

EXPLANATORY MEMORANDUM TO
THE COMPANIES (SUMMARY FINANCIAL STATEMENT) REGULATIONS 2008

2008 No. 374

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 Companies (Summary Financial Statement) Regulations 2008 set out the circumstances in which companies may prepare summary financial statements (SFS) instead of full accounts and reports, the persons to whom they can be sent and what they should contain. They restate the Companies (Summary Financial Statement) Regulations 1995¹ (the 1995 Regulations) and the Companies (Summary Financial Statement) Regulations (Northern Ireland) 1996² (the 1996 Regulations) with a small number of substantive changes.

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

3.1 None.

4. Legislative Background

4.1 Part 15 of the Companies Act 2006 (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) and the associated Schedules, 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 2008 and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 specify the form and content of accounts and reports and replace the accounting Schedules to the 1985 Act and the 1986 Order.

4.3 Sections 426 to 429 of the 2006 Act re-enact section 251 of the 1985 Act (and the equivalent Northern Ireland provisions) in providing all companies with the option to send out SFS in place of the full accounts and reports, having first ascertained that the recipient wishes to receive SFS. Section 426 extends the categories of persons to whom SFS may be sent to include persons nominated to enjoy information rights

¹ SI 1995/2092, as amended by SI 2000/3373, SI 2002/1780 and SI 2005/2281.

² SI 1996/179, as amended by Article 29 of, and Schedule 2 to, S.R. 2003 No. 3, S.R. 2005 No. 57 and S.R. 2006 No. 138.

under section 146 of the 2006 Act (section 146 provides that a member of a publicly traded company who holds shares on behalf of another person may nominate that person to receive communications that the company sends to members generally).

4.4 These Regulations (which are made under sections 426, 427, 428 and 1292(1) of the 2006 Act) replace the 1995 Regulations and the 1996 Regulations. They state the conditions that must be satisfied before SFS may be sent to members, debenture holders, others entitled to notice of general meetings and nominated persons enjoying information rights under section 146, and specify the minimum content of SFS. This includes explanatory material on matters such as the control and share structures of the company which certain publicly traded companies are required by the European Directive on Takeovers³ to include in their directors' report, which must either be included in the SFS or sent separately at the same time as the SFS (re-enacting section 251(2ZB) of the 1985 Act as inserted by section 992(5) of the 2006 Act).

4.5 The content of the SFS differs depending on the type of company (whether it is a banking or insurance company or an ordinary company), its size, whether or not it prepares group accounts and whether it prepares Companies Act accounts or IAS accounts. Although it is unlikely that small companies would opt to produce SFS (there would be no cost saving for a company with few shareholders and the SFS must be based on audited accounts), should they choose to do so the Regulations make specific provision for them by cross-referring to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

Policy

7.1 For companies with large numbers of persons to whom accounts and reports must be sent, the option to distribute the shorter SFS rather than the full accounts and reports offers a cost saving, in some cases significant. Many such persons find the SFS more suitable to their needs than the full accounts and reports.

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 1995 Regulations and the 1996 Regulations in terms of the 2006 Act and the regulations made under it, and do not make any change

³ Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142 of 30 April 2004, page 12).

to the substance of the provisions on SFS, other than to recognise the rights of nominated persons under section 146 of the 2006 Act and to make specific reference to the content of SFS for small companies. They are not politically or legally important.

Consultation

7.4 A 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 small number of helpful drafting comments were received.

Guidance

7.5 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 An Impact Assessment has not been prepared for these Regulations because the impact on business is minimal. They largely restate existing requirements without changing the substance.

8.2 These Regulations have no impact on the public sector.

9. Contact

Valerie Carpenter at the Department for Business, Enterprise & Regulatory Reform, Telephone: 020 7215 0225 or e-mail: Valerie.Carpenter@berr.gsi.gov.uk can answer any queries regarding the instrument.