an authorised person for the purposes of the Financial Services Act 1986.

(4) A company is “dormant” during any period in which it has no significant accounting transaction.

(5) “Significant accounting transaction” means a transaction which—

- (a) is required by section 221 to be entered in the company’s accounting records; but
- (b) is not a transaction to which subsection (6) or (7) applies.

(6) This subsection applies to a transaction arising from the taking of shares in the company by a subscriber to the memorandum as a result of an undertaking of his in the memorandum.

(7) This subsection applies to a transaction consisting of the payment of—

- (a) a fee to the registrar on a change of name under section 28 (change of name),
- (b) a fee to the registrar on the re-registration of a company under Part II (re-registration as a means of altering a company’s status),
- (c) a penalty under section 242A (penalty for failure to deliver accounts), or
- (d) a fee to the registrar for the registration of an annual return under Chapter III of Part XI.”

Modification of section 249B

4.—(1) Section 249B (cases where exemption from audit not available)(3) is modified as follows.

(2) In subsection (1A), for “section 250” substitute “section 249AA”.

(3) In subsection (1C)—

- (a) in paragraph (a), after “section 249” insert “(or if all bodies corporate in such group were companies, would so qualify)”, and
- (b) in paragraph (b)—

(3) Section 249B was inserted by regulation 2 of S.I. 1994/1935, and amended by regulation 10 of S.I. 1996/189 and regulation 3 of S.I. 1997/936.

- (i) after “section 249) is” insert “, where the company referred to in subsection (1B) is a charity,”, and
 - (ii) after “(or £420,000 gross)” insert “or, where the company so referred to is not a charity, not more than £1 million net (or £1.2 million gross)”.
- (4) In subsection (3), after “section 249A” insert “or by subsection (1) of section 249AA”.
- (5) In subsection (4)—
- (a) after “subsection (1) or (2) of section 249A”, insert “or by subsection (1) of section 249AA”,
 - (b) in paragraph (a), omit “(as the case may be)”, and after “section 249A” insert “or subsection (1) of section 249AA”, and
 - (c) for paragraph (b) substitute—
 - “(b) to the effect that members have not required the company to obtain an audit of its accounts for the year in question in accordance with subsection (2) of this section”.

Disclosure where dormant company acting as agent

Additional disclosures in notes to accounts

- 5.—(1) Schedule 4 (form and content of company accounts)(4) is amended as follows.
- (2) After paragraph 58 insert—

“Dormant companies acting as agents

58A. Where the directors of a company take advantage of the exemption conferred by section 249AA, and the company has during the financial year in question acted as an agent for any person, the fact that it has so acted must be stated.”

- 6.—(1) Schedule 8 (form and content of accounts prepared by small companies)(5) is amended as follows.
- (2) After paragraph 51 insert—

“Dormant companies acting as agents

51A. Where the directors of a company take advantage of the exemption conferred by section 249AA, and the company has during the financial year in question acted as an agent for any person, the fact that it has so acted must be stated.”

- 7.—(1) Schedule 8A (form and content of abbreviated accounts of small companies delivered to registrar)(6) is amended as follows.
- (2) After paragraph 9 insert—

(4) Schedule 4 was amended by section 4(2) of, and Schedule 1 to, the Companies Act 1989 (c. 40), and by regulation 14(1) of, and Schedule 1 to, S.I. 1996/189.

(5) Schedule 8 was substituted by regulation 2(3) of, and Schedule 2 to, S.I. 1997/220.

(6) Schedule 8A was inserted by regulation 2(3) of, and Schedule 2 to, S.I. 1997/220.

“Dormant companies acting as agents

9A. Where the directors of a company take advantage of the exemption conferred by section 249AA, and the company has during the financial year in question acted as an agent for any person, the fact that it has so acted must be stated.”

Minor and consequential amendments

Minor and consequential amendments

8.—(1) In subsection (9) of section 246 (special provisions for small companies)(7), for the words from “the company” to the end, substitute “the directors of the company have taken advantage of the exemption from audit conferred by section 249AA (dormant companies)”.

(2) In subsection (1) of section 247B (special auditors' report)(8)—

- (a) in paragraph (b), after “section 249A(1) or (2)” insert “or section 249AA”,
- (b) omit “and” at the end of paragraph (b), and
- (c) omit paragraph (c).

(3) In subsection (3) of section 249C (the report required for the purposes of section 249A(2))(9), omit from “(or, where the company is a charity,” to “that section)”.

(4) In subsection (1) of section 249E (effect of audit exemptions)(10), after “section 249A(1)” insert “or 249AA(1)”.

(5) After subsection (1) of section 249E insert—

“(1A) Where the directors of a company have taken advantage of the exemption conferred by section 249AA, then for the purposes of that section the company shall be treated as a company entitled to prepare accounts in accordance with section 246 even though it is a member of an ineligible group.”

(6) Section 250 (resolution not to appoint auditors)(11) is hereby repealed.

(7) In subsection (4)(a) of section 289 (particulars of directors to be registered under section 288)(12), for “section 250(3)” substitute “section 249AA(3)”.

(8) In subsection (2) of section 386 (election by private company to dispense with annual appointment of auditors)(13), for paragraph (a) substitute—

“(a) the directors of the company have taken advantage of the exemption conferred by section 249A or 249AA, or”.

(9) In subsection (1) of section 388A (certain companies exempt from obligation to appoint auditors)(14), for “section 250” substitute “section 249AA”.

(10) In paragraph 2(2)(a) of Schedule 1 (particulars of directors etc to be contained in statement under section 10)(15), for “section 250(3)” substitute “section 249AA(3)”.

(7) Section 246 was substituted by section 13(1) of the Companies Act 1989, and by regulation 2 of S.I. 1997/220. Subsection (3) was amended by regulation 6(1) of S.I. 1997/570.

(8) Section 247B was inserted by regulation 5 of S.I. 1997/220.

(9) Section 249C was inserted by regulation 2 of S.I. 1994/1935, and amended by regulation 7(3) of S.I. 1997/220.

(10) Section 249E was inserted by regulation 2 of S.I. 1994/1935.

(11) Section 250 was substituted by section 14 of the Companies Act 1989, and amended by regulation 2 of S.I. 1992/3003, regulation 11 of S.I. 1996/189 and regulation 7(4) of S.I. 1997/220.

(12) Section 289 was amended by sections 23 and 145 of, and paragraph 9 of Schedule 10 and paragraph 2 of Schedule 19 to, the Companies Act 1989.

(13) Section 386 was substituted by sections 118 and 119(1) of the Companies Act 1989.

(14) Section 388A was inserted by sections 118 and 119(1) of the Companies Act 1989, and substituted by regulation 3 of S.I. 1994/1935.

(15) Paragraph 2 of Schedule 1 was amended by section 23 of, and paragraph 17 of Schedule 10 to, the Companies Act 1989.

2000

Parliamentary Under-Secretary of State for
Consumers and Corporate Affairs,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend provisions in Part VII of the Companies Act 1985 (c. 6) (“the 1985 Act”) concerning—

- the exemption of certain small companies from the requirement to have their annual accounts audited, and
- the conditions a company must satisfy in order to qualify as dormant.

The amendments effected by the Regulations will apply to annual accounts and reports in respect of financial years ending two months or more after the date of coming into force of the Regulations (**regulation 1(2)**).

2. **Regulation 2** increases the turnover limit in section 249A(3)(b) of the 1985 Act which a small company other than a small charitable company must not exceed in respect of a financial year if it is to be exempt from audit. The turnover limit is increased from £350,000 to £1 million (for small charitable companies the gross income limit remains at £90,000).

3. **Regulation 4(3)(b)** increases the turnover limit for a group to qualify as a small group for the purposes of section 249B(1C) from £350,000 net (£420,000 gross) to £1 million net (£1.2 million gross) (the limit as it applies in relation to small charitable companies remains unchanged). A company which would otherwise be disqualified from claiming exemption from audit under section 249A for a financial year because it was a parent company or subsidiary undertaking for any period in that year, may nevertheless claim the exemption if it is a member of a small group which satisfies the conditions specified in section 249B(1C). **Regulation 4(3)(a)** amends section 249B(1C) (a) to provide for the exemption from audit for small groups to apply to groups where not all the bodies in the group are companies within the meaning of section 735 of the 1985 Act.

4. **Regulation 3** inserts a new section 249AA making provision for dormant companies to replace that in section 250 (which is repealed by regulation 8(6)). Dormant companies as defined will no longer need to pass a special resolution in order to qualify for exemption from audit, but instead will so qualify automatically provided 10% of members do not request an audit. The definition of dormancy has also been amended (see new section 249AA(4) to (7)).

5. **Regulations 5 to 7** impose new requirements for companies which are claiming dormancy status under section 249AA for a financial year and which have during that year acted as agent for any person to disclose that fact in the notes to their accounts (the amendments are to Schedules 4, 8 and 8A).

6. **Regulations 2(3), 4(2), (4) and (5) and 8** make minor and consequential amendments.

7. A Regulatory Impact Assessment of these Regulations is available from the Department of Trade and Industry, Company Law and Investigations Directorate, Room 4102, 1 Victoria Street, London SW1H 0ET. A copy has also been placed in the libraries of both Houses of Parliament.