

EXPLANATORY MEMORANDUM TO
THE STATUTORY AUDITORS AND THIRD COUNTRY AUDITORS
(AMENDMENT) REGULATIONS 2009

2009 No. 2798

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 This instrument amends the Statutory Auditors and Third Country Auditors Regulations 2007¹ (“the 2007 Regulations”) to remove the transitional provisions applying to sections 1253D and 1253E of the Companies Act 2006 (“the 2006 Act”). These sections were inserted into the 2006 Act by the 2007 Regulations.

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

3.1 This instrument comes into force on 21 October, less than 21 days from being laid. As explained below, this is to secure the policy objective of the instrument, by minimising the possibility that auditors’ papers could be transferred to third country regulators between the instrument’s being made and its coming into force.

3.2 This instrument amends the implementation of Directive 2006/43/EC of the European Parliament and of the Council 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, p87) (“the Audit Directive”). It is made under the power in section 2(2) of the European Communities Act 1972.

4. Legislative context

4.1 The 2007 Regulations inserted sections 1253D and 1253E into the 2006 Act to implement some of the requirements of Article 47 of the Audit Directive. This article requires that the transfer of audit working papers to the audit regulators of non-EEA states be largely prohibited, until the Commission has determined that they meet the requirements of the Audit Directive for such transfer. As the Commission is yet to make such determinations, section 1253D prohibits, with a limited exception, the transfer of audit working papers. Section 1253E foresees such Commission determinations and sets out how working arrangements may be made with non-EEA regulators for such transfer. The powers in section 1253E are delegated to the Professional

¹ SI 2007/3494

Oversight Board of the Financial Reporting Council by the Statutory Auditors (Delegation of Functions etc) Order 2008². Under the transitional arrangements for these provisions (regulation 15(2) of the 2007 Regulations, as amended by the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008³) sections 1253D and 1253E apply only to papers relating to audits conducted by auditors appointed for financial years beginning on or after 6 April 2008.

4.2 This instrument removes the transitional provision and so applies the controls in sections 1253D and 1253E to papers relating to all audits, regardless of their date, with effect from 21 October 2009.

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

7. Policy background

7.1 As explained above, sections 1253D and 1253E of the 2006 Act implement the requirement in Article 47 of the Audit Directive for Member States to ban the transfer of auditors' working papers to non-EEA audit regulators until the Commission has made a decision to allow transfers to specific regulators. These sections currently only apply to papers relating to audits for financial periods beginning on or after 6 April 2008. At the time of implementation it was thought unlikely that an issue would arise in regard to earlier audits. However subsequent work on potential determinations to permit access under Article 47 of the Audit Directive indicates that there is a potential issue, and that third country regulators may seek access to such papers in the next couple of months. The European Commission is of the clear view that the restriction should apply to working papers relating to all audits.

7.2 This amendment will extend the ban in sections 1253D and 1253E to all audits, provide legal clarity and prevent the exchange of information. It needs to come into force as soon as possible, so as to minimise the possibility of information being exchanged between the regulations being made and the ban coming into force.

² S.I. 2008/496

³ S.I. 2008/2639

8. Consultation outcome

8.1 BIS and Financial Reporting Council officials have informally consulted the major audit firms and other affected members of the audit profession. Representatives of major UK companies have also been consulted informally. All were content for the change to be made.

9. Guidance

9.1 This change primarily affects the Professional Oversight Board of the Financial Reporting Council, a small number of auditors and third country regulators. The Professional Oversight Board and BIS are ensuring that affected parties are aware of the change.

10. Impact

10.1 The impact of sections 1253D and 1253E of the 2006 Act was covered in the Impact Assessment attached to the 2007 Regulations. This is available at http://www.opsi.gov.uk/si/si2007/em/uksiem_20073494_en.pdf. As the effect of this amendment is to make the transfer of information less likely, it is unlikely to result in increased costs to business or to the regulator.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 This legislation applies to statutory auditors who audit large companies who have listings outside the EEA. These audit firms are unlikely to be small businesses.

12. Monitoring & review

12.1 The arrangements for co-operation between audit regulators will be kept under review by the Professional Oversight Board.

13. Contact

13.1 Jim Bellingham at the Department for Business, Innovation and Skills (tel: 020 7215 3858 or email: jim.bellingham@bis.gsi.gov.uk) can answer queries regarding the instrument.