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STATUTORY INSTRUMENTS

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**1990 No. 1504**

**The Companies (No. 2) (Northern Ireland) Order 1990**

**PART IV**

**OTHER AMENDMENTS OF COMPANY LAW**

*Appointment and removal of auditors and related matters*

**Introduction**

**53.** The following Articles amend the provisions of the Companies Order relating to auditors by inserting new provisions in Chapter V of Part XII of that Order in place of Articles 392 to 396 and 398 to 401.

**Appointment of auditors**

**54.—(1)** The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

*“Appointment of auditors*

**Duty to appoint auditors**

**392.—(1)** Every company shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to Article 396A (dormant company exempt from obligation to appoint auditors).

(2) Auditors shall be appointed in accordance with Article 393 (appointment at general meeting at which accounts are laid), except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with Article 393A.

(3) 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) or 393A(2), according to whichever of those Articles applies.

(4) Articles 393 and 393A have effect subject to Article 394 under which a private company may elect to dispense with the obligation to appoint auditors annually.

**Appointment at general meeting at which accounts laid**

**393.—(1)** This Article applies to every public company and to a private company which has not elected to dispense with the laying of accounts.

(2) 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) 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) If the directors fail to exercise their powers under paragraph (3), the powers may be exercised by the company in general meeting.

### **Appointment by private company which is not obliged to lay accounts**

**393A.**—(1) This Article applies to a private company which has elected in accordance with Article 260 to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the previous financial year are sent to members under Article 246 or, if notice is given under Article 261(2) requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditors of the company may be appointed by the directors at any time before—

- (a) the end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under Article 246, or
- (b) if notice is given under Article 261(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.

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

(5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.

### **Election by private company to dispense with annual appointment**

**394.**—(1) A private company may elect (by elective resolution in accordance with Article 387A) to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless—

- (a) a resolution has been passed under Article 258 by virtue of which the company is exempt from the obligation to appoint auditors, or
- (b) a resolution has been passed under Article 401 to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office—

- (a) where Article 393 then applies, until the conclusion of the next general meeting of the company at which accounts are laid;
- (b) where Article 393A then applies, until the end of the time for appointing auditors for the next financial year under that Article.

(4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this Article in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

#### **Appointment by Department in default of appointment by company**

**395.**—(1) If in any case 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) 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.

#### **Filling of casual vacancies**

**396.**—(1) The directors, 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) Special notice is required for a resolution at a general meeting of a 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) 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.

#### **Dormant company exempt from obligation to appoint auditors**

**396A.**—(1) A company which by virtue of Article 258 (dormant companies: exemption from provisions as to audit of accounts) 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 the exemption ceases.

(3) 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) Where Article 393A 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 Article 246, or
- (b) if notice is given under Article 261(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 paragraph (3) or (4), the powers may be exercised by the company in general meeting.”.

(2) In Schedule 23 to the Companies Order (punishment of offences), at the appropriate place insert—

“395(2)	Company failing to give Department notice of non-appointment of auditors.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”.
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(3) In section 46(4) of the Banking Act 1987(1) (duty of auditor of authorised institution to give notice to Bank of England of certain matters) for “Articles 392” substitute “Chapter V of Part XII and Articles”.

### **Rights of auditors**

**55.**—(1) The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

#### *“Rights of auditors*

### **Rights to information**

**397A.**—(1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers, and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company, and
- (b) is misleading, false or deceptive in a material particular.

A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

(3) A subsidiary undertaking which is a body corporate incorporated in Northern Ireland, and the auditors of such an undertaking, shall give to the auditors of any parent company of the undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a subsidiary undertaking fails to comply with this paragraph, the undertaking and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with this paragraph he is guilty of an offence and liable to a fine.

(4) A parent company having a subsidiary undertaking which is not a body corporate incorporated in Northern Ireland shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a parent company fails to comply with this paragraph, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Article 680B (criminal proceedings against unincorporated bodies) applies to an offence under paragraph (3).

### **Right to attend company meetings, &c.**

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

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

(2) In relation to a written resolution proposed to be agreed to by a private company in accordance with Article 389A, the company’s auditors are entitled—

- (a) to receive all such communications relating to the resolution as, by virtue of any provision of Schedule 15A, are required to be supplied to a member of the company,
- (b) to give notice in accordance with Article 389B of their opinion that the resolution concerns them as auditors and should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company,
- (c) to attend any such meeting, and
- (d) to be heard at any such meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(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.”.

(2) In Schedule 23 to the Companies Order (punishment of offences) at the appropriate place insert—

“397A(2)	Officer of a company making false, misleading or deceptive statement to auditors.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.
397A(3)	Subsidiary undertaking or its auditor failing to give information to auditors of parent company.	Summary.	One-fifth of the statutory maximum.

397A(4)	Parent company failing to obtain from subsidiary undertaking information for purposes of audit.	Summary.	One-fifth of the statutory maximum.”.
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### Remuneration of auditors

56. The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

#### *“Remuneration of auditors*

#### **Remuneration of auditors**

**398A.**—(1) 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) 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.

(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 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.

#### **Remuneration of auditors or their associates for non-audit work**

**398B.**—(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.”.

## **Removal, resignation, &c. of auditors**

**57.**—(1) The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

### *“Removal, resignation, &c. of auditors*

#### **Removal of auditors**

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

(2) 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) 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.

#### **Rights of auditors who are removed or not re-appointed**

**399A.**—(1) 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) 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) 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) The company shall (unless the representations are received by it too late for it to do so)—

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

(5) 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) 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.

### **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) 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.

### **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) 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) before the meeting convened on his requisition, or
- (b) 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
- (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) 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) 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.

### **Termination of appointment of auditors not appointed annually**

**401.**—(1) When an election is in force under Article 394 (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

No member may deposit more than one such notice in any financial year of the company.

(2) If such a notice is deposited it is the duty of the directors—

- (a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and
- (b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re-appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under Article 246 and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this Article by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This Article has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this Article.”

(2) In Schedule 23 to the Companies Order (punishment of offences), at the appropriate place insert—

“399(2)	Failing to give notice to registrar of removal of auditor.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
400(3)	Company failing to forward notice of auditor’s resignation to registrar.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
400A(5)	Directors failing to convene meeting requisitioned by resigning auditor.	1. On indictment. 2. Summary.	A fine. The statutory maximum.”.	

### Statement by person ceasing to hold office as auditor

**58.**—(1) The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

#### “Statement by person ceasing to hold office as auditor

**401A.**—(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.

#### **Offences of failing to comply with Article 401A**

**401B.**—(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.”.

(2) In Schedule 21 to the Companies Order (unregistered companies), in the entry for Articles 392 to 401 for “401” substitute “401B”.

(3) In Schedule 23 to the Companies Order (punishment of offences), at the appropriate place insert—

“401B(1)	Person ceasing to hold office as auditor failing to deposit statement as to circumstances.	1. On indictment. Summary.	2. A fine. The statutory maximum.	
401B(4)	Company failing to comply with requirements as to statement of person ceasing to hold office as auditor.	1. On indictment. Summary.	2. A fine. The statutory maximum.	One-tenth of the statutory maximum.”.