

EXPLANATORY MEMORANDUM TO
THE STATUTORY AUDITORS AND THIRD COUNTRY AUDITORS
(AMENDMENT) (NO 2) REGULATIONS 2008

2008 No. 2639

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform (BERR) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations amend the provisions on the registration of third country auditors in the Statutory Auditors and Third Country Auditors Regulations 2007 (“SATCAR”)¹, in order to align them with Decision 2008/627/EC of the European Commission concerning a transitional period for audit activities of certain third country auditors and audit entities (“the Commission Decision”)². SATCAR itself amended the provisions of the Companies Act 2006 relating to the regulation of statutory auditors, and provided for a register of non-EEA auditors to be established in order to implement many provisions of Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (“the Audit Directive”)³.

3. Matters of special interest to the joint committee on statutory instruments

3.1 None.

4. Legislative background

4.1 The legislative background to SATCAR was set out in the explanatory memorandum to those regulations. This is available at www.opsi.gov.uk/si/si2007/em/uksiem_20073494_en.pdf. These regulations amend SATCAR so that the provisions relating to the registration of third country auditors are in line with the Commission Decision, which provides transitional arrangements for the registration and regulation of auditors from certain third countries. A large part of the implementation of the Commission Decision will be done by the Professional Oversight Board of the Financial Reporting Council (POB) as “the designated body” under SATCAR. The amendments here are intended to enable the POB to do this in line with the Decision.

4.2 Regulation 2(2) introduces the necessary new definitions into regulation 29 of SATCAR. These include the definition of an “exempt third country auditor”, which specifies which auditors can benefit from the transitional arrangements to be implemented by the POB in accordance with the Commission Decision. That definition relies on the definition of a “specified third country”, which lists those countries whose auditors may benefit from the transitional arrangements.

¹ S.I. 2007/3494.

² OJ L202, 31.7.2008, p.70.

³ OJ L 157, 9.6.2006, p. 87.

4.3 Regulation 2(3) amends regulation 35 of SATCAR to require exempt third country auditors to supply the information specified in the Commission Decision when they register with the POB. Regulation 2(4) amends regulation 39 of SATCAR so that the POB is provided with updated information about exempt third country auditors who have registered. Alongside the POB's existing powers under section 1239(7) of the Companies Act 2006, to disapply information requirements in SATCAR, these changes will allow it to operate the registration system for exempt third country auditors in line with the requirements of the Commission Decision. The POB's written directions under the Companies Act to implement the Commission decision will be available at www.frc.org.uk/pob.

4.4 Regulation 2(5) amends regulation 40 of SATCAR to set out those situations where an exempt third country auditor may be removed from the register of third country auditors. The amendment is necessary because the existing provisions in SATCAR for the removal of third country auditors from the register are not compatible with the information requirements set out in the Commission Decision.

4.5 The Transposition Note setting out the main provisions implementing the Statutory Audit Directive has been updated to reflect the implementation of the Commission Decision. It is attached as an annex to this Explanatory Memorandum.

5. Territorial Extent and Application

5.1 These regulations apply to the United Kingdom.

6. European Convention on human rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy background to SATCAR, and to the implementation of the Audit Directive in general, is covered in the explanatory memorandum to those regulations. These regulations amend SATCAR so that the provisions relating to the registration of third country auditors are in line with the Commission Decision. That Decision was taken under the Commission's powers in the Audit Directive. It provides a transitional period for auditors from certain third countries to continue to audit accounts of overseas companies that are publicly traded on EU regulated markets without being subject to the regulation otherwise required by the Directive.

7.2 As it was during the negotiation and implementation of the Audit Directive, the approach to the Commission Decision has been to set a minimum statutory framework for audit regulation, while allowing professional and expert bodies to set the detailed requirements. The regulations ensure that auditors from the relatively large number of countries covered by the Commission Decision may all take advantage of the transitional arrangements. They also enable the POB to ensure that exempt third country auditors must provide all the information that, under the Decision, may be included on the register, and must keep that information up to date.

Commencement date

7.2 These regulations come into force on 31 October 2008.

Consultation

7.3 In January 2007, the European Commission published a consultation paper on the implementation of Articles 45 to 47 of the Statutory Audit Directive. It then issued a summary report of the results of the consultation in July 2007. BERR encouraged UK organisations to respond to the consultation. BERR has also sought comments from the accountancy institutes, the larger accountancy firms, the investor groups and others on each of the official draft Decisions that the Commission has issued, as well as seeking informal comments and supporting evidence at various stages of the negotiation.

7.4 In May 2008, the POB published a consultation paper on its proposals for the regulation of third country auditors. The main organisations interested in the proposals were the large accountancy firms with international networks, and the accountancy institutes. Following the POB consultation on 25 July, BERR officials discussed a draft of these regulations with representatives of the POB, the accountancy institutes and the large accountancy firms. BERR then published a draft of the regulations on its website for comment for a five week period beginning in August 2008. BERR received two written representations in response, which raised points of detail on the drafting. BERR has issued an explanatory text setting out and responding to the comments made on the draft regulations at:

www.berr.gov.uk/whatwedo/businesslaw/co-act-2006/made-or-before-parliament/page35232.html.

7.5 Details of the consultations on the development of SATCAR are set out in the Explanatory Memorandum to those regulations.

Scrutiny history

7.6 These regulations implement Commission Decision 2008/627/EC which was taken under article 46 of the Audit Directive. BERR submitted an unnumbered EM on 15 February 2008 on the proposed Commission Decision (EC) when it was issued in draft. The House of Commons European Scrutiny Committee cleared it while considering it politically important (Fourteenth Report, Item 29426, 20 February 2008). The House of Lords Select Committee on the European Union cleared it by letter of 4 March 2008 (Progress of Scrutiny - Seventh Report, 14 March 2008). BERR also wrote to the Committees on 21 August to inform them that the Decision had been adopted.

7.7 The scrutiny history of the Audit Directive is set out in the Explanatory Memorandum to SATCAR.

8. Impact

8.1 These regulations amend the provisions in SATCAR which specify the information that must be provided when exempt third country auditors register with the POB. The Explanatory Memorandum to SATCAR included an Impact Assessment on the implementation of the Audit Directive, including the provisions on registration

of third country auditors. That Impact Assessment is available at www.opsi.gov.uk/si/si2007/em/uksiem_20073494_en.pdf. In general, the impact of the Directive as assessed at that time is unchanged by these regulations, which only affect registration information. As there is no significant impact on the private or voluntary sectors resulting from the regulations, a new Impact Assessment is not required.

9. Contact

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TRANSPOSITION NOTE & TABLE

DIRECTIVE 2006/43/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 MAY 2006 ON STATUTORY AUDITS OF ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS, AMENDING COUNCIL DIRECTIVES 78/660/EEC AND 83/349/EEC AND REPEALING COUNCIL DIRECTIVE 84/253/EEC

1. This note describes the implementation in the UK of Directive 2006/43 EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L157, 9.6.2006, p.87).

2. UK law already regulates auditors and the audit process in Parts 16 and 42 of the Companies Act 2006, which apply to the whole of the UK and were brought into force on 6th April 2008. They replaced earlier provisions in the Companies Act 1985 and the Companies Act 1989 in Great Britain, and equivalent legislation in Northern Ireland.

3. The UK implementation of the Directive consists of provisions in the following instruments, which are the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform, except where indicated:

- Parts 16 and 42 of the Companies Act 2006;
- Statutory Auditors and Third Country Auditors Regulations 2007 (including amendments to the Companies Act 2006);
- Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008 (correcting minor errors in the Statutory Auditors and Third Country Auditors Regulations 2007);
- Statutory Auditors (Delegation of Functions etc) Order 2008 (which delegates some functions of the Secretary of state under Parts 16 and 42 of the Companies Act 2006 to the Professional Oversight Board or to the Auditing Practices Board);
- Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008;
- Partnerships (Accounts) Regulations 2008;
- Bank Accounts Directive (Miscellaneous Banks) Regulations 2008;
- Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;
- Companies Act 2006 (Consequential Amendments etc) Order 2008;
- Building Societies Act 1986 (*HM Treasury responsible*);
- Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (*HM Treasury responsible*);
- Friendly Societies Act 1992 (*HM Treasury responsible*);
- Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008 (*HM Treasury responsible*);

- Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2008 (*HM Treasury responsible*);
- Statutory Auditors (Transparency) Instrument 2008 (*Professional Oversight Board responsible*);
- Statutory Auditors (Registration) Instrument 2008 (*Professional Oversight Board responsible*);
- Statutory Auditors (Examinations) Instrument 2008 (*Professional Oversight Board responsible*);
- Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 (*Financial Services Authority responsible*).

4. The table below describes the main substantive provisions implementing the Directive. Unless otherwise indicated, references in the table to a section or schedule are to provisions of the Companies Act 2006 and references to a regulation are to a provision of the Statutory Auditors and Third Country Auditors Regulations 2007.

Directive 2006/43/EC on statutory audits: Transposition Measures		
Article	Objective	Implementation
1	Describes the Directive’s subject matter.	No implementation required.
2	Sets out definitions of terms used in Directive.	Directive definitions reflected in substantive implementing provisions.
APPROVAL OF AUDITORS		
3.1	Statutory audits may only be carried out by approved statutory auditors.	Section 1212(1).
3.2	Competent authorities to be designated for approving statutory auditors.	Section 1217 and Schedule 10.
3.3	Statutory auditors who are individuals to be approved only if articles 4 and 6-10 are met.	See implementation of articles 4 and 6-10 below.
3.4	Statutory auditors which are firms to be approved only if individuals conducting audits comply with articles 4 and 6-12, and if firm is controlled and managed by qualified individuals.	Paragraphs 6 and 7 of Schedule 10. See also implementation of articles 4 and 6-12 below.
4	Statutory auditors must be of good repute.	Paragraph 8 of Schedule 10.
5.1	Approval to be withdrawn if good repute compromised.	Paragraphs 8 and 14 of Schedule 10.
5.2	Approval to be withdrawn if firm not controlled and managed by qualified individuals.	Paragraphs 6, 7 and 14 of Schedule 10.

5.3	Withdrawal of approval to be notified to relevant authorities of other Member States.	Sections 1223A and 1253C (as inserted by regulations 7 and 14).
AUDITORS' QUALIFICATIONS		
6	Qualifications to include theoretical instruction, practical training and examination of professional competence.	Sections 1219 and 1220, and paragraphs 6 to 11 of Schedule 11.
7	Examination of professional competence must guarantee theoretical knowledge of subjects relevant to statutory audit, and the ability to apply that knowledge in practice.	Paragraph 8 of Schedule 11 and The Statutory Auditors (Examinations) Instrument 2008.
8.1 and 8.2	List of subjects to be included in test of theoretical knowledge.	Paragraph 8 of Schedule 11 and The Statutory Auditors (Examinations) Instrument 2008.
8.3	Commission may adopt further measures.	No implementation required at this stage.
9.1	Person holding a degree in a subject may be exempted from further test of theoretical knowledge under Article 7 or 8 in that subject.	Paragraph 8(2) of Schedule 11.
9.2	Person holding a degree in a subject may be exempted from further test of ability to apply knowledge under Article 7 if also has a diploma attesting to practical training.	Paragraph 8(3) of Schedule 11.
10.1	Practical training of minimum 3 years, at least 2 years of which with a statutory auditor.	Paragraph 9 of Schedule 11.
10.2	Training providers must provide adequate guarantees of their ability to provide training.	Paragraph 9(3) of Schedule 11.
11	Member State may allow a person who does not meet the Article 6 requirements instead to qualify through: (a) 15 years' professional experience and passing the exam under Article 7; or (b) 7 years' professional experience, passing the exam under Article 7, and completing the practical training under Article 10.	(a) Not implemented. (b) Paragraph 7 of Schedule 11.
12.1	Theoretical instruction of more than 1 year may count towards up to 4 years of the professional experience required by Article 11.	Paragraph 10(1) of Schedule 11.
12.2	Combination of professional experience and practical training must not be shorter than combination of theoretical instruction with practical training.	Paragraph 10(2) of Schedule 11.
13	Statutory auditors required to take part in continuing education.	Paragraphs 11 and 14 of Schedule 10.
14	Member State authorities must approve auditors from other Member States who pass an aptitude test.	Paragraph 6 of Schedule 10 (as amended by regulation 17).

REGISTRATION OF AUDITORS		
15.1	Auditors to be entered into public register in accordance with Articles 16 and 17. Requirements of Articles 15 and 16 may be disapplied if threat to a person's security.	See implementation of Articles 16 and 17 below. The Statutory Auditors (Registration) Instrument 2008.
15.2	Each auditor to be identified by registration number; register to be in electronic form and electronically accessible.	The Statutory Auditors (Registration) Instrument 2008.
15.3	Register to contain name and address of auditors' supervisory authorities.	The Statutory Auditors (Registration) Instrument 2008.
15.4	Register to be fully operational by 29 June 2009.	The Statutory Auditors (Registration) Instrument 2008.
16.1	Register to contain individual statutory auditor's name and address, details of any firm he is employed by, and details of any registration in other Member States.	The Statutory Auditors (Registration) Instrument 2008.
16.2	Third country auditors to be marked in register as such.	Regulation 32(2)(c).
17.1	Register to contain audit firm's name and address, legal form, names and addresses of owners and managers, and details of any registration in other Member States.	The Statutory Auditors (Registration) Instrument 2008.
17.2	Third country audit firms to be marked in register as such.	Regulation 32(3)(d).
18	Statutory auditors under a duty to update register.	The Statutory Auditors (Registration) Instrument 2008.
19	Information provided for register under Articles 16, 17 and 18 must be signed by statutory auditor.	The Statutory Auditors (Registration) Instrument 2008.
20.1	Register to be in a language permitted by Member State.	The Statutory Auditors (Registration) Instrument 2008.
20.2	Member State may allow information on register in a second Community language.	Not implemented.
PROFESSIONAL ETHICS		
21.1	Statutory auditors subject to professional ethics principles, including integrity, objectivity, professional competence and due care.	Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).
21.2	Commission may adopt further measures.	No implementation required at this stage.
22.1	Statutory auditor to be independent of audited person.	Sections 1214 and 1215, and paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).

22.2	Audit not to be carried out if significant threats to statutory auditor's independence; safeguards to be applied to mitigate threats. Audit of public interest entity not to be carried out in case of self-review or self-interest,	Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19). Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).
22.3	Statutory auditors to record significant threats to independence and safeguards applied.	Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).
22.4	Commission may adopt further measures.	No implementation required at this stage.
23.1	Audit documents to be subject to rules on confidentiality.	Paragraph 9(3)(b) of Schedule 10 (as amended by regulation 19).
23.2	Such confidentiality rules not to impede enforcement of Directive.	Paragraph 9(3)(b) of Schedule 10 (as amended by regulation 19).
23.3	Outgoing statutory auditor to provide incoming statutory auditor with all relevant information.	Paragraph 9(3)(c) of Schedule 10 (as amended by regulation 19).
23.4	Obligations of Article 23.1 and 2 extend to former statutory auditors.	Paragraph 9(4) of Schedule 10 (as amended by regulation 19).
24	Owners and managers of audit firms not to compromise independence and objectivity of individual auditors in conduct of audits.	Paragraph 9(3)(a) of Schedule 10 (as amended by regulation 19).
25	Audit fees not to be influenced by provision of additional services or based on a contingency.	Paragraphs 9(1)(e) and 21 of Schedule 10 (as amended by regulation 19).
AUDIT STANDARDS AND REPORTING		
26.1	Statutory audits to be conducted in accordance with international auditing standards adopted by Commission; but national standards may be applied if no such standards adopted.	No implementation required at this stage.
26.2	Commission may adopt international auditing standards under certain conditions.	No implementation required.
26.3	Member States may derogate from adopted international auditing standards under certain conditions.	No implementation required at this stage.
26.4	Member States may impose additional requirements until 29 June 2010.	No implementation required at this stage.
27(a)	For statutory audits of group accounts group auditor bears full responsibility.	- sections 495 and 471; - section 78(4)(c) of Building Societies Act 1986; - section 73(5)(c) of Friendly Societies Act 1992.
27(b)	Group auditor reviews work performed by other auditors, and documents review.	Paragraphs 10A(1) and 22 of Schedule 10 (as inserted by regulation 20).

27(c)	If work is carried out by an auditor in a country with which there is no Article 47 arrangement, group auditor is to retain copies of that auditor's documentation and make them available to authorities.	Paragraph 10A(3) to (6) of Schedule 10 (as inserted by regulation 20).
28.1	Audit report of audit firm to be signed by individual auditor carrying out the work, unless threat to personal security.	<ul style="list-style-type: none"> - sections 503 to 506; - regulation 10 of the Partnerships (Accounts) Regulations 2008; - regulation 9 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 8 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - sections 78A to 78D of Building Societies Act 1986 (as inserted by article 5 of Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - sections 74 to 74C of Friendly Societies Act 1992 (as inserted by article 5 of Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); -The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
28.2	If no international standard adopted for audit reports under Article 26.1, Commission may adopt a common EU standard.	No implementation required at this stage.
QUALITY ASSURANCE REVIEWS		
29.1	Statutory auditors must be subject to quality assurance reviews meeting following conditions:	
	(a) independent of the auditors;	Paragraph 12(1A) of Schedule 10 (as amended by regulation 22).
	(b) funding secure and free from influence;	Paragraph 12(1) of Schedule 10 (as amended by regulation 22).
	(c) adequate resources;	Paragraph 12(1) of Schedule 10 (as amended by regulation 22).
	(d) carried out by persons with appropriate education and experience;	Paragraph 13(4) of Schedule 10 (as amended by regulation 23).
	(e) selection of reviewers is objective;	Paragraph 13(4) of Schedule 10 (as amended by regulation 23).
	(f) review to test audit files, check compliance with audit standards, independence requirements, resources allocated, audit fees, and internal quality control;	Paragraph 13(5) and (6) of Schedule 10 (as amended by regulation 23).

	(g) review to be subject of a report;	Paragraph 13(8) of Schedule 10 (as amended by regulation 23).
	(h) take place at least every 6 years;	Paragraph 13(3) of Schedule 10 (as amended by regulation 23).
	(i) overall results of reviews to be published annually;	Section 1251A (as inserted by regulation 11).
	(j) review recommendations to be followed up, or disciplinary action taken.	Paragraphs 12 and 14 of Schedule 10 (as amended by regulation 22).
29.2	Commission may adopt measures for the uniform application of (a), (b) and (e) to (j) above.	No implementation required at this stage.
INVESTIGATIONS AND OVERSIGHT		
30.1	Member States to have effective systems of investigations and penalties.	Paragraphs 12 and 14 of Schedule 10 (as amended by regulation 22).
30.2	Penalties to be effective, proportionate and dissuasive.	Paragraphs 12 and 14 of Schedule 10 (as amended by regulation 22).
30.3	Penalties to be disclosed to the public and include the possibility of withdrawal of approval.	Paragraph 12(3) of Schedule 10 (as amended by regulation 22).
31	Commission to present a report on auditors' liability.	No implementation required.
32.1	Member States to have effective oversight of statutory auditors in accordance with paragraphs 2 to 7.	Sections 1209 to 1264 and Schedules 10 to 14.
32.2	All statutory auditors to be subject to public oversight.	Sections 1212(1) and 1217, paragraphs 1 to 4 of Schedule 10, and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008.
32.3	System of public oversight to be governed by independent non-practitioners.	Article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008.
32.4	System of public oversight to oversee approval and registration of statutory auditors, adoption of audit standards, continuing education, quality assurance, investigations and discipline.	Sections 1209 to 1264 and Schedules 10 to 14, and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008.
32.5	System of public oversight to include conducting investigations in relation to statutory auditors and taking appropriate action.	Sections 1224 and 1225, and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008.
32.6	System of public oversight to be transparent and publish annual work programmes and activity reports.	Paragraph 10 of Schedule 13 and article 7 of the Statutory Auditors (Delegation of Functions etc) Order 2008.

32.7	System of public oversight to be adequately funded, and funding free from undue influence.	Article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008.
33	Member States to ensure cooperation of national public oversight systems, and to nominate one entity as responsible for that cooperation.	Sections 1253A to 1253C (as inserted by regulation 16), and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008.
34.1	Member States to respect the principle of home-country regulation.	Sections 1210 and 1212.
34.2	For audits of group accounts, Member States may not impose additional requirements on audits of subsidiaries established in other Member States.	Sections 1210 and 1212, and paragraphs 6 to 11 of Schedule 10 (as amended by regulations 17 to 21).
34.3	For companies whose securities are traded on the market of a second Member State, the second Member State may not impose additional requirements on their audits.	Sections 1210 and 1212, and paragraphs 6 to 11 of Schedule 10 (as amended by regulations 17 to 21).
35.1	Member States to designate competent authorities for Directive's tasks.	Section 1217 and Schedule 10, Section 1220 and Schedule 11, and the Statutory Auditors (Delegation of Functions etc) Order 2008.
35.2	Competent authorities to avoid conflicts of interest.	Section 1217 and Schedule 10, Section 1220 and Schedule 11, and the Statutory Auditors (Delegation of Functions etc) Order 2008.
36.1	Competent authorities of Member States to cooperate with one another, render assistance and exchange information.	Sections 1253A to 1253C (as inserted by regulation 14).
36.2	Obligations of professional secrecy to apply to employees of competent authorities.	Sections 1224A and 1224B and Schedule 11A (as inserted by regulation 8 and Schedule to the Regulations).
36.3	Article 36.2 shall not prevent competent authorities exchanging information.	Section 1224A(4) and (5) and Schedule 11A (as inserted by regulation 10 and Schedule to the Regulations).
36.4	Competent authorities to provide information requested by competent authorities of other Member States. They may refuse in certain circumstances.	Section 1253B (as inserted by regulation 14).
36.5	Competent authorities to notify competent authorities of other Member States if aware of unlawful conduct in their territories.	Section 1253C (as inserted by regulation 14).
36.6	Competent authorities to conduct investigations requested by competent authorities of other Member States. They may refuse in certain circumstances.	Section 1253B (as inserted by regulation 14).

36.7	Commission may adopt further measures to facilitate cooperation between competent authorities.	No implementation required at this stage.
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APPOINTMENT AND DISMISSAL OF AUDITORS

37.1	Statutory auditor to be appointed by members of audited entity.	<ul style="list-style-type: none"> - sections 485 and 489; - regulation 8 of the Partnerships (Accounts) Regulations 2008; - regulation 7 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 6 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - section 77 of, and Schedule 11 to, the Building Societies Act 1986 (as amended by paragraphs 13 and 14 of Schedule 1 to the Companies Act 2006 (Consequential Amendments etc) Order 2008); - section 72 of, and Schedule 14 to, the Friendly Societies Act 1992 (as amended by paragraphs 15, 16 and 187 of Schedule 1 to the Companies Act 2006 (Consequential Amendments etc) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
37.2	Alternative systems of appointment allowed if designed to ensure independence of auditor from managers of audited entity.	Sections 486 and 490;

38.1	Statutory auditors not to be dismissed on improper grounds.	<ul style="list-style-type: none"> - section 994 (as amended by regulation 42); - regulation 11 of the Partnerships (Accounts) Regulations 2008; - regulation 10 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 9 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - paragraph 6A of Schedule 11 to the Building Societies Act 1986 (as inserted by article 6 of Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - paragraph 10A of Schedule 14 to the Friendly Societies Act 1992 (as inserted by article 6 of Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
38.2	Statutory auditor and audited entity to inform competent authority of dismissal or resignation, including an explanation of the reasons.	<ul style="list-style-type: none"> - sections 522 and 523; - regulations 12 and 13 of the Partnerships (Accounts) Regulations 2008; - regulations 11 and 12 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulations 10 and 11 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - paragraphs 8A to 8C of Schedule 11 to the Building Societies Act 1986 (as inserted by article 6 of Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - paragraphs 15A to 15C of Schedule 14 to the Friendly Societies Act 1992 (as inserted by article 6 of Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
STATUTORY AUDITS OF PUBLIC INTEREST ENTITIES		
39	Member States may exempt non-traded public interest entities from the requirements of Articles 40 to 43.	Implemented in provisions relating to Articles 40 to 43 – see below.
40.1	Statutory auditors of public interest entities to publish transparency reports containing certain information on their websites.	The Statutory Auditors (Transparency) Instrument 2008.
40.2	Transparency report to be signed by the statutory auditor.	The Statutory Auditors (Transparency) Instrument 2008.

41.1	Public interest entities to have audit committees, whose membership includes one independent person competent in accounting or auditing.	No implementation required – see Article 41.5 below.
41.2	Functions of an audit committee to include monitoring financial reporting process, the audit, and the independence of the statutory auditor.	No implementation required – see Article 41.5 below.
41.3	Proposal of public interest entity’s managers for appointment of statutory auditor to be based on audit committee’s recommendation.	No implementation required – see Article 41.5 below.
41.4	Statutory auditor to report to audit committee on key matters arising from audit.	Paragraph 10B(2)(e) and (f) of Schedule 10 (as inserted by regulation 21).
41.5	Member States may exempt public interest entities from the above requirements if they have a body performing equivalent functions.	Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.
41.6	Member States may exempt from the above requirements: (a) a subsidiary of a public interest entity; (b) a collective investment undertaking; (c) an issuer of asset-backed securities; (d) a credit institution which is not traded or issued debt securities of more than 100 million euros.	Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.
42.1	Statutory auditors of public interest entities to: (a) confirm annually in writing to audit committee their independence; (b) disclose annually to audit committee any additional non-audit services provided to entity; (c) discuss with audit committee the threats to their independence and the safeguards applied.	(a) Paragraph 10B(2)(a) of Schedule 10 (as inserted by regulation 21). (b) Paragraph 10B(2)(b) of Schedule 10 (as inserted by regulation 21). (c) Paragraph 10B(2)(c) and (d) of Schedule 10 (as inserted by regulation 21).
42.2	In audit firms, key audit partners responsible for audit to rotate after 7 years.	Paragraph 10C(1)(a) and (b) of Schedule 10 (as inserted by regulation 21).
42.3	Key audit partners not to take up key management posts in audited entity for two years following audit.	Paragraph 10C(3) and (4) of Schedule 10 (as inserted by regulation 21).
43	Quality assurance review under Article 29 must be every 3 years for statutory auditors of public interest entities.	Paragraph 23(1A) of Schedule 10 (as inserted by regulation 28).
AUDITORS FROM THIRD COUNTRIES		
44.1	Member States may approve third country auditors as statutory auditors, subject to reciprocity, if they meet requirements equivalent to Articles 4 and 6 to 13.	Section 1221(3) and (4).

44.2	The requirements of Article 14 also apply to approval of a third country auditor.	Section 1221(1A) and (7A) (as amended by regulation 6).
45.1	Competent authorities of Member State must register in accordance with Articles 15 to 17 third country auditor who provide an audit report of a company whose securities are traded on a regulated market in that Member State.	Regulations 34 to 37 (as amended by regulation 2(5) and (6) of the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008 and regulation 2(3) to (4) of the Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008).
45.2	Articles 18 and 19 also apply to such registration.	Regulations 35(5) and 39.
45.3	Member States to subject registered third country auditors to their systems of oversight, quality assurance, and investigation and penalties.	Sections 1242 to 1245 and Schedule 12 (as amended by regulations 32 and 33).
45.4	Audit reports to have no legal effect if the third country auditor is not registered.	Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.
45.5	Third country auditors to be registered only if: (a) meet requirements equivalent to Article 3(3); (b) majority of firm's managers meet requirements of Articles 4 to 10; (c) individual auditors meet requirements of Articles 4 to 10; (d) audits conducted in accordance with standards and requirements equivalent to Articles 22, 24, 25 and 26; (e) publish a transparency report equivalent to Article 40 requirements.	(a) Regulations 35(3)(c) and (4) and 36(c); (b) Regulations 35(3)(c) and 36(b)(i); (c) Regulations 35(3)(c) and 36(b)(ii); (d) Regulations 35(3)(c) and 36(d) and (e); (e) Regulations 35(3)(c) and 36(f).
45.6	Equivalence referred to in Article 45.5(d) to be assessed by Commission. Member States may assess if no Commission decision.	Regulation 36(d) and (e).
46.1	Member States may disapply Article 45.1 – 3 on basis of reciprocity if a third country auditor is subject in home country to quality assurance, investigations and oversight equivalent to Articles 29, 30 and 32.	Sections 1239(7) and 1242(4) (as amended by regulation 30(5)).
46.2	Equivalence referred to in Article 46.1 to be assessed by Commission. Member States may assess if no Commission decision.	Sections 1239(7) and 1242(4) (as amended by regulation 30(5)).

46.3	Member States to communicate to Commission their assessments of equivalence and any cooperative arrangements with third country authorities.	No implementation required in legislation.
TRANSFER OF PAPERS TO THIRD COUNTRY AUTHORITIES		
47.1	Member States may allow transfer of audit papers to a third country authority if: (a) papers relate to a company traded in that country or a group based in that country; (b) transfer is via Member State authority; (c) third country authority meets requirements declared as adequate under Article 47.3; (d) there are working arrangements based on reciprocity between the authorities; (e) transfer is in accordance with Data Protection Directive.	Section 1253D (as inserted by regulation 15). (No further implementation required at this stage until a Commission decision under Article 47.3.)
47.2	Working arrangements referred to in Article 47.1(d) must ensure that: (a) requests for audit papers are justified; (b) employees of authority are subject to professional secrecy obligations; (c) authorities only use papers for oversight and other functions equivalent to Articles 29, 30 and 32; (d) a request for papers may be if adverse effect on security or public order, or judicial proceedings initiated in respect of same matter.	Section 1253E (as inserted by regulation 15). (No further implementation required for the purposes of 47.1 at this stage until a Commission decision under Article 47.3.)
47.3	Adequacy referred to in Article 47.1(c) to be decided by Commission.	No implementation required at this stage.
47.4	As a derogation from Article 47.1, Member States may allow direct transfer of papers from auditors to third country authorities if: (a) authorities have initiated investigations; (b) transfer does not conflict with auditor's obligations to Member State authority; (c) reciprocal working arrangements between authorities for direct access; (d) Member State authority informed of request in advance; (e) working arrangements comply with Article 47.2.	(a) Paragraph 16A(2) of Schedule 10 (as inserted by regulation 24). (b) No implementation required, as no such conflicting obligations exist. (c) Paragraph 16A(1)(a) of Schedule 10 (as inserted by regulation 24) and section 1253E (as inserted by regulation 15). (d) Paragraph 16A(4) of Schedule 10 (as inserted by regulation 24). (e) Paragraph 16A(1)(a) of Schedule 10 (as inserted by regulation 24) and section 1253E (as inserted by regulation 15).

47.5	Commission may specify the cases to which Article 47.4 applies.	No implementation required at this stage.
47.6	Member States to communicate to Commission working arrangements referred to above.	No implementation required in legislation.
COMMITTEE PROCEDURE		
48	Committee procedure (comitology) for further measures to be made by Commission under Directive.	No implementation required.
DISCLOSURE OF AUDITOR REMUNERATION		
49.1(a)	Article 43.1 of Directive 78/660/EEC amended so that notes on company accounts include auditor's fees for audit and other services.	<ul style="list-style-type: none"> - Regulation 5 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008; - regulation 4(2) of the Partnerships (Accounts) Regulations 2008; - regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 3(5) of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - Schedule 10C to the Building Societies Act 1986 (as inserted by Schedule 1 to the Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - Schedule 13F to the Friendly Societies Act 1992 (as inserted by Schedule 1 to the Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
49.1(b)	Article 44.1 of Directive 78/660/EEC amended so that Member States may allow small companies not to produce notes on such fees.	<ul style="list-style-type: none"> - regulation 4 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008; - regulation 4(2) of the Partnerships (Accounts) Regulations 2008; - regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008;
49.1(c)	Article 45.2 of Directive 78/660/EEC amended so that Member States may allow medium-size companies not to disclose such fees if disclosed to audit regulator on request.	<ul style="list-style-type: none"> - regulation 4(4) of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008; - regulation 4(2) of the Partnerships (Accounts) Regulations 2008; - regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008;

49.2	Article 34 of Directive 83/349/EEC amended so that notes on group accounts include auditor's fees for audit and other services.	<ul style="list-style-type: none"> - regulation 6 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2007; - regulation 4(2) of the Partnerships (Accounts) Regulations 2008; - regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 3(5) of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - Schedule 10C to the Building Societies Act 1986 (as inserted by Schedule 1 to the Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - Schedule 13F to the Friendly Societies Act 1992 (as inserted by Schedule 1 to the Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
FINAL PROVISIONS		
50	Directive 84/253/EEC (previous directive on audit) is repealed.	No implementation required.
51	Statutory auditor approved under Directive 84/253/EEC before this Directive is transposed to be considered as approved in accordance with this Directive.	Section 1219(b) and (c).
52	Member States may impose more stringent requirement, unless otherwise provided for in Directive.	No specific implementation required.
53	Member States must transpose Directive by 29 June 2008, and communicate main provisions of national law to Commission.	No specific implementation required.
54	Directive enters into force 20 days after publication.	No implementation required.
55	Directive addressed to the Member States.	No specific implementation required.

TRANSPOSITION NOTE & TABLE

DECISION 2008/627/EC OF THE EUROPEAN COMMISSION CONCERNING A TRANSITIONAL PERIOD FOR AUDIT ACTIVITIES OF CERTAIN THIRD COUNTRY AUDITORS AND AUDIT ENTITIES

1. This note describes the implementation in the UK of Decision 2008/627/EC (the Commission Decision) dated 29 July 2008 (OJ L202, 31.7.2008, p.70).

2. The UK implementation of the Decision consists of provisions in the following instruments, which are the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform, except where indicated:

- Parts 16 and 42 of the Companies Act 2006;
- Statutory Auditors and Third Country Auditors Regulations 2007 [the 2007 regulations];
- Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008 (amending the Statutory Auditors and Third Country Auditors Regulations 2007) [the 2008 regulations];
- Directions to be made under the Companies Act 2006 that certain requirements imposed by the Statutory Auditors and Third Country Auditors Regulations 2007 and the Companies Act 2006 are not to apply to certain third country auditors (*Professional Oversight Board responsible*) [POB Directions].

Directive 2006/43/EC on statutory audits: Transposition Measures

Article	Objective	Implementation
1.1	<p>Requires that Member States do not apply Article 45 of Directive 2006/43/EC in relation to audit reports for financial years beginning during the period 29 June 2008 to 1 July 2010 by auditors from third countries referred to in the Annex to the Commission Decision if they supply the following information to Member States' competent authorities:</p> <p>(a) the name and address of the auditor and information about its legal structure;</p> <p>(b) where the auditor belongs to a network, a description of the network;</p> <p>(c) the auditing standards and independence requirements which have been applied to the audit concerned;</p> <p>(d) a description of the internal quality control system of the audit entity;</p> <p>(e) an indication of the whether and when the last quality assurance review of the auditor was carried out and information about the outcome of the review.</p>	<p>POB Directions.</p> <p>(a) Regulation 35(3)(a) of the 2007 regulations which requires the information in regulation 34(2)(a) and 34(3)(a), (b), (e) and (f) of the 2007 regulations to be included in an application for registration of a third country auditor.</p> <p>(b) Regulation 35(3)(a) of the 2007 regulations, which requires the information in regulation 34(3)(i) of the 2007 regulations to be included in an application for registration of a third country auditor.</p> <p>(c) Regulation 35(3A)(a) of the 2007 regulations as inserted by regulation 2(3) of the 2008 regulations.</p> <p>(d) Regulation 35(3A)(b) of the 2007 regulations as inserted by regulation 2(3) of the 2008 regulations.</p> <p>(e) Regulation 35(3A)(c) and (d) of the 2007 regulations as inserted by regulation 2(3) of the 2008 regulations.</p>
1.2	<p>Requires that the public be informed about third country auditors taking advantage of the transitional arrangements. Allows their registration for this purpose.</p>	<p>Regulation 34(5) of the 2007 regulations.</p>
1.3	<p>Allows Member States to apply their investigations and penalties systems to third country auditors taking advantage of the transitional arrangements.</p>	<p>Regulations 39 and 40 of the 2007 regulations (in particular regulation 39(2) inserted by regulation 2(4) of the 2008 regulations), subject to POB Directions.</p> <p>Section 1242 of and Schedule 12 to the Companies Act 2006 subject to POB Directions.</p>

1.4	Exception to allow Member States to apply Article 45 through cooperative arrangements with third country competent authorities.	Not implemented.
2	Requires the Commission to review the situation of the third countries referred to in the Decision within 2 years.	Not implemented.
3	Addresses the Decision to the Member States.	Not implemented.

Department for Business, Enterprise and Regulatory Reform
2 October 2008