EXPLANATORY MEMORANDUM TO

THE ACCOUNTING STANDARDS (PRESCRIBED BODIES) (UNITED STATES OF AMERICA AND JAPAN) (AMENDMENT) REGULATIONS 2024

2024 No. 623

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His 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 correct an error in the Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2015, SI 2015/1675 ("the 2015 Regulations") and the Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amendment) Regulations 2023, SI 2023/975 ("the 2023 Regulations"). Regulation 4 of the 2023 Regulations erroneously inserted regulation 5A into the 2015 Regulations using the negative resolution parliamentary procedure. This provision provided for an obligation for companies to note their accounts. This instrument revokes and replaces the existing regulation 5A in the 2015 Regulations with a new regulation made under the correct affirmative resolution parliamentary procedure and revokes regulation 4 in the 2023 Regulations.

3. Matters of special interest to Parliament

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

3.1 The Committee reported, in its Third Report on the 2023-24 Session, published on 22 November 2023, regulation 4 of the 2023 Regulations for doubt as to whether it is within vires. The Department accepted in its Explanatory Memorandum to the Committee of 14 November that this specific regulation should not have been introduced using the negative parliamentary procedure and that the affirmative procedure should have been used in line with section 473(3)(b) of the Companies Act 2006.

3.2 This instrument corrects the procedural error in the 2015 and 2023 Regulations. Therefore, it is appropriate to apply the free issue procedure to this instrument.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England, Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland. It also extends by agreement to Northern Ireland.

4.3 The UK Government is responsible for the operation and regulation of company law in England and Wales, and in Scotland. The Northern Ireland administration has agreed that, while the operation and regulation of companies remains a transferred

matter within the legislative competence of the Northern Ireland Assembly, amendments to the Companies Act 2006 and legislation regulating business entities should be made in the same terms for the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Kevin Hollinrake MP, Parliamentary Under Secretary of State, Department for Business and Trade has stated:

"In my view the provisions of the Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amendment) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 Regulation 4 of the 2023 Regulations was made under section 468 of the Companies Act 2006 and inserts regulation 5A into the 2015 Regulations. This provision provides for a new requirement for certain parent companies to disclose specified information in a note to the accounts. Regulations made under section 468 which "require additional matter to be included in a document of any class" are subject to the affirmative resolution procedure according to section 473(3)(b) of the Companies Act 2006. The Department acknowledges that regulation 4 of the 2023 Regulations was laid by negative resolution in error.

This new instrument substitutes the existing regulation 5A in the 2015 Regulations with a new regulation made under the correct affirmative resolution parliamentary procedure and revokes regulation 4 of the 2023 Regulations, which was made in error under the negative resolution procedure. The remaining provisions of the 2023 Regulations are correctly made.

7. Policy background

What is being done and why?

7.1 The 2015 Regulations provide to US and Japanese-listed parent companies in scope an extended transition period of up to four financial years after incorporation in the UK to convert to UK accounting principles for their reporting of group company accounts here. The objective of this regulatory easement is to support those US and Japanese-listed companies which have chosen to re-domicile in the UK to do so.

7.2 The 2023 Regulations implemented the recommendations from a 2023 post-implementation review that the 2015 Regulations should be extended and amended. It extended the 2015 Regulations for periodic review by the Secretary of State at five yearly intervals, with provisions for the Secretary of State to complete a first review and provide a report on this before 30th September 2028. The provisions of the 2023 Regulations covering these matters were laid correctly under the negative resolution procedure.

7.3 The 2023 Regulations also inserted provisions to place an obligation on any UK incorporated parent company preparing group accounts according to the accounting standards of one of the US or Japanese bodies prescribed in regulation 2 of the 2015 Regulations to disclose in a note to their accounts the date of the company's incorporation in the UK and the number of financial years remaining in which it may prepare accounts under these Regulations. This new disclosure provision responds to the finding of the post-implementation review of the 2015 Regulations that some

businesses using the easement seemed unclear about its time-limited duration and its recommendation that their understanding should be strengthened to counter abuse. However, regulation 4 of the 2023 Regulations, which covered this disclosure obligation, was incorrectly laid under the negative resolution parliamentary procedure. Parent companies are therefore not subject to any enforceable obligation to note their group accounts under the existing incorrectly laid regulation. This new instrument corrects this error. The new regulation 5A stipulates that the requirement to note the accounts will apply to parent companies preparing group accounts for financial years commencing on or after 1st October 2024. This is in order to provide adequate notice to businesses and their advisors; although this requirement is assessed as de minimis in its impacts (paragraphs 12.1-12.3 below)

Explanations

What did any law do before the changes to be made by this instrument?

7.4 Regulation 4 of the 2023 Regulations introduced the disclosure obligation outlined in paragraph 7.3 into the 2015 Regulations.

Why is it being changed?

7.5 Regulation 4 of the 2023 Regulations was laid incorrectly under the negative resolution procedure resulting in the disclosure obligation that was inserted by the existing regulation 5A in the 2015 Regulation being unenforceable. This new instrument revokes regulation 4 of the 2023 Regulations and revokes and replaces regulation 5A of the 2015 Regulations so that it is made correctly using the affirmative resolution parliamentary procedure.

What will it now do?

7.6 The new provision will correctly insert regulation 5A into the 2015 Regulations using the affirmative resolution parliamentary procedure. It will also stipulate a clear date for when the new requirement to note accounts will apply to parent companies preparing group accounts.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department does not intend to consolidate this instrument into the relevant legislation.

10. Consultation outcome

10.1 No consultation has been carried out in respect of this instrument.

11. Guidance

11.1 No guidance has been issued in respect of this instrument.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument. The 2023 Regulations were assessed as zero net cost. The post-implementation review concluded that the regulations provide a benefit to the companies in scope by them not having to transition in an accelerated time frame, that is, allowing them 4 financial years from the date of incorporation, instead of 18 months. The costs to businesses using and benefitting from the regulatory easement of the de minimis disclosure obligation – to clarify their entitlements to counter abuse – are assessed as negligible.

13. Regulating small business

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

14. Monitoring & review

14.1 A statutory review clause is included in the 2015 Regulations and the 2023 Regulations amended those Regulations by inserting requirements for five yearly reviews by the Secretary of State, with a first review report to be published no later than 30th September 2028. The Department is monitoring operation of the legislation, including through the disclosure obligation, which this instrument re-lays.

15. Contact

15.1 Chris Tollady at the Department for Business and Trade, telephone: 020 7215 1672 or email: chris.tollady@businessandtrade.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Andrew Death, Deputy Director for Corporate Reporting, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

15.3 Kevin Hollinrake MP, Parliamentary Under Secretary at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.