

EXPLANATORY MEMORANDUM TO
THE COMPANIES (BODIES CONCERNED WITH AUDITING STANDARDS ETC.)
(EXEMPTION FROM LIABILITY) REGULATIONS 2016

2016 No. 571

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 To introduce a new exemption from liability for the Financial Reporting Council (“the FRC”) for the carrying out of regulatory activities in relation to financial reporting.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 18 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (“the 2004 Act”) provides an exemption from liability for damages for bodies carrying on activities concerned with the matters set out in section 16(2) of the 2004 Act and which have received a grant from the Secretary of State under section 16 in relation to those matters.
- 4.2 The activities set out in section 16(2) of the 2004 Act include issuing accounting standards for auditors and actuarial work, investigating departures from such standards, exercising the functions of the Secretary of State under Part 42 of the Companies Act 2006 (audit regulatory functions), acting as the Independent Supervisor in respect of audits of companies owned by the Government and supervising the regulatory functions of the professional accountancy bodies.
- 4.3 The FRC currently carries out the regulatory functions listed in section 16(2) of the 2004 Act and is exempt from liability in connection with those activities under section 18 of that Act by virtue of a grant it receives. The exemption applies to acts or omissions occurring within 12 months of the payment of a grant.
- 4.4 Section 38 of the Small Business, Enterprise and Employment Act 2015 repeals section 18 of the 2004 Act and replaces it with a new section 18A (under which these Regulations are being made). Section 18A gives the Secretary of State the power by order or regulations to provide for exemption from liability in damages for specified bodies or persons, for things done or omitted to be done, for or in connection with the carrying on of specified activities listed in section 16(2).

4.5 This is the first exercise of the power under section 18A of the 2004 Act.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Government considers that it is desirable to provide an exemption from liability for damages for those who carry out the regulatory activities set out in section 16(2) of the 2004 Act, in relation to the carrying out of those activities. Section 18A permits the provision of an exemption to a body without the corresponding need to give them a grant every 12 months in order for the exemption from liability to apply.

7.2 The regulations provide the FRC and the Conduct Committee of the FRC with exemption from liability in respect of the activities specified of those bodies from 1st June 2016.

Consolidation

7.3 The regulations do not amend another instrument.

8. Consultation outcome

8.1 No general consultation has been carried out in relation to these regulations. The FRC has been consulted.

9. Guidance

9.1 The Department does not intend to issue any guidance alongside this instrument. It is not considered necessary as the regulations only apply to the FRC.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment had not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The regulations do not contain a review clause as they do not make regulatory provision in the sense of imposing requirements, restrictions, conditions or setting standards, or securing compliance with or enforcing those matters, within the meaning of section 32(4) of the Small Business, Enterprise and Employment Act 2015.

13. Contact

- 13.1 Rob Cottam at the Department for Business, Innovation and Skills Tel: 0207 215 0169 or email: rob.cottam@bis.gsi.gov.uk can answer any queries regarding the instrument.