

2008 No. 497

COMPANIES

The Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008

Made - - - - *23rd February 2008*

Coming into force - - *6th April 2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 257(1) and (4)(a) and (d) of the Companies Act 1985(a), section 15(a) of the Limited Liability Partnerships Act 2000(b) and sections 453 and 1292(1)(a) and (c) of the Companies Act 2006(c).

In accordance with section 257(2)(d) of the Companies Act 1985, sections 17(4) and (5)(b) of the Limited Liability Partnerships Act 2000 and sections 453(5) and 1290 of the Companies Act 2006, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, coming into force and interpretation

1.—(1) These Regulations may be cited as the Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008.

(2) These Regulations come into force on 6th April 2008.

(3) References in these Regulations to late filing, or to a failure to comply with filing requirements, are to a failure to comply with the requirements of section 441 of the Companies Act 2006 (which apply in relation to financial years beginning on or after 6th April 2008) in relation to a company's accounts and reports before the end of the period for filing those accounts and reports.

(4) For the purposes of regulations 2 and 4, whether a company is a public company or a private company depends upon its status at the end of the financial year in question.

Late filing penalties under the Companies Act 2006 as from 6th April 2008

2.—(1) This regulation applies where the requirements of section 441 of the Companies Act 2006 are complied with before 1st February 2009.

(2) The amount of the civil penalty to which a company is liable under section 453 of the Companies Act 2006 in a case of late filing is that shown in the following table:

(a) 1985 c.6: section 257 was inserted by the Companies Act 1989 (c.40), section 20.
(b) 2000 c.12.
(c) 2006 c.46.

| <i>Length of period</i> | <i>Public company</i> | <i>Private company</i> |
|--|-----------------------|------------------------|
| Not more than 3 months. | £500 | £100 |
| More than 3 months but not more than 6 months. | £1,000 | £250 |
| More than 6 months. | £2,000 | £500 |

(3) The first column of the table (“length of period”) refers to the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements of section 441 are complied with.

Late filing penalties under the Companies Act 1985 as from 6th April 2008

3.—(1) This regulation applies where the requirements of section 242(1) of the Companies Act 1985 are complied with on or after 6th April 2008.

(2) In section 242A of that Act(a), after subsection (2) insert—

“(2A) For the purposes of subsection (2), whether a company is a public company or a private company depends upon its status at the end of the financial year in question.”.

Late filing penalties under the Companies Act 2006 as from 1st February 2009

4.—(1) This regulation applies where the requirements of section 441 of the Companies Act 2006 are complied with on or after 1st February 2009.

(2) The amount of the civil penalty to which a company is liable under section 453 of the Companies Act 2006 in a case of late filing is that shown in the following table or, if there was a failure to comply with filing requirements in relation to the previous financial year of the company and that previous financial year had begun on or after 6th April 2008, double that shown in the table:

| <i>Length of period</i> | <i>Public company</i> | <i>Private company</i> |
|--|-----------------------|------------------------|
| Not more than 1 month. | £750 | £150 |
| More than 1 month but not more than 3 months. | £1,500 | £375 |
| More than 3 months but not more than 6 months. | £3,000 | £750 |
| More than 6 months. | £7,500 | £1,500 |

(3) The first column of the table (“length of period”) refers to the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements of section 441 are complied with.

Late filing penalties under the Companies Act 1985 as from 1st February 2009

5.—(1) This regulation applies where the requirements of section 242(1) of the Companies Act 1985 (which continue to apply in relation to financial years beginning before 6th April 2008 and, in the case of limited liability partnerships, in relation to financial years beginning on or after that date as well)(b) are complied with on or after 1st February 2009.

(2) For the table in section 242A(2) of the Companies Act 1985(c) substitute the following table:

(a) Section 242A was inserted by the Companies Act 1989, section 11.

(b) Section 242(1) is applied, with modifications, to limited liability partnerships by S.I. 2001/1090, regulation 3 and Schedule 1.

(c) The table is applied, with modifications, to limited liability partnerships by S.I. 2001/1090, regulation 3 and Schedule 1.

| <i>Length of period</i> | <i>Public company</i> | <i>Private company</i> |
|--|-----------------------|------------------------|
| Not more than 1 month. | £750 | £150 |
| More than 1 month but not more than 3 months. | £1,500 | £375 |
| More than 3 months but not more than 6 months. | £3,000 | £750 |
| More than 6 months. | £7,500 | £1,500 |

Limited liability partnerships: filing periods and late filing penalties

6.—(1) Section 443 of the Companies Act 2006 (calculation of period allowed for filing accounts and reports) applies to limited liability partnerships with the modification in Part 1 of the Schedule to these Regulations.

(2) Schedule 1 to the Limited Liability Partnership Regulations 2001(a) is amended as provided in Part 2 of the Schedule to these Regulations.

(3) This regulation applies to accounts and auditors' reports for financial years beginning on or after 6th April 2008.

23rd February 2008

Gareth Thomas
Parliamentary Under Secretary of State for Trade and Consumer Affairs,
Department for Business, Enterprise and Regulatory Reform

(a) S.I. 2001/1090, to which there are amendments not relevant to these Regulations.

SCHEDULE

Regulation 6

PART 1

Modification of section 443 of the Companies Act 2006 in its application to limited liability partnerships

In subsection (1), for the words “the period for filing a company’s reports and accounts” substitute “the period allowed for delivering the accounts and the auditor’s report”.

PART 2

Amendments to Schedule 1 to the Limited Liability Partnerships Regulations 2001

1. At the end of the entry relating to section 242A, add in the first column “subsection (2A)” and in the second column “Omit subsection (2A)”**(a)**.

2. In the second column, opposite the entry relating to section 244(1), for “10 months” substitute “9 months”.

3. In the second column, for the words opposite the entry relating to section 244(2) substitute, “In paragraph (a), for the words “10 months or 7 months, as the case may be” substitute “9 months”.”.

(a) Subsection (2A) is inserted by regulation 3(2) of these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations determine the penalties which companies must pay to the registrar of companies if they file their annual accounts and reports late, and which limited liability partnerships must pay if they deliver their accounts and auditors' reports late.

The penalties for late filing of accounts and reports under the Companies Act 2006 (for financial years beginning on or after 6th April 2008) are set out in the table in regulation 2 when the filing takes place before 1st February 2009, and in the table in regulation 4 when the filing takes place on or after 1st February 2009. The penalty is doubled for late filing in two successive years beginning on or after 6th April 2008. The level of penalty depends upon whether the company was public or private at the end of the financial year in question (regulation 1(4)).

The provisions about penalties for late filing of accounts and reports under the Companies Act 1985 (for financial years beginning before 6th April 2008) are also amended. The level of penalty depends upon whether the company was public or private at the end of the financial year in question (regulation 3). When the filing takes place on or after 1st February 2009 the penalties are as set out in the table in regulation 5. There is no provision for doubling the penalty for late filing in two successive years when either year began before 6th April 2008.

The penalties set out in the table in regulation 5 also apply to late delivery on or after 1st February 2009 of the accounts and auditors' reports of limited liability partnerships. This is because any change to the provisions in the Companies Act 1985 which have been applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001 automatically applies to limited liability partnerships as well as to companies.

The provision for doubling the penalty for late filing in two successive years, however, does not apply to limited liability partnerships, because section 453 of the Companies Act 2006 does not yet apply to limited liability partnerships.

The new 9-month deadline in the Companies Act 2006 for filing private company accounts and reports is applied by regulation 6 and the Schedule to the delivery of the accounts and auditors' reports of limited liability partnerships for financial years beginning on or after 6th April 2008. Regulation 6 and the Schedule also apply the new rules in section 443 of that Act for calculating that deadline.

There is no impact assessment for these Regulations as compliance with the filing requirements for accounts and reports would result in no additional cost to business. Any cost in relation to the application of the provisions as outlined above to limited liability partnerships is minimal and is covered in the Impact Assessment to the consultation on the application of the Companies Act 2006 to limited liability partnerships. This can be found at:

<http://www.berr.gov.uk/bbf/llp/page39897.html>

STATUTORY INSTRUMENTS

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