

STATUTORY INSTRUMENTS

1986 No. 1032

The Companies (Northern Ireland) Order 1986 (revoked)

PART XII

COMPANY ADMINISTRATION AND PROCEDURE

Chapter V

AUDITORS

F1 Order repealed (prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#) and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by [Companies Act 2006 \(Commencement No. 6, Saving and Commencement Nos. 3 and 5 \(Amendment\)\) Order 2008 \(S.I. 2008/674\)](#), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b)(2), [Sch. 1 paras. 135, 147, 148](#) {[Sch. 2 Note 1](#)} (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by [S.R. 2008/133](#), {regs. 2, 3}

Appointment of auditors

Duty to appoint auditors

392.—^{F1}(1) [^{F2}Every public company] shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to Article 396A (^{F3}certain companies exempt from obligation to appoint auditors).

(2 ^{F4} Auditors shall be appointed in accordance with Article 393 (appointment at general meeting at which accounts are laid). ^{F5} . . .

(3 ^{F6} References in this Chapter to the end of the time for appointing auditors are to the end of the time within which an appointment must be made under Article 393(2). ^{F7} . . .

(4) ^{F8}]]

- F1** [Art. 392](#) repealed (1.10.2007 for certain purposes and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#); [S.I. 2007/2194](#), arts. 1(3)(a), [8](#), [Sch. 2 Pt. 2](#) (with [art. 12](#), [Sch. 3 para. 44\(2\)](#))
- F2** Words in [art. 392\(1\)](#) substituted (1.10.2007 with effect as mentioned in [Sch. 4 para. 24\(6\)](#) of the amending S.I.) by [Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), arts. 1(3), 10(1), [Sch. 4 para. 24\(1\)\(a\)](#) (with [art. 12](#))
- F3** SR 1995/128
- F4** mod. by SR 2004/307

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Changes to legislation: There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), Chapter V. (See end of Document for details)

- F5** Words in art. 392(2) omitted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(1)(b)** (with art. 12)
- F6** mod. by SR 2004/307
- F7** Words in art. 392(3) omitted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(1)(c)** (with art. 12)
- F8** Art. 392(4) omitted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(1)(d)** (with art. 12)

Appointment at general meeting at which accounts laid^{F9}

393^{F10}.—^{[F11}(1^{F12} This Article applies to every public company^{F13}

(2^{F14} The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.

(3^{F15} The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4^{F16} If the directors fail to exercise their powers under paragraph (3), the powers may be exercised by the company in general meeting.]

- F9** mod. by SR 2004/307
- F10** mod. by SR 2004/307
- F11** Art. 393 repealed (1.10.2007 for certain purposes and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))
- F12** mod. by SR 2004/307
- F13** Words in art. 393(1) omitted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), {Sch. 4 para. 24(2)} (with art. 12)
- F14** mod. by SR 2004/307
- F15** mod. by SR 2004/307
- F16** mod. by SR 2004/307

Appointment by private company which is not obliged to lay accounts

393A.^{F17}

- F17** Art. 393A repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

Election by private company to dispense with annual appointment

394. ^{F18}

F18 Art. 394 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

Appointment by Department in default of appointment by company

395.—^{F19}(1 ^{F20} [^{F21}If in the case of a public company] no auditors are appointed, re-appointed or deemed to be re-appointed before the end of the time for appointing auditors, the Department may appoint a person to fill the vacancy.

(2 ^{F22} In such a case the company shall within one week of the end of the time for appointing auditors give notice to the Department of its power having become exercisable.

If a company fails to give the notice required by this Article, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.]

F19 Art. 395 repealed (1.10.2007 for certain purposes otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

F20 mod. by SR 2004/307

F21 Words in art. 395(1) substituted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), Sch. 4 para. 24(3) (with art. 12)

F22 mod. by SR 2004/307

Filling of casual vacancies

396.—^{F23}(1 ^{F24} The directors [^{F25}of a public company], or the company in general meeting, may fill a casual vacancy in the office of auditor.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

(3 ^{F26} Special notice is required for a resolution at a general meeting of [^{F27}a public company]—

- (a) filling a casual vacancy in the office of auditor, or
- (b) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy.

(4 ^{F28} On receipt of notice of such an intended resolution the company shall forthwith send a copy of it—

- (a) to the person proposed to be appointed, and
- (b) if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.]

F23 Art. 396 repealed (1.10.2007 for certain purposes otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))

F24 mod. by SR 2004/307

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- F25** Words in art. 396(1) inserted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(4)(a)** (with art. 12)
- F26** mod. by SR 2004/307
- F27** Words in art. 396(3) substituted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(4)(b)** (with art. 12)
- F28** mod. by SR 2004/307

[^{F29}Certain companies exempt from obligation to appoint auditors

396A.—[^{F30}(1) [^{F31}A public company] which by virtue of Article 257A (certain categories of small company) or [^{F32} Article 257AA (dormant companies) is exempt from the provisions of Part VIII relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if [^{F33}a public company] which has been exempt from those provisions ceases to be so exempt.

(3 ^{F34} Where Article 393 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) ^{F35}

(5 ^{F36} If the directors fail to exercise their powers under paragraph (3) ^{F37}. . . , the powers may be exercised by the company in general meeting.]]]

- F29** SR 1995/128
- F30** Art. 396A repealed (1.10.2007 for certain purposes otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch. 2 Pt. 2 (with art. 12, Sch. 3 para. 44(2))
- F31** Words in art. 396A(1) substituted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(5)(a)** (with art. 12)
- F32** SR 2001/153
- F33** Words in art. 396A(2) substituted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(5)(b)** (with art. 12)
- F34** mod. by SR 2004/307
- F35** Art. 396A(4) omitted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(5)(c)** (with art. 12)
- F36** mod. by SR 2004/307
- F37** Words in art. 396A(5) omitted (1.10.2007 with effect as mentioned in Sch. 4 para. 24(6) of the amending S.I.) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 24(5)(d)** (with art. 12)

Art. 397 rep. by 1990 NI 5

Rights of auditors

Rights to information

[^{F38}397A.—(1) An auditor of a company—

- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
- (b) may require any of the persons mentioned in paragraph (2) to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.

(2) Those persons are—

- (a) any officer or employee of the company;
- (b) any person holding or accountable for any of the company's books, accounts or vouchers;
- (c) any subsidiary undertaking of the company which is a body corporate incorporated in Northern Ireland;
- (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
- (e) any person who fell within any of sub-paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.

(3) Where a parent company has a subsidiary undertaking which is not a body corporate incorporated in Northern Ireland, the auditor of the parent company may require it to obtain from any of the persons mentioned in paragraph (4) such information or explanations as he may reasonably require for the purposes of his duties as auditor.

(4) Those persons are—

- (a) the undertaking;
- (b) any officer, employee or auditor of the undertaking;
- (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
- (d) any person who fell within sub-paragraph (b) or (c) at a time to which the information or explanations relates or relate.

(5) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person within paragraph (4) from whom the auditor has required the company to obtain the information or explanations.

(6) A statement made by a person in response to a requirement under paragraph (1)(b) or (3) may not be used in evidence against him in any criminal proceedings except proceedings for an offence under Article 397B.

(7) Nothing in this Article or Article 397B compels any person to disclose information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.]

F38 Arts. 397A, 397B substituted (6.4.2007) for art. 397A by [Companies \(Audit, Investigations and Community Enterprise\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1967 \(N.I. 17\)\)](#), arts. 1(2), 10; S.R. 2007/95, art. 2

Offences relating to the provision of information to auditors

397B.—(1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—

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(a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under Article 397A(1)(b), and
 (b) is misleading, false or deceptive in a material particular,
 the person is guilty of an offence and liable to imprisonment or a fine, or both.

(2) A person who fails to comply with a requirement under Article 397A(1)(b) without delay is guilty of an offence and is liable to a fine.

(3) However, it is a defence for a person charged with an offence under paragraph (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.

(4) If a company fails to comply with Article 397A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Nothing in this Article affects any right of an auditor to apply for an injunction to enforce any of his rights under Article 397A.

Right to attend company meetings, &c.

398.—(1) A company's auditors are entitled—

- (a) ^{F39} to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;
- (b) ^{F40} to attend any general meeting of the company; and
- (c) ^{F41} to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

[^{F42}(1A) ^{F43}

(2) ^{F44} In relation to a written resolution proposed to be agreed to by a private company ^{F45} . . . , the company's auditors are entitled—

- (a) to receive all such communications relating to the resolution as, by virtue of any provision of [^{F46}Chapter 2 of Part 13 of the Companies Act 2006], are required to be supplied to a member of the company,

Sub#paras. (b)-(d) rep. by 1997 NI 22

(3) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.]

F39 mod. by SR 2004/307

F40 mod. by SR 2004/307

F41 mod. by SR 2004/307

F42 SR 2003/3

F43 Art. 398(1A) omitted (1.10.2007) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 20(2)** (with art. 12)

F44 mod. by SR 2004/307

F45 Words in art. 398(2) omitted (1.10.2007) by virtue of Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 20(3)(a)** (with art. 12)

F46 Words in art. 398(2)(a) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3), 10(1), **Sch. 4 para. 20(3)(b)** (with art. 12)

Remuneration of auditors

Remuneration of auditors

398A.—(1 ^{F47} The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2 ^{F48} The remuneration of auditors appointed by the directors or the Department shall be fixed by the directors or the Department, as the case may be.

^{F49}(3) There shall be stated in a note to the company's annual accounts the amount of the remuneration of the company's auditors in their capacity as such.

(4) For the purposes of this Article “remuneration” includes sums paid in respect of expenses.

(5) This Article applies in relation to benefits in kind as to ^{F50} payments in cash, and in relation to any such benefit references to its amount are to its estimated money value.

The nature of any such benefit shall also be disclosed.

F47 mod. by SR 2004/307

F48 mod. by SR 2004/307

F49 prosp. rep. by 2005 NI 17 (which amendment repealed (6.4.2008) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2)

F50 prosp. subst. by 2005 NI 17 (which amendment repealed (6.4.2008) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2)

Remuneration of auditors or their associates for non-audit work

^{F51}**398B** ^{F52}.—(1) The Department may make provision by regulations for securing the disclosure of the amount of any remuneration received or receivable by a company's auditors or their associates in respect of services other than those of auditors in their capacity as such.

(2) The regulations may—

- (a) provide that “remuneration” includes sums paid in respect of expenses,
- (b) apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit require disclosure of its nature and its estimated money value,
- (c) define “associate” in relation to an auditor,
- (d) require the disclosure of remuneration in respect of services rendered to associated undertakings of the company, and
- (e) define “associated undertaking” for that purpose.

(3) The regulations may require the auditors to disclose the relevant information in their report or require the relevant information to be disclosed in a note to the company's accounts and require the auditors to supply the directors of the company with such information as is necessary to enable that disclosure to be made.

F51 prosp. subst. by 2005 NI 17

F52 mod. by SR 2004/307

Status: Point in time view as at 01/10/2007.

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Removal, resignation, &c. of auditors

Removal of auditors

399.—(1 ^{F53} A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.

(2 ^{F54} Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar.

If a company fails to give the notice required by this paragraph, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Nothing in this Article shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

(4 ^{F55} An auditor of a company who has been removed has, notwithstanding his removal, the rights conferred by Article 398 in relation to any general meeting of the company—

- (a) at which his term of office would otherwise have expired, or
- (b) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that Article to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

F53 mod. by SR 2004/307

F54 mod. by SR 2004/307

F55 mod. by SR 2004/307

Rights of auditors who are removed or not re-appointed

399A.—(1 ^{F56} Special notice is required for a resolution at a general meeting of a company—

- (a) removing an auditor before the expiration of his term of office, or
- (b) appointing as auditor a person other than a retiring auditor.

(2 ^{F57} On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3 ^{F58} The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4 ^{F59} The company shall (unless the representations are received by it too late for it to do so)—

- (a ^{F60} in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
- (b ^{F61} send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5 ^{F62} If a copy of any such representations is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6 ^{F63} Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming

to be aggrieved, the court is satisfied that the rights conferred by this Article are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

F56 mod. by SR 2004/307
F57 mod. by SR 2004/307
F58 mod. by SR 2004/307
F59 mod. by SR 2004/307
F60 mod. by SR 2004/307
F61 mod. by SR 2004/307
F62 mod. by SR 2004/307
F63 mod. by SR 2004/307

Resignation of auditors

400.—(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

The notice is not effective unless it is accompanied by the statement required by Article 401A.

(2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) ^{F64} The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar.

If default is made in complying with this paragraph, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, a daily default fine.

F64 mod. by SR 2004/307

Rights of resigning auditors

400A.—(1) This Article applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) ^{F65} He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) He may request the company to circulate to its members—

(a) ^{F66} before the meeting convened on his requisition, or

(b) ^{F67} before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company shall (unless the statement is received too late for it to comply)—

(a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and

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(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5^{F68} If the directors do not within 21 days from the date of the deposit of a requisition under this Article proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.

(6) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this Article are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8^{F69} An auditor who has resigned has, notwithstanding his resignation, the rights conferred by Article 398 in relation to any such general meeting of the company as is mentioned in paragraph (3) (a) or (b).

In such a case the references in that Article to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

F65 mod. by SR 2004/307
F66 mod. by SR 2004/307
F67 mod. by SR 2004/307
F68 mod. by SR 2004/307
F69 mod. by SR 2004/307

Termination of appointment of auditors not appointed annually

401. ^{F70}

F70 Art. 401 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/2194, arts. 1(3)(a), 8, Sch. 2 Pt. 2 (with art. 12)
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Statement by person ceasing to hold office as auditor

401A ^{F71}.—(1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—

(a) send a copy of it to every person who under Article 246 is entitled to be sent copies of the accounts, or

(b) apply to the court.

(4) The company shall if it applies to the court notify the auditor of the application.

(5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—

(a) it shall direct that copies of the statement need not be sent out, and

(b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;

and the company shall within 14 days of the court's decision send to the persons mentioned in paragraph (3)(a) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within 14 days of the court's decision—

(a) send copies of the statement to the persons mentioned in paragraph (3)(a), and

(b) notify the auditor of the court's decision;

and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.

F71 mod. by SR 2004/307

Offences of failing to comply with Article 401A

401B^{F72}.—(1) If a person ceasing to hold office as auditor fails to comply with Article 401A he is guilty of an offence and liable to a fine.

(2) In proceedings for an offence under paragraph (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) Articles 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to an offence under paragraph (1).

(4) If a company makes default in complying with Article 401A, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

F72 mod. by SR 2004/307

Status:

Point in time view as at 01/10/2007.

Changes to legislation:

There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), Chapter V.