

**EXPLANATORY MEMORANDUM TO
THE COMPANIES AND PARTNERSHIPS (ACCOUNTS AND AUDIT)
REGULATIONS 2013**

2013 No. 2005

1. 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends Part 15 of the Companies Act 2006¹ (“the 2006 Act”) and the Partnerships (Accounts) Regulations 2008² (“the 2008 Regulations”). It corrects defects in the implementation of Council Directive 90/605/EEC³ (“the Directive”). The principle effect of these regulations is to amend the scope of application of those provisions of the 2006 Act and 2008 Regulations that implement the Directive, to make sure that all the partnerships and unlimited companies covered by the Directive are also covered in the UK’s implementation. Those “qualifying partnerships” and unlimited companies are then subject to the same accounting, reporting and auditing requirements as limited companies under Part 15, Chapter 1 of Part 16 and Part 42 of the 2006 Act.

2.2 This instrument also amends Parts 15 and 16 of the 2006 Act and the Limited Liability Partnerships (Accounts and Audit) (Application of the Companies Act 2006) Regulations 2008⁴ (“the 2008 LLP Regulations”) to complete a package of amendments consequential to the implementation of Directive 2009/110/EC⁵ (“the Electronic Money Directive”) in the Electronic Money Regulations 2011⁶ (“the 2011 Regulations”).

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

3.1 None.

4. Legislative context

Requirements relating to the preparation, publication and audit of accounts and reports of unlimited companies and qualifying partnerships

4.1 The Directive extends the scope of the Fourth and Seventh Company Law (Accounting) Directives to require certain partnerships and unlimited companies to

¹ 2006 c.46.

² SI 2008/569.

³ Council Directive 90/605/EEC of 8 November 1990 (OJ L317 of 16 November 1990, page 60) amending Directive 78/660/EEC on annual accounts (OJ L222 of 14 August 1978, page 11) (“the Fourth Company Law (Accounting) Directive”) and Directive 83/349/EEC on consolidated accounts (OJ L193 of 18 July 1983, page 1) (“the Seventh Company Law (Accounting) Directive”) as regards the scope of those Directives.

⁴ SI 2008/1911.

⁵ Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions

⁶ SI 2011/99.

prepare, and where applicable, to obtain an audit of, their accounts and reports as if they were limited companies. The Directive then inserts within the Fourth Company Law (Accounting) Directive specific Member State options in relation to the publication of the accounts of those entities.

4.2 The Department for Trade and Industry submitted an Explanatory Memorandum on a draft of the Directive to Parliament on 4 June 1990 (Council Document No 6847/86). The House of Commons European Scrutiny Committee considered it politically and legally important and cleared it (Report No.24, Session 89/90). The Lords Select Committee on the EU referred it to Sub-Committee A and cleared it (Progress of Scrutiny, 26th June 1990, Session 89/90).

4.3 The UK's original implementation of the Directive was contained in the Partnerships and Unlimited Companies (Accounts) Regulations 1993⁷ and the Partnerships and Unlimited Companies (Accounts) Regulations (Northern Ireland) 1994⁸, both of which were revoked by the 2008 Regulations on 6 April 2008 and replaced, for qualifying partnerships, by those regulations; and for the unlimited companies affected, by provisions of the 2006 Act itself.

4.4 Part 15 of the 2006 Act and regulations made under it concern the accounts and reports to be prepared by a company. It came into force on 6 April 2008, applying to financial years beginning on or after that date. The requirements apply to all limited companies and unlimited companies. However, section 448 of the 2006 Act provides an exemption from the requirement to file accounts and reports for unlimited companies, which is intended to be tailored in such a way to take account of the requirements of the Directive.

4.5 The 2008 Regulations concern the form and content of the annual accounts and consolidated accounts of certain types of partnerships. Partnerships are not subject to the 2006 Act. However the 2008 Regulations apply the provisions of Part 15 and of chapter 1 of Part 16 of the 2006 Act (preparation and audit of accounts and reports) to "qualifying partnerships" as defined in regulation 3 of the 2008 Regulations. Qualifying partnerships are intended to be those general partnerships and limited partnerships that are subject to the requirements of the Directive. The requirements of the 2006 Act apply to the preparation and, where applicable, the audit of the accounts of qualifying partnerships, as if those partnerships were limited companies. However, the 2008 Regulations also contain some provisions specific to qualifying partnerships on the publication of their accounts.

4.6 The 2008 Regulations also implement in part Directive 2006/43/EC⁹. They contain requirements relating to the appointment and dismissal of auditors, which are equivalent to the requirements on companies in Part 16 of the 2006 Act. They also apply the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008¹⁰ to qualifying partnerships; and the provisions of Part 42 of the 2006 Act to statutory auditors of qualifying partnerships.

⁷ SI 1993/1820.

⁸ SR (NI) 1994/133.

⁹ 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 of 9 June 2006, page 87).

¹⁰ SI 2008/489 as amended by SI 2011/2189.

Requirements specific to e-money issuers and groups containing an e-money issuer

4.7 HM Treasury submitted an Explanatory Memorandum on a draft of the Electronic Money Directive to Parliament on 31 October 2008 (Council Document No 14201/08). The House of Commons European Scrutiny Committee cleared it on 24 June 2009. It was cleared by the House of Lords European Scrutiny Committee on 22 April 2009, following letters to the Government on 18 November 2008 and 17 December 2008 and replies by Lord Myners, then Financial Services Secretary, to the Chairman on 2 December 2008, 30 March 2009 and 2 April 2009.

4.8 The Electronic Money Directive was implemented in the UK by the 2011 Regulations, which commenced between February and April 2011. The 2011 Regulations contained certain consequential amendments to the 2008 LLP Regulations affecting the application of the 2006 Act to LLPs. However certain others were missed and no consequential amendments were made to the 2006 Act itself. This instrument aims to correct these omissions.

4.9 This instrument is made under a combination of powers in the Companies Act 2006, the Limited Liability Partnership Act 2000¹¹ and section 2(2) of the European Communities Act 1972¹².

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. The UK Government is responsible for company law in England and Wales and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the 2006 Act and associated legislation on companies and partnerships should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State Employment Relations and Consumer Affairs has made the following statement regarding human rights:

In my view the provisions of the Companies and Partnerships (Accounts and Audit) Regulations 2013 are compatible with the European Convention on Human Rights.

7. Policy background

What is being done and why?

7.1 Limited partnerships are formed of at least one general partner and one or more limited partners. The general partners have unlimited liability. The Fourth Company law Directive requires that limited partnerships which have as general partners only limited liability entities of the types specified in the Directive must prepare and publish accounts, notwithstanding the form of the limited partners. This was explained when the Government consulted on the original implementation of the Directive in 1992.

¹¹ 2000 c.12.

¹² 1972 c.68.

7.2 At the end of 2009 it was brought to the attention of the Department for Business, Innovation and Skills that there was a technical defect in the drafting of the 2008 Regulations. As a result, some limited partnerships interpreted the 2008 Regulations as not applying to them where at least one of their limited partners did not take the form of one of the limited liability entities specified in the Directive (for instance a limited partner was an individual), regardless of all the general partners being limited liability entities of the type specified.

7.3 Regulation 4(3) of this instrument replaces the defective definition of “qualifying partnership” in the 2008 Regulations with a longer, clearer, systematic definition. It then inserts a new regulation 3A which replaces the previous provisions on interpretation of references to a “member” of a qualifying partnership with a new longer, systematic provision on the interpretation of these references for the purpose of the remainder of the 2008 Regulations.

7.4 Regulation 4(4) of this instrument amends regulation 6 of the 2008 Regulations consistent with the provisions discussed above to make sure the intended qualifying partnerships are covered by the requirement to make accounts available for inspection. The amendment to regulation 6 of the 2008 Regulations also fills a further gap in implementation by requiring that accounts be available for inspection at a UK address where a partnership has moved its principal place of business out of the UK.

7.5 Regulation 2(3) to (6) of this instrument amends section 448 of the 2006 Act to correct the implementation of the Directive as it applies to unlimited companies all of whose members are limited liability entities of the types specified in the Directive, where one or more of these is a limited partnership. At present certain of these unlimited companies are able to take up the exemption from filing accounts and reports where this is not permitted by the Directive.

7.6 Regulations 5 and 6 of this instrument make consequential amendments to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008¹³ and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008¹⁴.

7.7 Regulation 2(2) and (7) to (9) of this instrument make amendments to the definitions of the term “e-money issuer” in the 2006 Act. These definitions apply for the purposes of certain provisions in Part 15 (accounts) and Part 16 (audit) on the availability of audit and accounting exemptions under the 2006 Act. These are consequential amendments which were missed when the 2011 Regulations were made. Regulation 3 makes some of the same amendments to the 2008 LLP Regulations.

7.8 Finally, regulation 7 of this instrument revokes regulations which amended the predecessor Regulations to the 2008 Regulations. The regulations revoked are the Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations 2005¹⁵ and the Partnerships and Unlimited Companies (Accounts) (Amendment) (Northern Ireland) Regulations 2006¹⁶.

¹³ SI 2008/409.

¹⁴ SI 2008/410.

¹⁵ SI 2005/1987.

¹⁶ SR (NI) 2006/354.

Consolidation

7.9 None

8. Consultation outcome

8.1 The Department for Business, Innovation and Skills published draft regulations to rectify the technical defect in the 2008 Regulations relating to limited partners in a qualifying partnership on 13 April 2010.

8.2 The deadline for comments on that draft passed on 6 July 2010. Comments were received from the British Venture Capital and Private Equity Association and the Institute of Chartered Accountants in England and Wales. The comments resulted in one change to the draft regulations, to amend the commencement arrangements so that this instrument applies for accounting years beginning on or after a certain date (now 1 October 2013).

8.3 As the amended draft regulations were nearing the point where they were due to be made in autumn 2011, further issues came to light prompted by a member of the public who contacted BIS having read the draft regulations. These issues concerned the scope of the 2008 Regulations and more specifically which partnership structures should be covered by the requirements. Similar problems emerged in relation to unlimited companies.

8.5 All the further amendments have been developed with further informal consultation with the original consultees on the amendments to the 2008 Regulations. We have also discussed with them further amendments that have been needed to regulation 6 of the 2008 Regulations, as well as other consequential amendments.

8.6 The amendments contained in this instrument to the definitions of “e-money issuer” have been developed in consultation with the Financial Conduct Authority and HM Treasury.

9. Guidance

9.1 Companies House will be amending the following Guidance documents on its website to reflect the amendments that have been made by this instrument:

- Chapter 9 of Life of a Company Part 1 Annual Requirements (GP2) - available at www.companieshouse.co.uk/about/gbhtml/gp2.shtml#ch9
- Limited Partnership (GPO2) – available at www.companieshouse.co.uk/about/gbhtml/gpo2.shtml

9.2 Companies House guidance for Limited Partnerships will also be modified to reflect modifications made to the Limited Partnership Act 1907 by the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013¹⁷ (“the 2013 Regulations”). The 2013 Regulations introduce Collective Investment Schemes structured as Limited Partnerships. These modified Partnerships are likely to be structured as qualifying partnerships, which would therefore be covered by the requirements of the 2008 Regulations.

¹⁷ At the time of publishing this Explanatory Memorandum, the 2013 Regulations have been laid in draft before Parliament.

10. Impact

10.1 The principle impact of this instrument results from the correction of technical defects in the 2008 Regulations and the 2006 Act relating to the implementation of the Directive. An Impact Assessment has been prepared and is attached to this Explanatory Memorandum. It finds that between 5,000 and 8,000 limited partnership investment funds are likely to be affected and that the costs are likely to be between £8,000 and £30,000 per limited partnership affected in most cases. These would be likely to double in the first year and would be higher for around 10% of limited partnerships that will not be able to take advantage of recent changes introduced to UK Generally Accepted Accounting Principles allowing them not to produce consolidated accounts.

10.2 The Regulatory Policy Committee has validated the Government's assessment that the changes will represent a Regulatory "IN" with an Equivalent Annual Net Cost to Business of £190.5 million. The Impact Assessment will be published alongside the Explanatory Memorandum at www.legislation.gov.uk.

10.3 The amendments contained in regulation 2(2) and (7) to (9) and regulation 3 of this instrument to the definitions of "e-money" issuers are covered by HM Treasury's original Impact Assessment on the 2011 Regulations, which is available at www.legislation.gov.uk/ukxi/2011/99/impacts.

11. Regulating small business

11.1 When qualifying as small, assuming they are not covered by exclusions for certain financial services providers, partnerships or unlimited companies affected by this instrument will be able to take advantage of the small companies accounting and audit exemptions available in the 2006 Act.

11.2 This instrument is covered by the Government's 6th Statement of New Regulation (July to December 2013). That statement also covers the implementation of certain new accounting exemptions for micro sized companies via the first phase of the implementation of the "Micros Directive"¹⁸. When qualifying as micro-sized, subject to exclusions for certain financial services providers, unlimited companies affected by this instrument will be able to take advantage of the accounting exemptions being made available.

12. Monitoring & review

12.1 This instrument continues the implementation of Council Directive 90/605/EEC amending the Fourth and Seventh Company Law (Accounting) Directives. The implementation of these changes will be reviewed in 2018 at the same time as the implementation of the new accounting exemptions for micro sized companies via the implementation of the Micros Directive which also amends the Fourth Company Law (Accounting) Directive. .

¹⁸ Directive 2012/6/EU of the European Parliament and of the Council of 14 March 2012 amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities

13. Contact

Paul Smith at the Department for Business, Innovation and Skills (tel: 020 7215 4164 or email: pauld.smith@bis.gsi.gov.uk) can answer questions about this instrument.