

2013 No. 1973

COMPANIES

The Companies (Receipt of Accounts and Reports) Regulations 2013

<i>Made</i>	- - - -	<i>6th August 2013</i>
<i>Laid before Parliament</i>		<i>8th August 2013</i>
<i>Coming into force</i>	- -	<i>1st October 2013</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 426(1) and (3) of the Companies Act 2006^(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Companies (Receipt of Accounts and Reports) Regulations 2013.

(2) These Regulations come into force on 1st October 2013 and apply in relation to annual accounts and reports prepared in respect of a company's financial year ending on or after 30th September 2013.

Interpretation

2. In these Regulations, unless otherwise stated—

“the 2006 Act” means the Companies Act 2006;

“full accounts and reports” means, in relation to a company, the annual accounts and reports, copies of which the company is required to send to the persons specified in section 423(1) of the 2006 Act.

Revocation and transitional provision

3.—(1) The Companies (Summary Financial Statement) Regulations 2008^(b) are revoked.

(2) A notification to the company under regulation 5(2) which is in force immediately before 1st October 2013 and the effect of a failure to respond before that date to an opportunity to elect to receive copies of the full accounts and reports under regulation 5(3) of the Companies (Summary Financial Statement) Regulations 2008 are treated on and after that date as if they were a notification or failure to respond under the provisions of regulation 6(2) and 6(3) of these Regulations.

^(a) 2006 c.46. Section 426 was amended by regulation 10 of S.I. 2013/xxxx.

^(b) S.I. 2008/374.

Persons to whom a company may send strategic report with supplementary material

4.—(1) Subject to these Regulations, a company may send a copy of its strategic report with supplementary material instead of a copy of its full accounts and reports to—

- (a) a person specified in section 423(1) of the Companies Act 2006 (duty to circulate copies of annual accounts and reports); and
- (b) a person nominated to enjoy information rights under section 146 of the Companies Act 2006 (traded companies: nomination of persons to enjoy information rights).

Cases in which sending of strategic report with supplementary material prohibited

5.—(1) In the following cases a company may not send a copy of its strategic report with supplementary material to a person specified in regulation 4—

- (a) in the case of any such person, where it is prohibited from doing so by any relevant provision of its constitution;
- (b) in the case of any such person who is the holder of a debenture, where it is prohibited from doing so by a relevant provision in any instrument constituting or otherwise governing any of the company's debentures of which that person is a holder; or
- (c) in the case of any such person (whether or not the holder of a debenture) where it is prohibited from sending a summary financial statement to any such person by any relevant provision of its constitution.

(2) In the following cases a company may not send a copy of its strategic report with supplementary material to a person specified in regulation 4 in relation to any financial year—

- (a) where, in relation to that year, no auditor's report has been made in respect of the annual accounts of the company, or the strategic report, or the directors' report, or the auditable part of the directors' remuneration report, where relevant, under sections 495 (auditor's report on company's annual accounts), 496 (auditor's report on strategic report and directors' report(a)) and 497 (auditor's report on auditable part of directors' remuneration report) of the 2006 Act respectively;
- (b) where the period for filing accounts and reports for that year under section 442 of the 2006 Act (period for filing accounts) has expired;
- (c) where the strategic report in respect of that financial year has not been approved by the board of directors and has not been signed on behalf of the board by a director of the company.

(3) For the purposes of paragraph (1) any provision (however expressed) which requires copies of the full accounts and reports to be sent to a person specified in regulation 4, or which forbids the sending of a copy of the strategic report with supplementary material under section 426 of the 2006 Act (option to provide strategic report with supplementary material), is a relevant provision.

Ascertainment of the wishes of a person specified in regulation 4

6.—(1) A company may not send a copy of the strategic report with supplementary material to a person specified in regulation 4 unless the company has ascertained that the person does not wish to receive copies of its full accounts and reports, and paragraphs (2) and (3) apply for the ascertainment of whether or not such a person wishes to receive copies of the full accounts and reports for a financial year.

(2) Where a person specified in regulation 4 has expressly notified the company either that the person wishes to receive copies of the full accounts and reports or that the person wishes, instead of copies of those documents, to receive a copy of the strategic report with supplementary material, the company must send copies of the full accounts and reports or strategic report with

(a) Section 496 was amended by paragraph 21 of the Schedule to S.I 2013/xxx).

supplementary material, as appropriate, to that person in respect of the financial years to which the notification applies.

(3) Where there has been no such express notification to the company by such a person, that person may be taken to have elected to receive a strategic report with supplementary material if the person fails to respond to an opportunity to elect to receive copies of the full accounts and reports given to the person either—

- (a) by a consultation notice under regulation 7, or
- (b) as part of a relevant consultation of that person's wishes by the company under regulation 8.

(4) For the purposes of paragraph (2) a notification has effect in relation to a financial year if it relates to that year (whether or not it has been given at the invitation of the company) and if it has been received by the company not later than 28 days before the first date on which copies of the full accounts and reports for that year are sent to the persons specified in regulation 4 in accordance with section 423 of the 2006 Act.

Consultation by notice

7.—(1) A consultation notice under this regulation is notice given by a company to a person specified in regulation 4 which—

- (a) states that for the future, so long as the person is a person so specified, the person will be sent a copy of the strategic report with supplementary material for each financial year instead of a copy of the company's full accounts and reports, unless the person notifies the company that the person wishes to receive full accounts and reports;
- (b) states that the card or form accompanying the notice in accordance with regulation 9(3) must be returned by a date specified in the notice, being a date at least 21 days after service of the notice and not less than 28 days before the first date on which copies of the full accounts and reports for the next financial year for which that person is entitled to receive them are sent out to persons specified in regulation 4 in accordance with section 423 of the 2006 Act;
- (c) includes a statement in a prominent position to the effect that the strategic report and supplementary material will not contain sufficient information to allow as full an understanding of the results and state of affairs of the company or group as would be provided by the full annual accounts and reports and that persons specified in regulation 4 requiring more detailed information have the right to obtain, free of charge, a copy of the company's last full accounts and reports.

Relevant consultation

8.—(1) A company may conduct a relevant consultation to ascertain the wishes of a person specified in regulation 4.

(2) For the purposes of this regulation, a relevant consultation of the wishes of such a person is a notice given to that person which—

- (a) states that for the future, so long as the person is a person specified in regulation 4, the person will be sent a strategic report with supplementary material instead of the full accounts and reports of the company, unless the person notifies the company that the person wishes to continue to receive full accounts and reports;
- (b) accompanies a copy of the full accounts and reports; and
- (c) accompanies a copy of a strategic report with supplementary material, with respect to the financial year covered by those full accounts and reports and which is identified in the notice as an example of the documents which that person will receive for the future, so long as the person is a person specified in regulation 4, unless the person notifies the company to the contrary.

Supplementary provisions

9.—(1) The company communications provisions of the 2006 Act apply to any notice or other communication required or authorised to be sent to or by the company by any provision in these Regulations.

(2) This regulation and regulations 6, 7 and 8 apply to a person who is entitled, whether conditionally or unconditionally, to become a person specified in section 423(1) of the 2006 Act in relation to the company, but who has not yet become such a person, as they apply to a person specified in regulation 4.

(3) Subject to paragraph (4), a notice given under regulations 7 or 8 must be accompanied by a card or form—

- (a) in respect of which, in the case of a card or form sent by post, any postage necessary for its return to the company has been, or will be, paid by the company, and
- (b) which is so worded as to enable a person specified in regulation 4, by marking a box and returning the card or form, to notify the company that the person wishes to receive full accounts and reports for the next financial year for which the person is entitled to receive them as such a person and for all future financial years after that.

(4) The company need not pay the postage in respect of the return of the card or form in the following circumstances—

- (a) if the address of a member to which notices are sent in accordance with the company's constitution is not within an EEA State,
- (b) if the address of a debenture holder to which notices are sent in accordance with the terms of any instrument constituting or otherwise governing the debentures of which the person is a holder is not within an EEA State, or
- (c) if the address of a person to whom paragraph (2) applies to which notices are sent, in accordance with the contractual provisions under which the person has a right (conditionally or unconditionally) to become a person specified in section 423(1) of the 2006 Act, is not within an EEA State.

Jo Swinson

Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
6th August 2013 Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the circumstances under which companies may send to members in place of the company's full accounts and reports a copy of the company's strategic report with supplementary material in accordance with section 426 of the Companies Act 2006 (c.46) ("the Act").

Section 426 (as originally enacted) provided that a company could prepare and send a summary financial statement to persons who were entitled to receive full copies of the company's accounts and reports. That section was amended by regulation 10 of the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (S.I. 2013/XXX) ("the 2013 Regulations") to provide that instead of an option to provide a summary financial statement the company could provide a copy of its strategic report with supplementary material. The requirement for a company to prepare a strategic report is set out in section 414A of Part 15 of the Act, and supplementary material is described in section 426A of the Act, both as inserted into the Act by the 2013 Regulations.

Regulation 2 revokes the Companies (Summary Financial Statement) Regulations 2008 (S.I. 2008/374) with a saving for notifications made under regulation 5(2) and the effect of a failure to respond to an opportunity to elect to receive copies of the full accounts and reports under regulation 5(3) of those regulations.

Regulations 4 to 8 provide for the conditions under which a company may provide a copy of the strategic report with supplementary material and the procedures by which it can be ascertained whether a person wishes to receive full accounts and reports. These regulations are in substantially the same form as regulations 4 to 8 of S.I. 2008/374.

An impact assessment of the effect that the 2013 Regulations will have on the costs to business is available from Business Environment Directorate of the Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or at www.gov.uk/bis and is published with the Explanatory Memorandum alongside that instrument on www.legislation.gov.uk. No separate impact assessment has been prepared for this instrument.

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