

EXPLANATORY MEMORANDUM TO
THE BANK ACCOUNTS DIRECTIVE (MISCELLANEOUS BANKS) REGULATIONS
2008

2008 No. 567

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

2. Description

2.1 The Bank Accounts Directive (Miscellaneous Banks) Regulations 2008 ensure that certain banking undertakings are subject to the same accounting requirements as banking companies subject to the Companies Act 2006 (the 2006 Act) in implementation of EU Directives. They replace the Banks Accounts Directive (Miscellaneous Banks) Regulations 1991¹ (the 1991 Regulations).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Part 15 of the 2006 Act and regulations made under it replace the provisions of Part 7 of the Companies Act 1985 (the 1985 Act) and Part 8 of the Companies (Northern Ireland) Order 1986 (the 1986 Order) concerning the accounts and reports to be prepared by a company.

4.2 Part 15 comes into force on 6th April 2008, applying to financial years beginning on or after that date. The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008² and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008³ specify the form and content of accounts and reports previously contained in the accounting Schedules to the 1985 Act and the 1986 Order.

4.3 These Regulations concern the form and content of the annual accounts and consolidated accounts of certain banks which are not subject to the 2006 Act accounting requirements. They restate the 1991 Regulations to reflect the 2006 Act and its associated regulations, continuing the implementation of Council Directive 86/635/EEC⁴ so that certain banking undertakings continue to be subject to the same accounting and auditing requirements as companies subject to the 2006 Act.

¹ SI 1991/2704 as amended by SI 2001/3649 and SI 2005/1984.

² SI 2008/409.

³ SI 2008/410.

⁴ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L372 of 31 December 1986, page 1).

4.4 The Regulations also implement in part Directive 2006/43/EC⁵ and are made under the power in section 2(2) of the European Communities Act 1972. They contain requirements relating to the appointment and dismissal of auditors, signature of auditors' reports and disclosure of auditors' remuneration equivalent to the requirements on companies in Part 16 of the 2006 Act and in the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008⁶. As a general rule when transposing this EU legislation the Government has followed the wording of the Directive as closely as possible. Transposition Notes setting out the main provisions implementing Directive 2006/43/EC are attached to the Statutory Auditors and Third Country Auditors Regulations 2007⁷ and can be found at <http://www.opsi.gov.uk/si/si200734>.

4.5 The Regulations are made under the power in section 2(2) of the European Communities Act 1972.

4.6 The DTI submitted EM 7677/04 on 22 April 2004 and a supplementary EM on 2 March 2005 on the Proposal for a Directive of the European Parliament and Council on Statutory Audit of Annual Accounts and Consolidated Accounts and amending Council Directives 78/660/EEC and 83/349/EEC. The House of Commons European Scrutiny Committee cleared it, while considering it legally and politically important (Report 12, Item 25479, Session 2004-5). The House of Lords Select Committee on the European Union cleared it by letter of 18 March 2005 to the Minister (Progress of Scrutiny, 21/3/05, Session 04/05).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Trade and Consumer Affairs, Gareth Thomas, has made the following statement regarding Human Rights:

In my view the provisions of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008 are compatible with the Convention rights.

7. Policy background

Policy

7.1 The Government's general policy on banking undertakings subject to the 1991 Regulations is to treat them in the same way as banking companies of the same size and sector unless this is clearly inappropriate. Therefore, accounting and auditing requirements and options are applied to banking undertakings in the same way as they are applied to banking companies. That policy is unchanged.

⁵ 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 L 157 of 9 June 2006, page 87).

⁶ SI 2008/489.

⁷ SI 2007/3494.

7.2 The detailed accounting and reporting requirements in Part 15 of the 2006 Act and the regulations under it are substantially the same as those in Part 7 of the 1985 Act and Part 8 of the 1986 Order and their associated Schedules.

7.3 These Regulations restate the 1991 Regulations in terms of the 2006 Act and the regulations under it. Leaving aside the new provisions implementing Directive 2006/43/EC, they do not make any change to the substance of the requirements other than to reduce from 10 to 9 months from the end of the financial year the period within which accounts must be prepared; this reflects the new time limit for private companies in section 442(2)(a) of the 2006 Act. They are not politically or legally important.

Consultation

7.4 An initial draft of these Regulations was made available on the Department's website on 20 July 2007, with comments invited by the end of September. A further draft was made available on the Department's website in November 2007 incorporating the provisions relating to the implementation of Directive 2006/43/EC, with comments invited by the end of January 2008. No comments were received.

7.5 There have been three consultations on the implementation of Directive 2006/43/EC. On 23 August 2004 the DTI published a consultation paper asking for comments on the UK's negotiation strategy for the Audit Directive. The majority of the respondents were supportive of the Government's approach. Following the negotiation and adoption of the Directive, on 5 March 2007 the DTI published a consultation on the policy for implementation of the Directive. There were 31 responses, with the majority broadly supportive of the Government's overall approach, while commenting on many detailed issues. A summary of responses to the 5 March consultation, and the Government's conclusions, were published on 25 July 2007 alongside a draft of the Statutory Auditors and Third Country Auditors Regulations 2007 (those regulations were subsequently made on 17 December 2007).

Guidance

7.6 Guidance on these and the other accounting regulations will be published on the Department's website once the regulations have been made. This will explain the impact and relevance of the changes, and help users to find their way around the new form of the detailed requirements on the format and content of accounts.

8. Impact

8.1 A separate Impact Assessment has not been prepared for these Regulations. Where the Regulations restate existing requirements without changing the substance, the impact on business is minimal. The Impact Assessment for Directive 2006/43/EC covers the implementation of the Directive for companies. There is no additional or different impact on these banking undertakings. The Impact Assessment is attached to the Statutory Auditors and Third Country Auditors regulations and can be found at <http://www.opsi.gov.uk/si/si200734>.

8.2 These Regulations have no impact on the public sector.

9. Contact

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