EXPLANATORY MEMORANDUM TO THE BANK ACCOUNTS DIRECTIVE (MISCELLANEOUS BANKS) (AMENDMENT) REGULATIONS 2005

2005 No. 1984

1. This Explanatory Memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. DESCRIPTION

2.1 The Bank Accounts Directive (Miscellaneous Banks) Regulations 1991[1] ("the 1991 Regulations") apply the provisions of Part 7 of the Companies Act 1985 ("the 1985 Act") on accounts and audit to certain banking undertakings. Part 7 has been amended in particular by the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004[2] ("the 2004 Regulations") and the Companies Act 1985 (Operating and Financial Review and Directors' Report etc) Regulations 2005[3] ("the 2005 Regulations"). This Statutory Instrument makes minor consequential changes to the 1991 Regulations resulting from those amendments.

3. MATTERS OF SPECIAL INTEREST TO THE JOINT COMMITTEE ON STATUTORY INSTRUMENTS

3.1 None.

4. LEGISLATIVE BACKGROUND

4.1 Council Directive 86/635/EEC of 8th December 1986 [4] concerns the form and content of the annual accounts and consolidated accounts of banks and other financial institutions. The 1991 Regulations implement that Directive in so far as it applies to bodies corporate or unincorporated other than (a) bodies corporate to which Part 7 of the 1985 Act applies and (b) building societies.

4.2 The 1991 Regulations applied Part 7 of the 1985 Act to certain banking undertakings, so that they are subject to the same accounting requirements derived from EC legislation as banking companies subject to the 1985 Act. Subsequent amendments made to the provisions of Part 7 will in many instances apply automatically for the purposes of the 1991 Regulations. In some cases, however,

[1] S.I. 1991/2704
[2] S.I. 2004/2947
[3] S.I. 2005/1011
[4] OJ L372 of 31.12.1986, P. 1

certain consequential changes will need to be made to the 1991 Regulations. This is the purpose of these Regulations.

Recent Changes to Part 7 of the 1985 Act

4.3 The 2004 Regulations ensure the effective application in Great Britain of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards[5] (the "IAS Regulation"), and implement Member State options in that Regulation.

4.4 The IAS Regulation requires companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market in any Member State in the EU ("publicly traded companies") to prepare their consolidated accounts on the basis of accounting standards issued by the International Accounting Standards Board that are adopted by the European Commission.

4.5 The IAS Regulation also permits Member States to extend use of IAS. The 2004 Regulations extend use of IAS to the individual accounts of publicly traded companies and to the individual and consolidated accounts of other companies on a permissive basis.

4.6 The 2004 Regulations also implement the following European legislation:

- Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions[6] (the "Fair Value Directive"). The Fair Value Directive amends European accounting requirements to permit certain financial instruments to be recorded at fair value (essentially current market value), in line with international accounting practices.

- Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EE and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings[7] (the "Accounts Modernisation Directive"). The Accounts Modernisation Directive amends accounting requirements to enable companies to follow modern, more transparent accounting practices that are consistent with IAS.

4.7 The 2005 Regulations implement provisions of the Accounts Modernisation Directive concerning the directors' report which are relevant for the purposes of the 1991 Regulations.

[5] OJ L243 of 11.9.2002, P. 1
[6] OJ L283 of 27.10.2001, P. 28
[7] OJ L178 of 17.7.2003, P. 16

4.8 These Regulations update references in the 1991 Regulations in the light of these changes. The opportunity is also being taken to update cross-references in the 1991 Regulations to provisions of the 1985 Act which have been amended or repealed by other legislation.

Scrutiny

4.9 **IAS Regulation –** DTI Explanatory Memorandum 6365/01 was submitted on 16 March 2001. The Commons European Scrutiny Committee considered it not legally or politically important and cleared it (Report No. 1, Item 22162, Session 00/01). The Lords Select Committee on the EU did not report on it (Progress of Scrutiny 13.04.01, Session 00/01).

4.10 **Accounts Modernisation Directive -** DTI Explanatory Memorandum 9730/1/02 REV1 COM (2002) 25912 Final was submitted on 26 February 2002. The Commons European Scrutiny Committee considered it politically important and cleared it (Report No 37, Item 23522, Session 01/02). The Lords Select Committee on the EU cleared it on 09.07.02 (Progress of Scrutiny 22.07.02, Session 01/02).

4.11 DTI Explanatory Memorandum OTNYREM was submitted on 05 December 2002. The Commons European Scrutiny Committee considered it politically important and cleared it (Report No. 5, Item 24060, Session 02/03). The Lords Select Committee on the EU did not report on it (Progress of Scrutiny 21.12.02, Session 02/03).

4.12 **Fair Value Directive** - DTI Explanatory Memorandum 6511/00 COM (2000) 80 Final was submitted on 10 April 2000. The Commons European Scrutiny Committee considered it not legally or politically important and cleared it (Report No. 14, Item 21048, Session 99/00). Lords Select Committee on the EU did not report on it (Progress of Scrutiny 21.04.00, Session 99/00).

5. EXTENT

5.1 This instrument applies to Great Britain.

6. EUROPEAN CONVENTION ON HUMAN RIGHTS

6.1 Not applicable.

7. POLICY BACKGROUND

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. In line with this policy, banking undertakings will, for example, have the option to choose to use IAS to prepare their accounts.

7.2 There is considerable interest in the move to IAS among larger companies and the specialist press, but little interest among smaller undertakings (who are less likely to want to use IAS) and the general media. There is a general view that IAS is the way forward; over 90% of those who responded to the original 2002 consultation on whether use of IAS should be extended were in favour of some extension. The summary of responses is at www.dti.gov.uk/cld/iassummary.pdf.

7.3 There was less interest in the technical details of how the IAS Regulation should be implemented in the 2004 Regulations (consulted on in March 2004), although the proposals were broadly supported overall. Slightly less than half of those who responded commented on whether the proposals should be applied to banking undertakings, but all who commented were supportive. Further details can be found in the summary of responses at www.dti.gov.uk/cld/AccountingModernisationResp1110.pdf.

7.4 The 2005 Regulations were consulted on in May 2004. The main focus of the consultation was the proposal to introduce an Operating and Financial Review for quoted companies rather than the Accounts Modernisation Directive amendments to the directors' report requirements. The majority of those who commented on the directors' report amendments were supportive of the implementation proposals. A summary of responses can be found at www.dti.gov.uk/cld/21_12_gov_response.pdf.

8. IMPACT

8.1 A separate Regulatory Impact Assessment (RIA) has not been prepared for these Regulations. The RIA for S.I. 2004/2947 covers the impact of those Regulations on banking undertakings. The RIA for S.I. 2005/1011 covers the impact on companies generally of the amendments to the directors' report. The costs and benefits outlined there are equally applicable to these entities.

8.2 The RIAs and the Transposition Notes were attached to the original Explanatory Memoranda for S.I. 2004/2947 and S.I. 2005/1011.

8.3 There is no impact on the public sector as this Statutory Instrument only applies to banking undertakings.

9. CONTACT

Valerie Carpenter at the Department of Trade & Industry (telephone 020 7215 0225 or email valerie.carpenter@dti.gsi.gov.uk) can answer any queries regarding the instrument.