EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (AMENDMENT OF SECTION 413) REGULATIONS 2009

2009 No. 3022

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 These Regulations correct an incorrect cross-reference in section 413(8) of the Companies Act 2006 "the 2006 Act", which deals with disclosures in the notes to banking company accounts of advances, credits and guarantees for the benefit of directors.

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

3.1 None.

4. **Legislative Context**

4.1 All companies are required by the 2006 Act to prepare annual accounts. Section 413(8) of the 2006 Act deals with the disclosure in the notes to the accounts of banking companies and the holding companies of credit institutions of advances, credits and guarantees for the benefit of directors. Section 413 replaced section 232 of the Companies Act 1985 and follows more closely Article 43(1)(13) of the 4th (78/660/EEC) Company Law Directive and Article 34(13) of the 7th (83/349/EEC) Company Law Directive.
4.2 These Regulations are being made to correct an incorrect cross-reference.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

6.1 Ian Lucas, the Minister for Business and Regulatory Reform, has made the following statement regarding Human Rights:

In my view the provisions of The Companies Act 2006 (Amendment of section 413) Regulations 2009 are compatible with the Convention rights.

7. **Policy Background**

7.1 The Regulations correct an error in section 413 of the 2006 Act which deals with disclosures in the notes to accounts of advances, credits and guarantees for the benefit of directors. The intention was to continue to exercise the option available to Member states in article 40(7) of the Bank Accounts Directive[1] to require banks to disclose only aggregate figures, since lending money is a principal business of banks. That was the position under the Companies Act 1985.

7.2 The Government received representations from banking stakeholders that the law as currently drafted is unclear and might result in banks making many pages of additional disclosure of such matters as individual credit card transactions for each director. This is because section 413(8) cross refers to subsections (3)(a) and (4)(b) rather than subsection (5)(a) and (c).

7.3 The technical change to correct this cross-reference was unanimously supported in the public consultation which closed on 23 October. The Regulations will come into force in time for the 2009 accounts for the majority of banking companies which prepare their accounts to a 31 December year end.

8. Consultation outcome

8.1 The Government initially consulted on this amendment to section 413(8) towards the end of 2008 as part of its consultation on the draft Companies Act 2006 (Accounts, Reports and Audit) Regulations 2009(S.I. 2009/1581). There were no comments received on the proposed change to that subsection. However the Government decided that it wished to consider the matter further and so the amendment was not included in those Regulations.

8.2 The Government published a further public consultation in August 2009 to consider possible options for amending section 413. There were 17 responses to this consultation, from banks and banking organisations, accountants and accounting bodies and from public authorities. All responses (other than those from consultees who requested confidentiality) are published on the consultation pages of the BIS website, along with the Government's summary and response. The option to correct the incorrect cross-reference in section 413(8) was unanimously approved by those who commented on this option.

8.3 The 2009 consultation also took the opportunity to seek views on matters such as the wider issue of the disclosure of loans etc. to all directors, not just those of banks, by raising a number of questions, setting out options, and asking for suggestions. There was a broad range of views on these, which the Government will consider further. If it did decide to make changes to legislation it would publish draft regulations for comment.

9. Guidance

9.1 The Department will be publicising these Regulations to banking stakeholders, the professional legal and accounting bodies and major firms as well as to the Financial Reporting Council.

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[1] Council Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions.

10. Impact

10.1 This is a technical amendment, namely the correction of an error in the 2006 Act. Section 413 is in Part 15 of the 2006 Act which applies to companies for accounting periods beginning on or after 6 April 2008. Thus, for most banks, the accounts for the year ended 31 December 2009 will be the first set of accounts prepared under the 2006 Act and these banks will not need to suffer from the defect that these Regulations remedy. For that reason no Impact Assessment of the effect that the implementation of this Regulation will have on the costs of business, charities or voluntary bodies has been prepared.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The Regulations will affect only banking companies and the holding companies of credit institutions.

12. Monitoring and review

12.1 This instrument will be reviewed, from 2011, as part of the Companies Act 2006 evaluation.

13. Contact

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