

EXPLANATORY MEMORANDUM TO
THE COMPANIES (DISCLOSURE OF AUDITOR REMUNERATION AND
LIABILITY LIMITATION AGREEMENTS) REGULATIONS 2008

2008 No. 489

1. 1.1 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 These regulations require companies, in their annual accounts, to disclose information about amounts payable for the services they and their associates have purchased from their auditors and their associates. They also require companies to disclose whether they have entered into a liability limitation agreement with their auditors, and if so, to provide certain information about that agreement. They replace the existing Companies (Disclosure of Auditor Remuneration) Regulations 2005 (SI 2005/2417).

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

- 3.1 None.

4. Legislative background

- 4.1 The provisions on Auditor Remuneration (part 2 of the regulations) are made under section 494 of the Companies Act 2006. This section restates the previous section 390B of the 1985 Companies Act, and allows the Secretary of State to make regulations requiring companies to disclose details of services provided by their auditors, and the remuneration involved. These regulations restate with minor modifications the provisions of the previous regulations made under the 1985 Act (the Companies (Disclosure of Auditor Remuneration) Regulations 2005 (SI 2005/2417)). These modifications ensure that the regulations comply with the requirements of Directive 2006/43/EC on statutory audit of annual and consolidated accounts (the Audit Directive) in respect of medium-sized companies; replace references to the 1985 Act definitions of small and medium-sized companies with references to the equivalent definitions in the 2006 Act, and provide a limited exemption from the disclosure requirements in respect of certain small scale services provided by associates only distantly connected with the company's auditors. The majority of the provisions of the Audit Directive are implemented in the Statutory Auditors and Third Country Auditors Regulations 2007 (SI2007/3494) and a full transposition note is attached to the Explanatory Memorandum for those regulations.

4.2 The provisions on Liability Limitation Agreements (part 3 of the Regulations) are made under section 538 of the Companies Act 2006. Sections 534 to 538 of that Act introduce a new ability for a company to agree a Liability Limitation Agreement with its auditor, and these regulations specify the way in which such an agreement is to be disclosed in the company's accounts.

5. Extent

5.1 These regulations apply to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Following the corporate scandals of earlier in the decade, including Enron and WorldCom, the regulation of auditors in the UK was reviewed. One aspect of that review was the provision, by a company auditor, of non-audit services.

7.2 One conclusion of the review was that there should be greater disclosure of the provision of non-audit services. The Companies (Disclosure of Auditor Remuneration) Regulations 2005 were made after consultation with a range of stakeholders. Those regulations required disclosure of non audit services, in a number of specific categories, provided by the company's auditor or its associates.

7.3 The current regulations continue the approach of the 2005 regulations, while making the minimum amendments to comply with the EU's Audit Directive, and alleviating an unintended consequence of the earlier drafting.

Consultation

7.4 There have been three consultations in the development of these regulations. On 5 March 2007 the Department of Trade and Industry published a consultation on the overall policy for the implementation of the Audit Directive. There were 31 responses. While the majority of the responses supported the Government's overall approach of making only the minimum changes to the UK framework needed to implement the Directive, some responses called for a wider review of the 2005 Auditor Remuneration Regulations. The Government has been clear that it does not propose at present to make major changes to the regulations, which have not yet been in place for two full reporting cycles. On 25 July 2007 the Government published a draft of these regulations alongside a statement of its conclusions following the first

consultation. Following comments received, the Government has carried a further short consultation on a further draft of the regulations which has introduced a de minimis exemption from disclosure for certain small scale services provided by persons only distantly associated with the company's auditor. There was no opposition to the exemption in the responses to this third consultation and a majority were supportive.

8. **Impact**

- 8.1 8.1 The Regulatory Impact Assessment relating to the Companies Act 2006 (<http://www.berr.gov.uk/files/file29937.pdf>), provisions of which are implemented by these regulations, is available on the website of the Department for Business, Enterprise and Regulatory Reform. The provisions on disclosure on auditor remuneration are also covered in the Impact Assessment for the implementation of the Audit Directive (http://www.opsi.gov.uk/si/si2007/em/uksiem_20073494_en.pdf), which is available on the OPSI website.

9. **Contact**

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