

EXPLANATORY MEMORANDUM TO
THE COMPANIES (REVISION OF DEFECTIVE ACCOUNTS AND REPORTS)
(AMENDMENT) (No.2) REGULATIONS 2013

2013 No. 2224

- 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.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument revokes and replaces the Companies (Revision of Defective Accounts and Reports)(Amendment) Regulations 2013 (SI 2013/1971) before it comes into force on 1st October 2013.

2.2. The Companies (Revision of Defective Accounts and Reports) Regulations 2008 (S.I. 2008/373) set out detailed provisions on how companies should revise their accounts and reports under the Companies Act 2006 (“the 2006 Act”) if they are found to be defective. These Regulations amend S.I. 2008/373 to reflect amendments made to the 2006 Act by the Enterprise and Regulatory Reform Act 2013 (c.24) and the Companies (Strategic Report and Directors’ Report) Regulations 2013 (S.I. 2013/xxx)(“the 2013 Regulations”).

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

3.1 This instrument has been made a matter of urgency to revoke and replace SI 2013/1971 before it comes into force. That instrument was drafted to make amendments to SI 2008/373 consequential upon the making of amendments to the Companies Act 2006 (c.46) as explained above. However that instrument contained a drafting error as it was drafted to apply to financial years commencing on or after 1st October 2013, and not to financial years ending on or after 30th September (see SI 2013/1971). That had the effect that SI 2013/1971 was out of line with the application of those amendments and did not apply to the reports which it was intended to apply to. In accordance with guidance the Department has revoked the earlier instrument and replaced it with this instrument which is in the same substantive form save for the amendments to regulation 1(2) and 13 of SI 2013/1971.

4. Legislative Context

4.1 Section 454 of the 2006 Act enables company directors to revise the accounts, directors' report or directors' remuneration report where they consider that the original accounts or reports did not comply with the accounting and reporting provisions of the 2006 Act or regulations made under it. It also enables voluntary revision of summary financial statements.

4.2 Section 454 of the 2006 Act confers power on the Secretary of State to make regulations providing for the application of the 2006 Act provisions where there is voluntary revision. S.I. 2008/373 set out the procedures for voluntary revision. They cover matters such as the method of revision, the functions of the auditors in relation to the revised documents and the steps directors should take to bring revisions to the attention of shareholders (including persons nominated to enjoy information rights under section 146 of the 2006 Act).

4.3 Part 15 of the 2006 Act sets out the requirements in respect of the preparation of accounts and reports by companies. Part 15 of the 2006 Act is amended by the 2013 Regulations to repeal section 417 (business review) and remove it from the directors' report, and to insert new provisions (sections 414A to 414D) requiring the preparation of a strategic report.

4.4 The 2013 regulations also amend section 426 of Part 15 of the 2006 Act (option to provide summary financial statement). Companies will no longer be required to prepare a summary financial statement to submit to members who elect not to receive copies of the full accounts and reports, but instead in those circumstances companies will be able to send a copy of the strategic report. In that case, new section 426A provides for certain supplementary material to accompany the strategic report for the information of members.

4.5 Paragraph 12 of the Schedule to the 2013 Regulations amends section 454 to insert a reference to the strategic report and to substitute for the reference to summary financial statement a reference to the strategic report with supplementary material.

4.6 Section 79(2) of the Enterprise and Regulatory Reform Act 2013 (c.24) inserted into the 2006 Act section 422A (revised directors' remuneration policy) and in subsection 422A(5) applied section 454 to the revision of the directors' remuneration policy.

4.7 These Regulations amend S.I. 2008/373 as consequence of these amendments to the 2006 Act.

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

- *What is being done and why*

7.1 This instrument corrects a drafting error in SI 2013/1971 and is therefore being issued free of charge to all known recipients of that instrument.

7.2 From time to time, companies may need to revise their accounts or reports, if they discover that these in some way do not comply with the requirements of company law. In order to encourage openness and transparency, the 2006 Act explicitly permits voluntary revision. S.I. 2008/373 set out procedures for voluntary revision, to ensure that companies are not discouraged from making voluntary revisions by uncertainty about how to do so, and to ensure consistency in the way it is done.

7.3 These Regulations amend S.I. 2008/373 in order to ensure that companies can make voluntary revisions to the strategic report, directors report and the revised directors' remuneration policy introduced into the 2006 Act by the 2013 Regulations and the Enterprise and Regulatory Reform Act 2013.

8. Consultation outcome

8.1 The changes in this instrument that refer to a revised directors remuneration policy are consequential upon the insertion of section 422A into the Companies Act 2006 by the Enterprise and Regulatory Reform Act 2013, which was based on a full consultation. The consultation covering directors' remuneration ran from 14 March 2012 to 27 April 2012.

8.2 The consultation covering changes to the directors' report and strategic report ran from 19 September 2011 and 25 November 2011 and received 116 responses.

8.3 Both consultations involved the full range of stakeholders and the specific changes in this instrument have not been subject to further review as they are deregulatory in effect and result from the legislative changes already consulted on.

9. Guidance

9.1 BIS is not planning to produce guidance on the matters covered by these Regulations.

10. Impact

10.1 The changes to directors' remuneration, made under the Enterprise and Regulatory Reform Act 2013, and the changes to the narrative reporting framework were subject to full impact assessments. As a result, the impact of these consequential amendments was implicit in those assessments and there is no additional impact on business. A separate Regulatory Impact Assessment has therefore not been prepared for this instrument

10.2 There is no impact on the public sector or on charities or voluntary bodies.

11. Regulating small business

11.1 The legislation will apply to small companies who choose not to apply the small companies' exemption available in the Act.

12. Monitoring & review

12.1 The regulations will be reviewed in line with any review of the provisions to which the amendments relate.

13. Contact

Mark Jackson at the Department for Business, Innovation and Skills, Tel: 0207 215 0352 or email: mark.jackson@bis.gsi.gov.uk, can answer any queries regarding the instrument.