

EXPLANATORY MEMORANDUM TO
THE COMPANIES (DISCLOSURE OF AUDITOR REMUNERATION AND
LIABILITY LIMITATION AGREEMENTS) (AMENDMENT) REGULATIONS 2011

2011 No. 2198

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

2. Purpose of the instrument

2.1 This instrument amends the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 (“the 2008 Regulations”)¹. It replaces the previous classification of audit and non-audit services, which large companies and groups must use to disclose the fees they have paid their auditor or associates of their auditor. The new classification is intended to link more clearly to that under Council Directives 78/660/EEC (“the 4th Company Law Directive”)² and 83/349/EEC (“the 7th Company Law Directive”)³ and to that in the revised Ethical Standards for Auditors, produced by the Auditing Practices Board (APB)⁴.

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

3.1 None.

4. Legislative context

4.1 The 2008 regulations were made as part of the implementation of the Companies Act 2006 and of Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts (“the Audit Directive”)⁵. Article 49 of the Audit Directive amended the 4th and 7th Company Law Directives to introduce requirements into EU law on disclosure by companies of fees they have paid to their auditors for audit and non-audit services. In the UK, disclosure of these fees was already required under the Companies (Disclosure of Auditor Remuneration) Regulations 2005⁶, which had been introduced following amendments to the Companies Act 1985. The 2008 regulations made almost no changes to the disclosure framework for large companies, including to the classification of services provided by the auditor. The framework requires the auditor to supply to the company the information needed for it to make the disclosure. The company then does this in notes to its annual accounts.

4.2 The 2008 regulations work in parallel with the Ethical Standards for Auditors. The ethical standards require auditors to undertake an analysis of threats to their independence (including from the provision of non-audit services) and to put in place any necessary safeguards in order to reduce the threats to an acceptable level. Under Ethical Standard 5, which deals specifically with the provision of non-audit services,

¹ S.I. 2008/489

² OJ L 222 of 14 August 1978 page 11

³ OJ L 193 of 18 July 1983 page 1

⁴ See www.frc.org.uk/apb/publications/ethical.cfm.

⁵ OJ L 157, 9.6.2006 p87

⁶ S.I. 2005/2417

an analysis of threats, and identification of example safeguards, is set out under different headings of non-audit service that the auditor might provide. The standards then link to the Guidance on Audit Committees produced by the Financial Reporting Council⁷ which requires discussion between the auditor and the audit committee about the analysis the auditor has undertaken and the safeguards they have put in place.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 In May 2009, the House of Commons Treasury Select Committee's report "The Banking Crisis: Reforming Corporate Governance and Pay in the City" raised concerns about the fees paid to auditors, by companies that they audited, for the non-audit services they provided in the run-up to the financial crisis. The APB responded to this by undertaking a review of the Ethical Standards for Auditors. The APB review began with a "Consultation on audit firms providing non-audit services to listed companies that they audit" in October 2009⁸. With BIS's agreement, the review included consideration of the most appropriate classification of non-audit services for the purposes of both the ethical standards and disclosure under the 2008 regulations. The conclusions of the review were broadly supportive of amendments to the classification in the 2008 regulations so that it aligned with the classification in the revised ethical standards.

7.2 The APB completed its review of the Ethical Standards for Auditors in December 2010. The revised classification of non-audit services in the standards is used to identify possible threats to the auditor's independence and possible safeguards which could be put in place to address these. The revised ethical standards then require the auditor to disclose their analysis of threats to their independence to the audit committee. This is part of a dialogue which is also the subject of guidance in the Guidance on Audit Committees issued by the Financial Reporting Council. This guidance was revised at the same time as the ethical standards and the new disclosure requirements are in addition to those in the 2008 regulations.

7.3 It therefore makes sense if the classification of non-audit services under the ethical standards links to the classification of non-audit services for disclosure in large companies' accounts. Following a review of the ethical standards, completed with revisions to the standards in December 2010, these classifications are currently out of line. This imposes an additional administrative burden on companies, who must be able to reconcile the auditor's analysis under the ethical standards with the fees they are required to disclose in the notes to their accounts under the 2008 regulations. However, as the company's shareholders and users of the accounts do not have such

⁷ See www.frc.org.uk/corporate/auditcommittees.cfm

⁸ For documentation on the review of the standards, see www.frc.org.uk/apb/publications/pub2123.html and www.frc.org.uk/apb/publications/pub2324.html

reconciliation they do not have the insight, which the company's audit committee and directors have, into how the auditor has complied with the ethical standards.

8. Consultation outcome

8.1 BIS issued draft amending regulations on 7 April 2011 with a deadline for comments on 30 June 2011. BIS received nine responses commenting on the draft regulations. The Department has issued an explanatory text including a summary of the comments received. The explanatory text also includes the Government's response to all those comments and explains the changes that have been made in the final regulations. The explanatory text is available at www.bis.gov.uk/policies/business-law/accounting-auditing-reporting/audit.

8.2 The publication of draft amending regulations was in addition to the process of consultation conducted by the APB during its review of the ethical standards on non-audit services. With BIS's agreement, the consultation included consideration of the most appropriate classification of non-audit services for the purposes of both the ethical standards and disclosure under the 2008 regulations. The APB received 150 responses to the consultation. In July 2010 the APB followed up the first consultation with a "Feedback and Consultation Paper: The Provision of Non-Audit Services by Auditors" which included draft amendments to the ethical standards. The APB received 39 responses on the consultation and draft amendments to the ethical standards and issued a final feedback statement with the revised standards. The responses to both consultations were broadly supportive of amendments to the classification in the 2008 regulations so that it aligned with the classification in the revised ethical standards.

9. Guidance

9.1 This instrument is intended to bring the audit fees disclosure framework for large companies into line with that under the revised Ethical Standards for Auditors. The revised framework includes some concepts (such as "audit related (assurance) services") which arise in the ethical standards. There is also a need to identify how the new classification of non-audit services under the 2008 regulations maps to that under the revised ethical standards. BIS has agreed with the APB that it should be for them to provide guidance on these matters.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk.

11. Regulating small business

11.1 This instrument amends the framework for disclosure by large companies of fees paid to their auditors for audit and non-audit services. Disclosure by small companies is not affected.

12. Monitoring & review

12.1 The arrangements will be kept under review by the APB.

13. Contact

13.1 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 the instrument.

TRANSPPOSITION NOTE & TABLE

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

1. This note describes the implementation in the UK of 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, 9.6.2006, p.87).

2. UK law already regulates auditors and the audit process in Parts 16 and 42 of the Companies Act 2006, which apply to the whole of the UK and were brought into force on 6th April 2008. They replaced earlier provisions in the Companies Act 1985 and the Companies Act 1989 in Great Britain, and equivalent legislation in Northern Ireland.

3. The UK implementation of the Directive consists of provisions in the following instruments, which are the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform, except where indicated:

- Parts 16 and 42 of the Companies Act 2006;
- Statutory Auditors and Third Country Auditors Regulations 2007 (including amendments to the Companies Act 2006) (“the 2007 regulations”);
- Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008 (correcting minor errors in the Statutory Auditors and Third Country Auditors Regulations 2007);
- Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008;
- Statutory Auditors (Delegation of Functions etc) Order 2008 (which delegates some functions of the Secretary of State under Parts 16 and 42 of the Companies Act 2006 to the Professional Oversight Board or to the Auditing Practices Board);
- Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008;
- Companies Act 2006 (Transfer of Audit Working Papers to Third Countries) Regulations 2010 (amending Part 42 of the Companies Act 2006) (“the 2010 regulations”);
- Statutory Auditors and Third Country Auditors (Amendment) Regulations 2011 (including amendments to the Companies Act 2006) (“the 2011 regulations”);
- Partnerships (Accounts) Regulations 2008;
- Bank Accounts Directive (Miscellaneous Banks) Regulations 2008;
- Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;
- Companies Act 2006 (Consequential Amendments etc) Order 2008;
- Building Societies Act 1986 (*HM Treasury responsible*);

- Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (*HM Treasury responsible*);
- Friendly Societies Act 1992 (*HM Treasury responsible*);
- Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008 (*HM Treasury responsible*);
- Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 (*HM Treasury responsible*);
- Statutory Auditors (Transparency) Instrument 2008 (*Professional Oversight Board responsible*);
- Statutory Auditors (Registration) Instrument 2008 (*Professional Oversight Board responsible*);
- Statutory Auditors (Examinations) Instrument 2008 (*Professional Oversight Board responsible*);
- Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 (*Financial Services Authority responsible*).

4. The table below describes the main substantive provisions implementing the Directive. Unless otherwise indicated, references in the table to a section or schedule are to provisions of the Companies Act 2006 and references to a regulation are to a provision of the Statutory Auditors and Third Country Auditors Regulations 2007.

Directive 2006/43/EC on statutory audits: Transposition Measures		
Article	Objective	Implementation
1	Describes the Directive's subject matter.	No implementation required.
2	Sets out definitions of terms used in Directive.	Directive definitions reflected in substantive implementing provisions.
APPROVAL OF AUDITORS		
3.1	Statutory audits may only be carried out by approved statutory auditors.	Section 1212(1).
3.2	Competent authorities to be designated for approving statutory auditors.	Section 1217 and Part 1 of Schedule 10.
3.3	Statutory auditors who are individuals to be approved only if articles 4 and 6-10 are met.	See implementation of articles 4 and 6-10 below.
3.4	Statutory auditors which are firms to be approved only if individuals conducting audits comply with articles 4 and 6-12, and if firm is controlled and managed by qualified individuals.	Paragraphs 6 and 7 of Schedule 10. See also implementation of articles 4 and 6-12 below.
4	Statutory auditors must be of good repute.	Paragraph 8 of Schedule 10.

5.1	Approval to be withdrawn if good repute compromised.	Paragraphs 8 and 14 of Schedule 10.
5.2	Approval to be withdrawn if firm not controlled and managed by qualified individuals.	Paragraphs 6, 7 and 14 of Schedule 10.
5.3	Withdrawal of approval to be notified to relevant authorities of other Member States.	Sections 1223A and 1253C (as inserted by regulations 7 and 14).
AUDITORS' QUALIFICATIONS		
6	Qualifications to include theoretical instruction, practical training and examination of professional competence.	Sections 1219 and 1220, and paragraphs 6 to 11 of Schedule 11.
7	Examination of professional competence must guarantee theoretical knowledge of subjects relevant to statutory audit, and the ability to apply that knowledge in practice.	Paragraph 8 of Schedule 11 and The Statutory Auditors (Examinations) Instrument 2008.
8.1 and 8.2	List of subjects to be included in test of theoretical knowledge.	Paragraph 8 of Schedule 11 and The Statutory Auditors (Examinations) Instrument 2008.
8.3	Commission may adopt further measures.	No implementation required at this stage.
9.1	Person holding a degree in a subject may be exempted from further test of theoretical knowledge under Article 7 or 8 in that subject.	Paragraph 8(2) of Schedule 11.
9.2	Person holding a degree in a subject may be exempted from further test of ability to apply knowledge under Article 7 if also has a diploma attesting to practical training.	Paragraph 8(3) of Schedule 11.
10.1	Practical training of minimum 3 years, at least 2 years of which with a statutory auditor.	Paragraph 9 of Schedule 11.
10.2	Training providers must provide adequate guarantees of their ability to provide training.	Paragraph 9(3) of Schedule 11.
11	Member State may allow a person who does not meet the Article 6 requirements instead to qualify through: (a) 15 years' professional experience and passing the exam under Article 7; or	Not implemented.
	(b) 7 years' professional experience, passing the exam under Article 7, and completing the practical training under Article 10.	Paragraph 7 of Schedule 11.
12.1	Theoretical instruction of more than 1 year may count towards up to 4 years of the professional experience required by Article 11.	Paragraph 10(1) of Schedule 11.

12.2	Combination of professional experience and practical training must not be shorter than combination of theoretical instruction with practical training.	Paragraph 10(2) of Schedule 11.
13	Statutory auditors required to take part in continuing education.	Paragraphs 11 and 14 of Schedule 10.
14	Member State authorities must approve auditors from other Member States who pass an aptitude test.	Paragraph 6 of Schedule 10 (as amended by regulation 17).
REGISTRATION OF AUDITORS		
15.1	Auditors to be entered into public register in accordance with Articles 16 and 17. Requirements of Articles 15 and 16 may be disapplied if threat to a person's security.	See implementation of Articles 16 and 17 below. The Statutory Auditors (Registration) Instrument 2008.
15.2	Each auditor to be identified by registration number; register to be in electronic form and electronically accessible.	The Statutory Auditors (Registration) Instrument 2008.
15.3	Register to contain name and address of auditors' supervisory authorities.	The Statutory Auditors (Registration) Instrument 2008.
15.4	Register to be fully operational by 29 June 2009.	The Statutory Auditors (Registration) Instrument 2008.
16.1	Register to contain individual statutory auditor's name and address, details of any firm he is employed by, and details of any registration in other Member States.	The Statutory Auditors (Registration) Instrument 2008.
16.2	Third country auditors to be marked in register as such.	Regulation 32(2)(c).
17.1	Register to contain audit firm's name and address, legal form, names and addresses of owners and managers, and details of any registration in other Member States.	The Statutory Auditors (Registration) Instrument 2008.
17.2	Third country audit firms to be marked in register as such.	Regulation 32(3)(d).
18	Statutory auditors under a duty to update register.	The Statutory Auditors (Registration) Instrument 2008.
19	Information provided for register under Articles 16, 17 and 18 must be signed by statutory auditor.	The Statutory Auditors (Registration) Instrument 2008.
20.1	Register to be in a language permitted by Member State.	The Statutory Auditors (Registration) Instrument 2008.
20.2	Member State may allow information on register in a second Community language.	Not implemented.
PROFESSIONAL ETHICS		

21.1	Statutory auditors subject to professional ethics principles, including integrity, objectivity, professional competence and due care.	Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).
21.2	Commission may adopt further measures.	No implementation required at this stage.
22.1	Statutory auditor to be independent of audited person.	Sections 1214 and 1215, and paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).
22.2	Audit not to be carried out if significant threats to statutory auditor's independence; safeguards to be applied to mitigate threats. Audit of public interest entity not to be carried out in case of self-review or self-interest,	Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19). Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).
22.3	Statutory auditors to record significant threats to independence and safeguards applied.	Paragraphs 9 and 21 of Schedule 10 (as amended by regulation 19).
22.4	Commission may adopt further measures.	No implementation required at this stage.
23.1	Audit documents to be subject to rules on confidentiality.	Paragraph 9(3)(b) of Schedule 10 (as amended by regulation 19).
23.2	Such confidentiality rules not to impede enforcement of Directive.	Paragraph 9(3)(b) of Schedule 10 (as amended by regulation 19).
23.3	Outgoing statutory auditor to provide incoming statutory auditor with all relevant information.	Paragraph 9(3)(c) of Schedule 10 (as amended by regulation 19).
23.4	Obligations of Article 23.1 and 2 extend to former statutory auditors.	Paragraph 9(4) of Schedule 10 (as amended by regulation 19).
24	Owners and managers of audit firms not to compromise independence and objectivity of individual auditors in conduct of audits.	Paragraph 9(3)(a) of Schedule 10 (as amended by regulation 19).
25	Audit fees not to be influenced by provision of additional services or based on a contingency.	Paragraphs 9(1)(e) and 21 of Schedule 10 (as amended by regulation 19).
AUDIT STANDARDS AND REPORTING		
26.1	Statutory audits to be conducted in accordance with international auditing standards adopted by Commission; but national standards may be applied if no such standards adopted.	No implementation required at this stage.
26.2	Commission may adopt international auditing standards under certain conditions.	No implementation required.
26.3	Member States may derogate from adopted international auditing standards under certain conditions.	No implementation required at this stage.
26.4	Member States may impose additional requirements until 29 June 2010.	No implementation required at this stage.

27(a)	For statutory audits of group accounts group auditor bears full responsibility.	<ul style="list-style-type: none"> - sections 495 and 471; - section 78(4)(c) of Building Societies Act 1986; - section 73(5)(c) of Friendly Societies Act 1992.
27(b)	Group auditor reviews work performed by other auditors, and documents review.	Paragraphs 10A(1) and 22 of Schedule 10 (as inserted by regulation 20).
27(c)	If work is carried out by an auditor in a country with which there is no Article 47 arrangement, group auditor is to retain copies of that auditor's documentation and make them available to authorities.	Paragraph 10A(3) to (6) of Schedule 10 (as inserted by regulation 20 and amended by regulation 5(2) of the 2011 regulations).
28.1	Audit report of audit firm to be signed by individual auditor carrying out the work, unless threat to personal security.	<ul style="list-style-type: none"> - sections 503 to 506; - regulation 10 of the Partnerships (Accounts) Regulations 2008; - regulation 9 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 8 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - sections 78A to 78D of Building Societies Act 1986 (as inserted by article 5 of Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - sections 74 to 74C of Friendly Societies Act 1992 (as inserted by article 5 of Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
28.2	If no international standard adopted for audit reports under Article 26.1, Commission may adopt a common EU standard.	No implementation required at this stage.
QUALITY ASSURANCE REVIEWS		
29.1	Statutory auditors must be subject to quality assurance reviews meeting following conditions:	
	(a) independent of the auditors;	Paragraph 12(1A) of Schedule 10 (as amended by regulation 22).
	(b) funding secure and free from influence;	Paragraph 12(1) of Schedule 10 (as amended by regulation 22).
	(c) adequate resources;	Paragraph 12(1) of Schedule 10 (as amended by regulation 22).
	(d) carried out by persons with appropriate education and experience;	Paragraph 13(4) of Schedule 10 (as amended by regulation 23).
	(e) selection of reviewers is objective;	Paragraph 13(4) of Schedule 10 (as amended by regulation 23).

	(f) review to test audit files, check compliance with audit standards, independence requirements, resources allocated, audit fees, and internal quality control;	Paragraph 13(5) and (6) of Schedule 10 (as amended by regulation 23).
	(g) review to be subject of a report;	Paragraph 13(8) of Schedule 10 (as amended by regulation 23).
	(h) take place at least every 6 years;	Paragraph 13(3) of Schedule 10 (as amended by regulation 23).
	(i) overall results of reviews to be published annually;	Section 1251A (as inserted by regulation 11).
	(j) review recommendations to be followed up, or disciplinary action taken.	Paragraphs 12 and 14 of Schedule 10 (as amended by regulation 22).
29.2	Commission may adopt measures for the uniform application of (a), (b) and (e) to (j) above.	No implementation required at this stage.
INVESTIGATIONS AND OVERSIGHT		
30.1	Member States to have effective systems of investigations and penalties.	Paragraphs 12 and 14 of Schedule 10 (as amended by regulation 22).
30.2	Penalties to be effective, proportionate and dissuasive.	Paragraphs 12 and 14 of Schedule 10 (as amended by regulation 22).
30.3	Penalties to be disclosed to the public and include the possibility of withdrawal of approval.	Paragraph 12(3) of Schedule 10 (as amended by regulation 22).
31	Commission to present a report on auditors' liability.	No implementation required.
32.1	Member States to have effective oversight of statutory auditors in accordance with paragraphs 2 to 7.	Sections 1209 to 1264 and Schedules 10 to 14.
32.2	All statutory auditors to be subject to public oversight.	Sections 1212(1) and 1217, paragraphs 1 to 4 of Schedule 10, and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).
32.3	System of public oversight to be governed by independent non-practitioners.	Article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).
32.4	System of public oversight to oversee approval and registration of statutory auditors, adoption of audit standards, continuing education, quality assurance, investigations and discipline.	Sections 1209 to 1264 and Schedules 10 to 14, and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).

32.5	System of public oversight to include conducting investigations in relation to statutory auditors and taking appropriate action.	Sections 1224 and 1225, and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).
32.6	System of public oversight to be transparent and publish annual work programmes and activity reports.	Paragraph 10 of Schedule 13 and article 7 of the Statutory Auditors (Delegation of Functions etc) Order 2008.
32.7	System of public oversight to be adequately funded, and funding free from undue influence.	Article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).
33	Member States to ensure cooperation of national public oversight systems, and to nominate one entity as responsible for that cooperation.	Sections 1253A to 1253C (as inserted by regulation 16), and article 4 of the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).
34.1	Member States to respect the principle of home-country regulation.	Sections 1210 and 1212.
34.2	For audits of group accounts, Member States may not impose additional requirements on audits of subsidiaries established in other Member States.	Sections 1210 and 1212, and paragraphs 6 to 11 of Schedule 10 (as amended by regulations 17 to 21).
34.3	For companies whose securities are traded on the market of a second Member State, the second Member State may not impose additional requirements on their audits.	Sections 1210 and 1212, and paragraphs 6 to 11 of Schedule 10 (as amended by regulations 17 to 21).
35.1	Member States to designate competent authorities for Directive's tasks.	Section 1217 and Schedule 10, Section 1220 and Schedule 11, and the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).
35.2	Competent authorities to avoid conflicts of interest.	Section 1217 and Schedule 10, Section 1220 and Schedule 11, and the Statutory Auditors (Delegation of Functions etc) Order 2008 (as amended by regulation 7 of the 2010 regulations).
36.1	Competent authorities of Member States to cooperate with one another, render assistance and exchange information.	Sections 1253A to 1253C (as inserted by regulation 14).
36.2	Obligations of professional secrecy to apply to employees of competent authorities.	Sections 1224A (as amended by regulation 3 of the 2011 regulations) and 1224B and Schedule 11A (as inserted by regulation 8(2) and the Schedule to the 2007 Regulations and as amended by regulation 6 of the 2011 regulations).
36.3	Article 36.2 shall not prevent competent authorities exchanging information.	Section 1224A(4) and (5) and Schedule 11A (as inserted by regulation 8(2) and the Schedule to the 2007 Regulations and as amended by regulation 6 of the 2011 regulations).

36.4	Competent authorities to provide information requested by competent authorities of other Member States. They may refuse in certain circumstances.	Section 1253B (as inserted by regulation 14).
36.5	Competent authorities to notify competent authorities of other Member States if aware of unlawful conduct in their territories.	Section 1253C (as inserted by regulation 14).
36.6	Competent authorities to conduct investigations requested by competent authorities of other Member States. They may refuse in certain circumstances.	Section 1253B (as inserted by regulation 14).
36.7	Commission may adopt further measures to facilitate cooperation between competent authorities.	No implementation required at this stage.

APPOINTMENT AND DISMISSAL OF AUDITORS

37.1	Statutory auditor to be appointed by members of audited entity.	<ul style="list-style-type: none"> - sections 485 and 489; - regulation 8 of the Partnerships (Accounts) Regulations 2008; - regulation 7 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 6 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - section 77 of, and Schedule 11 to, the Building Societies Act 1986 (as amended by paragraphs 13 and 14 of Schedule 1 to the Companies Act 2006 (Consequential Amendments etc) Order 2008); - section 72 of, and Schedule 14 to, the Friendly Societies Act 1992 (as amended by paragraphs 15, 16 and 187 of Schedule 1 to the Companies Act 2006 (Consequential Amendments etc) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
37.2	Alternative systems of appointment allowed if designed to ensure independence of auditor from managers of audited entity.	Sections 486 and 490;

38.1	Statutory auditors not to be dismissed on improper grounds.	<ul style="list-style-type: none"> - section 994 (as amended by regulation 42); - regulation 11 of the Partnerships (Accounts) Regulations 2008; - regulation 10 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 9 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - paragraph 6A of Schedule 11 to the Building Societies Act 1986 (as inserted by article 6 of Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - paragraph 10A of Schedule 14 to the Friendly Societies Act 1992 (as inserted by article 6 of Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
38.2	Statutory auditor and audited entity to inform competent authority of dismissal or resignation, including an explanation of the reasons.	<ul style="list-style-type: none"> - sections 522 and 523; - regulations 12 and 13 of the Partnerships (Accounts) Regulations 2008; - regulations 11 and 12 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulations 10 and 11 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - paragraphs 8A to 8C of Schedule 11 to the Building Societies Act 1986 (as inserted by article 6 of Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - paragraphs 15A to 15C of Schedule 14 to the Friendly Societies Act 1992 (as inserted by article 6 of Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
STATUTORY AUDITS OF PUBLIC INTEREST ENTITIES		
39	Member States may exempt non-traded public interest entities from the requirements of Articles 40 to 43.	Implemented in provisions relating to Articles 40 to 43 – see below.
40.1	Statutory auditors of public interest entities to publish transparency reports containing certain information on their websites.	The Statutory Auditors (Transparency) Instrument 2008.
40.2	Transparency report to be signed by the statutory auditor.	The Statutory Auditors (Transparency) Instrument 2008.

41.1	Public interest entities to have audit committees, whose membership includes one independent person competent in accounting or auditing.	No implementation required – see Article 41.5 below.
41.2	Functions of an audit committee to include monitoring financial reporting process, the audit, and the independence of the statutory auditor.	No implementation required – see Article 41.5 below.
41.3	Proposal of public interest entity’s managers for appointment of statutory auditor to be based on audit committee’s recommendation.	No implementation required – see Article 41.5 below.
41.4	Statutory auditor to report to audit committee on key matters arising from audit.	Paragraph 10B(2)(e) and (f) of Schedule 10 (as inserted by regulation 21).
41.5	Member States may exempt public interest entities from the above requirements if they have a body performing equivalent functions.	Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.
41.6	Member States may exempt from the above requirements: (a) a subsidiary of a public interest entity; (b) a collective investment undertaking; (c) an issuer of asset-backed securities; (d) a credit institution which is not traded or issued debt securities of more than 100 million euros.	Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.
42.1	Statutory auditors of public interest entities to:	
	(a) confirm annually in writing to audit committee their independence;	Paragraph 10B(2)(a) of Schedule 10 (as inserted by regulation 21).
	(b) disclose annually to audit committee any additional non-audit services provided to entity;	Paragraph 10B(2)(b) of Schedule 10 (as inserted by regulation 21).
	(c) discuss with audit committee the threats to their independence and the safeguards applied.	Paragraph 10B(2)(c) and (d) of Schedule 10 (as inserted by regulation 21).
42.2	In audit firms, key audit partners responsible for audit to rotate after 7 years.	Paragraph 10C(1)(a) and (b) of Schedule 10 (as inserted by regulation 21).
42.3	Key audit partners not to take up key management posts in audited entity for two years following audit.	Paragraph 10C(3) and (4) of Schedule 10 (as inserted by regulation 21).
43	Quality assurance review under Article 29 must be every 3 years for statutory auditors of public interest entities.	Paragraph 23(1A) of Schedule 10 (as inserted by regulation 28).
AUDITORS FROM THIRD COUNTRIES		

44.1	Member States may approve third country auditors as statutory auditors, subject to reciprocity, if they meet requirements equivalent to Articles 4 and 6 to 13.	Section 1221(3) and (4).
44.2	The requirements of Article 14 also apply to approval of a third country auditor.	Section 1221(1A) and (7A) (as amended by regulation 6).
45.1	Competent authorities of Member State must register in accordance with Articles 15 to 17 third country auditor who provide an audit report of a company whose securities are traded on a regulated market in that Member State.	Regulations 34 to 37 (as amended by regulation 2(5) and (6) of the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008, regulation 2(3) of the Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008 and regulation 7(3) and (4) of the 2011 Regulations).
45.2	Articles 18 and 19 also apply to such registration.	Regulation 35(5) (as amended by regulation 2(4) of the Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008) and Regulation 39 (as substituted by regulation 7(5) of the 2011 Regulations).
45.3	Member States to subject registered third country auditors to their systems of oversight, quality assurance, and investigation and penalties.	Sections 1242 (as amended by regulation 32 and by regulation 4 of the 2011 Regulations) to 1245 and Schedule 12 (as amended by regulation 33).
45.4	Audit reports to have no legal effect if the third country auditor is not registered.	Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.
45.5	Third country auditors to be registered only if:	
	(a) meet requirements equivalent to Article 3(3);	Regulations 35(3)(c) and (4) and 36(1)(c);
	(b) majority of firm's managers meet requirements of Articles 4 to 10;	Regulations 35(3)(c) and 36(1)(b)(i);
	(c) individual auditors meet requirements of Articles 4 to 10;	Regulations 35(3)(c) and 36(1)(b)(ii);
	(d) audits conducted in accordance with standards and requirements equivalent to Articles 22, 24, 25 and 26;	Regulations 35(3)(c) and 36(1)(d) and (e);
	(e) publish a transparency report equivalent to Article 40 requirements.	Regulations 35(3)(c) and 36(1)(f).
45.6	Equivalence referred to in Article 45.5(d) to be assessed by Commission. Member States may assess if no Commission decision.	Regulation 36(1)(d) and (e).
46.1	Member States may disapply Article 45.1 – 3 on basis of reciprocity if a third country auditor is subject in home country to quality assurance, investigations and oversight equivalent to Articles 29, 30 and 32.	Sections 1239(7) (as amended by regulation 30(5)) and 1242(4) (as amended by regulation 2 of the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2011).

46.2	Equivalence referred to in Article 46.1 to be assessed by Commission. Member States may assess if no Commission decision.	Sections 1239(7) (as amended by regulation 30(5)) and 1242(4) (as amended by regulation 2 of the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2011).
46.3	Member States to communicate to Commission their assessments of equivalence and any cooperative arrangements with third country authorities.	No implementation required in legislation.

TRANSFER OF PAPERS TO THIRD COUNTRY AUTHORITIES

47.1	Member States may allow transfer of audit papers to a third country authority if:	<ul style="list-style-type: none"> - Section 1253D(1) (as inserted by regulation 2 of the 2010 regulations); - Section 1253DA (as inserted by regulation 2 of the 2010 regulations) (transfer by Secretary of State); - Section 1253DB (as inserted by regulation 2 of the 2010 regulations) (transfer by statutory auditor)
	(a) papers relate to a company traded in that country or a group based in that country;	<ul style="list-style-type: none"> - Section 1253DA(3) (as inserted by regulation 2 of the 2010 regulations) (transfer by the Secretary of State) - Section 1253DB(4) (as inserted by regulation 2 of the 2010 regulations) (transfer by statutory auditor with the approval of the Secretary of State).
	(b) transfer is via Member State authority and at their request;	<ul style="list-style-type: none"> - Section 1253DA(2) (as inserted by regulation 2 of the 2010 regulations) (transfer by the Secretary of State) - Section 1253DB(3) (as inserted by regulation 2 of the 2010 regulations) (transfer by statutory auditor with the approval of the Secretary of State).
	(c) third country authority meets requirements declared as adequate under Article 47.3;	Section 1253D(2) (as inserted by regulation 2 of the 2010 regulations)

	(d) there are working arrangements based on reciprocity between the authorities;	<ul style="list-style-type: none"> - Section 1253DA(4) (as inserted by regulation 2 of the 2010 regulations) (transfer by the Secretary of State) - Section 1253DB(5) (as inserted by regulation 2 of the 2010 regulations) (transfer by statutory auditor) - Section 1253E (as substituted by regulation 3 of the 2010 regulations)
	(e) transfer is in accordance with Data Protection Directive.	Section 1253D(3) (as inserted by regulation 2 of the 2010 regulations).
47.2	Working arrangements referred to in Article 47.1(d) must ensure that:	Section 1253E(2) (as substituted by regulation 3 of the 2010 regulations)
	(a) requests for audit papers are justified;	
	(b) employees of authority are subject to professional secrecy obligations;	Section 1253E(5) (as substituted by regulation 3 of the 2010 regulations)
	(c) authorities only use papers for oversight and other functions equivalent to Articles 29, 30 and 32;	Section 1253E(3) and (4) (as substituted by regulation 3 of the 2010 regulations)
	(d) a request for papers may be refused if adverse effect on security or public order, or if judicial proceedings initiated in respect of same matter.	Section 1253E(6) and (7) (as inserted by regulation 3 of the 2010 regulations)
47.3	Adequacy referred to in Article 47.1(c) to be decided by Commission.	Section 1253D(2) (as inserted by regulation 2 of the 2010 regulations)
47.4	As a derogation from Article 47.1, Member States may allow direct transfer of papers from auditors to third country authorities if:	Section 1253DC (as inserted by regulation 2 of the 2010 regulations) Paragraphs 16A(1) and 16AB(1) and (2) of Schedule 10 (as inserted by regulation 5 of the 2010 regulations).
	(a) authorities have initiated investigations;	
	(b) transfer does not conflict with auditor's obligations to Member State authority;	No implementation required, as no such conflicting obligations exist.
	(c) reciprocal working arrangements between authorities for direct access;	Paragraph 16AB(5) of Schedule 10 (as inserted by regulation 5 of the 2010 regulations).
	(d) Member State authority informed of request in advance;	Paragraph 16AB(4) of Schedule 10 (as inserted by regulation 5 of the 2010 regulations).
	(e) working arrangements comply with Article 47.2.	Paragraph 16AB(5) of Schedule 10 (as inserted by regulation 5 of the 2010 regulations).
47.5	Commission may specify the cases to which Article 47.4 applies.	No implementation required at this stage.
47.6	Member States to communicate to Commission working arrangements referred to above.	No implementation required in legislation.

COMMITTEE PROCEDURE

48

Committee procedure (comitology) for further measures to be made by Commission under Directive.

No implementation required.

DISCLOSURE OF AUDITOR REMUNERATION

49.1

(a) Article 43.1 of Directive 78/660/EEC amended so that notes on company accounts include auditor's fees for audit and other services.

- Regulation 5 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 as amended by regulations 2, 3 and 4 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) (Amendment) Regulations 2011;
- regulation 4(2) of the Partnerships (Accounts) Regulations 2008;
- regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008;
- regulation 3(5) of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;
- Schedule 10C to the Building Societies Act 1986 (as inserted by Schedule 1 to the Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008);
- Schedule 13F to the Friendly Societies Act 1992 (as inserted by Schedule 1 to the Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008);
- The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.

	(b) Article 44.1 of Directive 78/660/EEC amended so that Member States may allow small companies not to produce notes on such fees.	<ul style="list-style-type: none"> - regulation 4 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008; - regulation 4(2) of the Partnerships (Accounts) Regulations 2008; - regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008;
	(c) Article 45.2 of Directive 78/660/EEC amended so that Member States may allow medium-size companies not to disclose such fees if disclosed to audit regulator on request.	<ul style="list-style-type: none"> - regulation 4(4) of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008; - regulation 4(2) of the Partnerships (Accounts) Regulations 2008; - regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008;
49.2	Article 34 of Directive 83/349/EEC amended so that notes on group accounts include auditor's fees for audit and other services.	<ul style="list-style-type: none"> - regulation 6 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008; - regulation 4(2) of the Partnerships (Accounts) Regulations 2008; - regulation 4(2) of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008; - regulation 3(5) of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; - Schedule 10C to the Building Societies Act 1986 (as inserted by Schedule 1 to the Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008); - Schedule 13F to the Friendly Societies Act 1992 (as inserted by Schedule 1 to the Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008); - The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.
FINAL PROVISIONS		
50	Directive 84/253/EEC (previous directive on audit) is repealed.	No implementation required.
51	Statutory auditor approved under Directive 84/253/EEC before this Directive is transposed to be considered as approved in accordance with this Directive.	Section 1219(b) and (c).
52	Member States may impose more stringent requirement, unless otherwise provided for in Directive.	No specific implementation required.

53	Member States must transpose Directive by 29 June 2008, and communicate main provisions of national law to Commission.	No specific implementation required.
54	Directive enters into force 20 days after publication.	No implementation required.
55	Directive addressed to the Member States.	No specific implementation required.

Department for Business, Innovation and Skills
1 September 2011