

CONSULTATIVE DOCUMENT

THE DRAFT COMPANIES ACT 2006 (ACCOUNTS, REPORTS AND AUDIT) REGULATIONS 2009

Introduction

1. Directive 2006/46/EC on Company Reporting was introduced as part of the Commission's EU Company Law and Corporate Governance Action Plan and amended the Accounting Directives with the aim of enhancing confidence in financial statements and annual reports published by European companies.

2. One of the measures requires publicly traded companies¹ to include a corporate governance statement in their annual directors' reports. While the Directive has largely been implemented in the UK², the draft Regulations will complete implementation with regard to filing at Companies House and auditor review of corporate governance statements where these are published separately from the directors' report.

3. The draft Regulations, which will come into force in April 2009, also make a number of unrelated technical corrections to accounting provisions made in or under the Companies Act 2006.

4. An Impact Assessment (IA) was previously produced on the effect that the implementation of Directive 2006/46 will have on the costs of business, charities or voluntary bodies. That IA can be found appended to the Explanatory Memorandum for *the Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 (SI 2008/393)*, starting on page 6, at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080393_en.pdf. Otherwise, an Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities or voluntary bodies.

5. This note invites views from interested parties on any aspect of the Regulations.

¹ Companies whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC.

² by the Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 (S.I. 2008/393), the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (S.I. 2008/409), the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410), and by Rules 7.2.1 to 7.2.11 in Annex C of the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 (FSA 2008/32).

How to respond

6. The Government published a consultation document seeking views on implementation of the Directive in March 2007 and published a summary of responses and the Government's response to that consultation in July 2007. Those publications can be found on the BERR website <http://www.berr.gov.uk/consultations/page38068.html>

The Financial Services Authority also consulted before making its rules which contain the substantive requirements for corporate governance statements.

7. These draft Regulations complete implementation by making technical amendments to the Companies Act 2006 which will not result in burdensome effects for business. The same is true of the technical amendments to the Act and regulations made under it. We therefore intend to conduct an informal consultation only to enable interested parties to express views and to ensure they are forewarned of the Regulations.

8. We would welcome any comments on the draft Regulations by Friday 9 January 2009.

9. When responding, please state whether you are replying as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents.

10. You are invited to send comments, preferably by email to:

companiesAct2006@berr.gsi.gov.uk

If by letter, then to

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Filing and auditor review of separate corporate governance statements: Part 2 of the draft Regulations

1. Directive 2006/46 contains a new requirement for publicly traded companies whose securities are traded on an EC regulated market to prepare a corporate governance statement and to disclose this information in their annual directors' report. The main requirement is that such companies must disclose whether they apply a corporate governance code and explain, as applicable, where they depart from that code.
2. As the regulator of listed companies, it was considered most appropriate for the Financial Services Authority to implement these new requirements under the Financial Services and Markets Act 2000 rather than under the Companies Act. Accordingly the Directive's requirements for corporate governance statements were largely implemented by FSA rules in June 2008 for financial years beginning on or after 29 June³.
3. The FSA rules exercised the Member State option in the Directive to give companies the choice of either including the corporate governance statement in their directors' report or of publishing a separate report at the same time and in the same manner as the directors' report. The FSA rules can not amend the Companies Act requirements on filing of documents with the registrar of companies and auditor review of any separate corporate governance statement. The Government therefore needs to amend the Companies Act to complete implementation of the Directive requirements with regard to publication and auditor review of statements issued separate from the directors' report. Part 2 of the draft Regulations covers this requirement and will apply in relation to financial years beginning on or after 29th June 2008 which have not ended before 6th April 2009 (draft regulation 1(3)).

Accounts Amendments: Part 3 of the draft Regulations

4. The draft Regulations also make a few amendments to correct provisions in Part 15 of the Companies Act 2006 on accounts and regulations made under it.
5. Regulation 10 corrects an unintended error in the re-enactment of Companies Act 1985 provisions⁴ by section 413 of the 2006 Act which deals with disclosures of advances, credits and guarantees for the benefit of directors. The aim was to continue to exercise the option available to member states under the Bank Accounts Directive⁵ to require banks to disclose only

³ Rules 7.2.1 to 7.2.11 in Annex C of the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 (FSA 2008/32).

⁴ Part 3 of Schedule 6 to the 1985 Act as adapted by Part 4 of Schedule 9 to that Act.

⁵ Article 40(7) of Council Directive 86/635/EEC.

aggregate figures. However, the effect of the Act, as it stands currently, is to require the information for each director and therefore does not permit banks to provide the information in aggregate.

6. Regulations 11 and 12 amend both the Small Companies Accounts and Large and Medium-sized Companies Accounts Regulations made under Part 15 of the Companies Act. While both sets of Regulations specify what is meant by “provisions” for the purposes of various sections of the 2006 Act, they currently omit to do so for the purposes of section 841 in Part 23 of the Act on distributions (realised losses and profits and revaluations of fixed assets). The amendments address that omission and also update a reference to pensions in the directors’ remuneration report for quoted companies.

7. To enable early application of these technical amendments, they will apply to financial years beginning on or after 6th April 2008 (the financial years to which Part 15 of the 2006 Act applies) which have not ended before 6th April 2009.