

EXPLANATORY MEMORANDUM TO
THE COMPANIES (LATE FILING PENALTIES) AND LIMITED LIABILITY
PARTNERSHIPS (FILING PERIODS AND LATE FILING PENALTIES)
REGULATIONS 2008

2008 No. 497

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument amends, with effect from 1 February 2009, the schedule of penalties which are to be paid by limited companies and limited liability partnerships which file their accounts after the time period specified in the Companies Acts.

2.2 This instrument also amends the time period within which limited liability partnerships are obliged to file their accounts so as to be the same as for companies under the Companies Act 2006 (“the 2006 Act”) and applies the provision in the 2006 Act on how to calculate this period.

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

None

4. Legislative Background

This instrument:

- a) amends section 242A of the Companies Act 1985 (“the 1985 Act”), using the power contained in section 257 of the 1985 Act;
- b) exercises the regulation-making power contained in section 453 of the 2006 Act;
- c) applies to limited liability partnerships, using the power in section 15(a) of the Limited Liability Partnerships Act 2000 to amend the Limited Liability Partnerships Regulations 2001 (SI 2001/1090), the new rules in section 443 of the 2006 Act on the calculation of the deadline for filing accounts;
- d) also applies to limited liability partnerships the new deadline for filing private company accounts (the new deadline for company accounts is in section 442 of the 2006 Act, but because the 1985 Act still applies to limited liability partnerships, the application of the new deadline to limited liability partnerships is by amendment of the application of that Act).

The amendment of section 242A of the 1985 Act applies also to limited liability partnerships by virtue of the Limited Liability Partnerships Regulations 2001 and the operation of section 20(2) of the Interpretation Act 1978.

5. Territorial Extent and Application

Where this instrument amends the 1985 Act (including in the application of that Act to limited liability partnerships), it applies to England and Wales and to Scotland. Where it exercises a power under the 2006 Act or applies a provision in that Act to limited liability partnerships, it applies to all of the United Kingdom.

6. European Convention on Human Rights

Stephen Timms, MP, PC, Minister of State has made the following statement regarding Human Rights:

In my view the provisions of the Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008 are compatible with the Convention rights.

7. Policy background

7.1 The Companies Acts provide for a regime of civil administrative penalties (“late filing penalties”) for limited companies which file their accounts after the due date specified in the Acts. The purpose of this regime is to encourage companies to file on time so that the accounts can be placed on the public record and viewed by any interested person. The 2006 Act provides for the level of penalties to be specified in regulations; it is therefore necessary to make regulations for the regime to come into effect when the 2006 Act comes into force. In addition, the instrument amends the current schedule of penalties in the 1985 Act. These provisions make the regime more effective, in three respects:

- a) it provides for a general increase in the level of penalties to reflect the fact that these have not changed since 1992;
- b) it increases the level of penalty in particular for those who file more than one month late;
- c) it doubles the penalty for any company which also filed late the previous year.

7.2 The purpose of amending the 1985 Act is to ensure simplicity for companies and their professional advisers. The new penalties will apply to accounts filed late on or after 1 February 2009, regardless of whether they were filed under the 1985 Act or under the 2006 Act. However, the doubling of penalties will only apply when two consecutive sets of accounts are filed late under the 2006 Act, in other words filings of accounts for financial years beginning on or after 6th April 2008.

7.3 The purpose of the instrument in respect of limited liability partnerships is to ensure that they are subject to the same regime as limited companies with regard

to the deadline for filing of accounts, and with regard to the penalties if these accounts are filed late. The doubling of penalties for the late filing of accounts in two successive years will not be applied to limited liability partnerships until Part 15 of the 2006 Act on Accounts is applied (with modification) to limited liability partnerships . It is intended that double penalties will apply for two successive late filings of accounts for financial years beginning on or after 1 October 2008.

8. Impact

This instrument does not place any new or increased regulatory burden on business, the third sector, the public or the public sector. It simply changes the level of penalties which are payable by companies and limited liability partnerships if they do not meet their obligations under the Companies Acts relating to the timely filing of accounts.

9. Contact

Tom Smith (Companies House, 02920 380401, tsmith@companieshouse.gov.uk) can answer any queries regarding the instrument.