

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL ACCOUNTING STANDARDS (DELEGATION OF FUNCTIONS) (EU EXIT) REGULATIONS 2021
2021 No. 609

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to delegate certain functions of the Secretary of State, relating to the adoption of international accounting standards for use within the UK. The functions are delegated to a UK body called the UK Accounting Standards Endorsement Board (“UKEB”). By this delegation, the UKEB will be responsible for the adoption of international accounting standards for use within the UK. The functions were originally conferred on the Secretary of State by Chapter 3 of Part 2 of The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (the “principal Regulations”), to replace the framework for the adoption of international accounting standards by the European Commission within the EU following the end of the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations are made under powers provided by the principal Regulations. The principal Regulations were made under section 8 of The European Union (Withdrawal) Act 2018 (c. 16).
- 3.2 These Regulations and this explanatory memorandum should be read in the context of the principal Regulations
(<http://www.legislation.gov.uk/uksi/2019/685/contents/made>).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Climate Change and Corporate Responsibility, Lord Callanan, has made the following statement regarding Human Rights:

“In my view the provisions of the International Accounting Standards (Delegation of Functions) (EU Exit) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Before the end of the transition period, Regulation EC No 1606/2002 required publicly traded companies to apply a single set of high-quality international accounting standards (also known as International Financial Reporting Standards, or “IFRS”) for the preparation of their consolidated financial accounts. The requirements of this Regulation were transposed into UK law in relation to companies by Part 15 of the Companies Act 2006 and Regulations made under that Part (the Companies (Revision of Defective Accounts and Reports) Regulations 2008, the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008). The result was that publicly traded companies in the UK were required to apply IFRS as adopted by the EU to their consolidated accounts. Publicly traded companies’ individual accounts, and other companies’ individual and consolidated accounts, were required to be prepared using international accounting standards or UK Generally Accepted Accounting Practices (“UK GAAP”), which is a UK specific set of accounting standards set by the Financial Reporting Council (“FRC”).
- 6.2 The principal Regulations were made, under section 8 of The European Union (Withdrawal) Act 2018, to bring existing international accounting standards adopted by the EU into UK law and to provide powers to endorse and adopt new or amended international accounting standards, as issued by the International Accounting Standards Board (“IASB”), and known as IFRS, to the Secretary of State. As part of the UK national framework these standards are specified as “UK-adopted international accounting standards” and they replaced IFRS as adopted by the EU for use by UK companies. The principal Regulations also included a power for the Secretary of State to delegate certain functions to a designated body. This instrument uses that power to delegate functions, including the adoption of international accounting standards for use in the UK, to the UKEB.

7. Policy background

What is being done and why?

- 7.1 The Government is committed to IFRS as a global set of accounting standards that facilitate investment and transparency across borders. In addition, given the size of the UK’s financial sector and the depth of expertise in company reporting, it is important that the UK continues to play a significant and positive role in the development of IFRS, to ensure that they reflect the views of UK stakeholders and the UK public good.
- 7.2 Delegating functions to endorse and adopt IFRS, as well as to influence the development of IFRS, to the UKEB, will ensure these functions are carried out by a dedicated body with the necessary skills and experience.

7.3 Regulation 2 of this instrument delegates all the functions conferred onto the Secretary of State in Chapter 3 of Part 2 of the principal Regulations to the UKEB, with two exceptions. Firstly, the Secretary of State retains the function to amend the criteria for determining whether the use of an IFRS is conducive to the long term public good of the UK. Secondly, the duty to lay a report in Parliament on how the endorsement and adoption duties have been discharged remains with the Secretary of State. The UKEB will nevertheless be bound by transparency and accountability requirements set out in its key governance documents (more detail on these is provided below). In addition, the principal Regulations will require the UKEB to report to the Secretary of State on its technical decision-making and require this report be laid in Parliament.

Functions delegated to the UKEB

- 7.4 The responsibility and power to adopt IFRS is delegated to the UKEB. Board Members will include accountants, preparers of accounts and users of accounts. It will have a representative and diverse range of skills and experiences to ensure that IFRS adoption decisions are made according to technical criteria and free from political interference.
- 7.5 To adopt a standard, the UKEB will need to be satisfied that it adheres to the criteria set out in the principal Regulations. The Board can only decide to adopt a standard if it is satisfied that the standard is conducive to the UK's long-term public good and would not be contrary to the principle that accounts must give a "true & fair" view of an undertaking's assets, liabilities, financial position and profit or loss. The latter requirement provides consistency with the requirement on directors of a company in s.393 of the Companies Act 2006. The Board will meet to consider standards before taking an adoption decision so that it can discuss whether a standard fulfils the criteria. The terms of reference and other governance documents will ensure that the UKEB's meetings will be open to public scrutiny.
- 7.6 The UKEB will also be able to adopt a standard in part. This power is to be used in exceptional circumstances and only if the adopted part of the standard fulfils the statutory criteria mentioned above. If the UKEB does not adopt a standard, either fully or in part, the standard will not form part of UK-adopted international accounting standards. The role of the UKEB in influencing the development of IFRS is intended to minimise the chance of the UKEB not adopting a standard because it does not satisfy the adoption criteria.
- 7.7 The requirement to consult, prior to adopting a standard, is also delegated to the UKEB. Understanding the views of UK stakeholders and the possible impacts of an adoption decision is crucial to being able to determine whether the standard would meet the adoption criteria. The UKEB will have the resources to conduct the large consultations that are necessary. Indeed, a Technical Advisory Group for IFRS 17, a major new insurance standard due to come into effect in 2023, has already been established by the UKEB's secretariat, and has held several meetings. The Group consists of a representative range of industry stakeholders.
- 7.8 The responsibility to participate in and contribute to a single set of international accounting standards is delegated to the UKEB. Outreach with stakeholders has shown that the need to influence the development of IFRS by the IASB is highly valued by business because it would allow UK interests to be addressed while a standard is still in development. This influencing work will be a substantial part of the

UKEB's responsibilities. Proactive engagement with the IASB should minimise the possibility that the standards being assessed do not meet the UK's adoption criteria.

- 7.9 Lastly, the requirements of publication, certification and review of new standards are also delegated to the UKEB.

Precedents

- 7.10 This approach is consistent with market participants' understanding of the operation of the current UK infrastructure for capital markets and how technical market standards are adopted in the UK. There are many pre-existing examples, including the approach taken by HM Treasury on adoption of technical standards (adopted as the Financial Conduct Authority's Disclosure Guidance and Transparency Rules), and the delegation of the Secretary of State's audit-related functions to the FRC under Part 42 of the Companies Act 2006. Bodies which endorse and adopt IFRS have also been shown to work around the world. There are similar models in Australia and Canada.

Detail on the UKEB

- 7.11 The UKEB is an unincorporated association governed by the rules set out in its terms of reference. A subsidiary of the FRC, registered in England and Wales as company number 11870890, will provide facilities and support to the UKEB in the carrying out of its functions. The provision of such facilities will be governed by a service level agreement between the subsidiary company and the FRC. The UKEB will report to the FRC on its governance and due process, although its technical decision-making will remain independent and it will report on those decisions to the Secretary of State. The reports will be made publicly available. Further detail on the recruitment, budget and governance policies are contained in the key documents described below.
- 7.12 The Secretary of State sets the terms of reference for the UKEB. This document outlines the UKEB's role and responsibilities; the process for appointing UKEB members; the composition requirements for the Board; and arrangements relating to meetings and voting on adoption of IFRS. The Chair and Board Members will be required to comply with the terms of reference as a condition of their terms of appointment. A copy of the terms of reference has been published on the UKEB's website.
- 7.13 Alongside the terms of reference and the service level agreement, the working arrangements between the UKEB, the FRC and BEIS will also be governed by a memorandum of understanding. It will set out the roles and responsibilities of each Party in relation to the UKEB. In particular, it will include provisions to ensure the independence of the UKEB's technical decision-making. A copy of the memorandum of understanding will be made publicly available.
- 7.14 Regulation 3 of this instrument requires the UKEB to have satisfactory arrangements for recording its decisions and to facilitate accountability for those decisions. The terms of reference require the UKEB to adhere to transparent due process, set out in a due process document. The UKEB will publicly consult on the due process document before finalising and it will be periodically reviewed thereafter. The FRC will oversee the UKEB's compliance with its due process procedures.

Accountability

- 7.15 Parliamentary accountability has been built into the constitution of the UKEB. The terms of reference will require the UKEB to report periodically to the Secretary of

State on its technical decision-making, and to the FRC on adherence with its governance and due process. The principal Regulations require the Secretary of State to lay the UKEB's report before Parliament, and to report on the carrying out of the Secretary of State's responsibilities under the principal Regulations. The UKEB's reports on governance and due process to the FRC will also be made publicly available. This will ensure that the UKEB can balance accountability to Parliament whilst remaining independent of direct political influence in the endorsement of individual accounting standards.

- 7.16 The Secretary of State retains the ability to amend or revoke the delegation in any circumstances, including if the UKEB was deemed to be ineffective, through additional regulations.

Exemption from liability

- 7.17 Regulation 4 confers on the UKEB the exemption from liability provided for in s.18A of The Companies (Audit, Investigations and Community Enterprise) Act 2004 in relation to the UKEB's carrying out of the issuing of accounting standards for use in the UK. Section 18A provides for "*exemption from liability for bodies concerned with accounting standards etc*". It provides that in the carrying out of specified matters, neither the body nor any of its members, officers or members of staff (or those acting as such) may be made liable in damages for anything done in carrying out those activities. The FRC already benefits from a similar exemption under this provision for its role in issuing accounting standards for use in Companies Act accounts.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it delegates certain functions that were conferred on the Secretary of State by the principal Regulations, which were made under section 8 of the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This is not a consolidation.

10. Consultation outcome

- 10.1 We have not been able to perform a full public consultation due to sensitivities surrounding negotiations with the EU and the coronavirus outbreak.
- 10.2 However, internal and external stakeholder groups were established to advise on the development of a future IFRS Framework after departure from the EU. Members included representatives from professional bodies and industry representative groups; as well as accounting and audit professionals. Internal stakeholders included representatives from regulators and other government departments.
- 10.3 Many of these stakeholders were familiar with the EU adoption and endorsement process. As such, they were well placed to advise on the development of a UK framework for future IFRS endorsement and adoption.
- 10.4 Stakeholders were largely supportive of the proposal to delegate functions relating to the adoption of IFRS to the UKEB. They placed particular emphasis on the need for

the UKEB to actively feed UK industry views into the development of IFRS by the IASB and for the UK's process to be streamlined in comparison with that in the EU.

- 10.5 Officials also worked closely with the stakeholder groups during the development of the key documents for the UKEB, including the terms of reference and memorandum of understanding. Drafts of these two documents were shared with selected internal and external stakeholders representing approximately 20 organisations in August 2020. BEIS received 11 responses which were very helpful in finalising drafts of those documents. The groups were also previously given sight of these Regulations in draft.

11. Guidance

- 11.1 The UKEB's website (<https://www.endorsement-board.uk/>) contains information on the UKEB's intended functions. The website also hosts the text of UK-adopted international accounting standards. The intention is that the website becomes the hub for all matters relating to UK endorsement and adoption of IFRS.
- 11.2 Further information on accounting after the transition period has also been published on gov.uk (<https://www.gov.uk/guidance/accounting-for-uk-companies>).

12. Impact

- 12.1 This instrument does not place any new reporting obligations on companies. Neither will it have an impact on charities or voluntary bodies.
- 12.2 The funding of the UKEB will be run on a cost recovery basis and there should not be a significant impact on the public sector. Instead, the UKEB will be funded by increasing the FRC's levy on preparers of accounts using IFRS. As listed companies are widely in favour of IFRS, this is not expected to be contentious.
- 12.3 A de minimis impact assessment was produced and cleared in April 2018 covering both the principal Regulations and this instrument. It assessed that the direct and indirect costs to business (including familiarisation) would fall below the de minimis threshold of £5m per annum. Therefore, a full Impact Assessment is not required.
- 12.4 We estimate that around 15,000 economically significant companies (both listed and unlisted) in the UK use IFRS, including those using them on a voluntary basis.

13. Regulating small business

- 13.1 As noted above, this instrument does not place any new reporting obligations on companies. Further, application of IFRS is only mandatory for the group accounts of companies whose securities are admitted to trading on a UK regulated market. As such, many of the users of IFRS are likely to be large and we expect that small businesses applying IFRS do so on a voluntary basis. Therefore, we do not expect the legislation to affect disproportionately activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the principal Regulations require the UKEB to report at least annually to the Secretary of State on the carrying out of the delegated functions. This report will be laid in Parliament. The Secretary of State also retains the ability to amend or withdraw the delegation at any time.

- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Climate Change and Corporate Responsibility, Lord Callanan, has made the following statement:

“A review clause is not included in respect of the functions delegated by the International Accounting Standards (Delegation of Functions) (EU Exit) Regulations 2021 because the UK Accounting Standards Endorsement Board will be required to report at least annually to the Secretary of State on the carrying out of the delegated functions.”

15. Contact

- 15.1 Daniel Makevic, at the Department for Business, Energy & Industrial Strategy, may be contacted with any queries regarding the instrument (Telephone: 020 7215 1108 or email: daniel.makevic@beis.gov.uk).
- 15.2 Andrew Death, Deputy Director for Business Frameworks, at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Climate Change and Corporate Responsibility, Lord Callanan at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.