Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972 and sections 473(3), 1290 and 1292(4) of the Companies Act 2006, for approval by resolution of each House of Parliament.

These draft Regulations supersede the draft Regulations of the same name published on 6th February 2009 and are being issued free of charge to all known recipients of those draft Regulations.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

COMPANIES

The Companies Act 2006 (Accounts, Reports and Audit) Regulations 2009

Made - - - - 2009

Coming into force in accordance with regulation 1(2)

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to auditors and the audit of accounts(**b**).

In exercise of the powers conferred by section 2(2) of that Act, and by sections 468(1) and (2) and 1292(1) of the Companies Act 2006(**c**), the Secretary of State makes the following Regulations.

In accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972 and sections 473(3), 1290 and 1292(4) of the Companies Act 2006, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations may be cited as the Companies Act 2006 (Accounts, Reports and Audit) Regulations 2009.

(2) They come into force on the day after the day on which they are made, save for regulation 10 which comes into force on 1st October 2009.

(3) Part 2 of the Regulations (corporate governance statements) applies in relation to financial years beginning on or after 29th June 2008 which have not ended before the date of coming into force of these Regulations.

(**a**) 1972 c.68.
(**b**) S.I. 2007/1679.
(**c**) 2006 c.46.

(4) Regulations 11 and 12 in Part 3 of the Regulations (accounts amendments) apply in relation to financial years beginning on or after 6th April 2008 which have not ended before the date of coming into force of these Regulations.

PART 2

CORPORATE GOVERNANCE STATEMENTS

Approval and signing of separate corporate governance statement

2. After section 419 of the Companies Act 2006 (approval and signing of directors' report) insert—

"**Approval and signing of separate corporate governance statement**

419A. Any separate corporate governance statement must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.".

Filing obligations of unquoted companies

3.—(1) Section 446 of the Companies Act 2006 (filing obligations of unquoted companies) is amended as follows.

(2) Omit "and" at the end of subsection (1)(a), and after subsection (1)(b) insert—

", and

(c) any separate corporate governance statement.".

(3) In subsection (2), after "directors' report" insert "and any separate corporate governance statement".

(4) After subsection (3A) (inserted by way of transitional adaptation by paragraph 8(2) of Schedule 1 to the Companies Act 2006 (Commencement No.5, Transitional Provisions and Savings) Order 2007(**a**)), insert—

"(3B) The copy of any separate corporate governance statement delivered to the registrar under this section must—

(a) state the name of the person who signed it on behalf of the board under section 419A, and

(b) be signed on behalf of the board by a director or the secretary of the company.".

(5) Paragraph (4) shall cease to have effect when that transitional adaptation ceases to have effect.

(6) In subsection (3) (as it has effect after that transitional adaptation ceases to have effect), for "and directors' report" substitute ", directors' report and any separate corporate governance statement".

Filing obligations of quoted companies

4.—(1) Section 447 of the Companies Act 2006 (filing obligations of quoted companies) is amended as follows.

(2) Omit "and" at the end of subsection (1)(b), and after subsection (1)(c) insert—

", and

(d) any separate corporate governance statement.".

(**a**) S.I. 2007/3495 (C.150).

(3) In subsection (2), for "and the directors' report" substitute ", the directors' report and any separate corporate governance statement".

(4) After subsection (3B) (inserted by way of transitional adaptation by paragraph 9(2) of Schedule 1 to the Companies Act 2006 (Commencement No.5, Transitional Provisions and Savings) Order 2007), insert—

"(3C) The copy of any separate corporate governance statement delivered to the registrar under this section must—

(a) state the name of the person who signed it on behalf of the board under section 419A, and

(b) be signed on behalf of the board by a director or the secretary of the company.".

(5) Paragraph (4) shall cease to have effect when that transitional adaptation ceases to have effect.

(6) In subsection (3) (as it has effect after that transitional adaptation ceases to have effect), for "and the directors' report" substitute ", the directors' report and any separate corporate governance statement".

Part 15 definition of "corporate governance statement"

5. After section 472 of the Companies Act 2006 insert—

"**Meaning of "corporate governance statement" etc**

472A.—(1) In this Part "corporate governance statement" means the statement required by rules 7.2.1 to 7.2.11 in the Disclosure Rules and Transparency Rules sourcebook issued by the Financial Services Authority.

(2) Those rules were inserted by Annex C of the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 made by the Authority on 26th June 2008 (FSA 2008/32).

(3) A "separate" corporate governance statement means one that is not included in the directors' report.".

Auditor's report on separate corporate governance statement

6. After section 497 of the Companies Act 2006 (auditor's report on auditable part of directors' remuneration report) insert—

"**Auditor's report on separate corporate governance statement**

497A.—(1) Where the company prepares a separate corporate governance statement in respect of a financial year the auditor must state in his report on the company's annual accounts for that year whether in his opinion the information given in the statement in compliance with rules 7.2.5 and 7.2.6 in the Disclosure Rules and Transparency Rules sourcebook issued by the Financial Services Authority (information about internal control and risk management systems in relation to financial reporting processes and about share capital structures) is consistent with those accounts.

(2) The rules referred to above were inserted by Annex C of the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 made by the Authority on 26th June 2008 (FSA 2008/32).".

Auditor's duties in relation to separate corporate governance statement

7. After section 498 of the Companies Act 2006 (duties of auditor) insert—

"**Auditor's duties in relation to separate corporate governance statement**

498A. Where the company is required to prepare a corporate governance statement in respect of a financial year and no such statement is included in the directors' report—

(a) the company's auditor, in preparing his report on the company's annual accounts for that year, must ascertain whether a corporate governance statement has been prepared, and

(b) if it appears to the auditor that no such statement has been prepared, he must state that fact in his report.".

Part 16 definition of "corporate governance statement"

8. Before section 539 of the Companies Act 2006 insert—

"**Meaning of "corporate governance statement" etc**

538A.—(1) In this Part "corporate governance statement" means the statement required by rules 7.2.1 to 7.2.11 in the Disclosure Rules and Transparency Rules sourcebook issued by the Financial Services Authority.

(2) Those rules were inserted by Annex C of the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 made by the Authority on 26th June 2008 (FSA 2008/32).

(3) A "separate" corporate governance statement means one that is not included in the directors' report.".

Index of defined expressions

9. In Schedule 8 to the Companies Act 2006 (index of defined expressions), at the appropriate place insert—

"corporate governance statement and separate corporate governance statement	
— in Part 15	section 472A
— in Part 16	section 538A".

PART 3

ACCOUNTS AMENDMENTS

Amendment of section 444A

10. In section 444A of the Companies Act 2006 (filing obligations of companies entitled to small companies exemption in relation to directors' report)(**a**), for subsection (4) substitute—

"(4) The copy of the auditor's report delivered to the registrar under this section must—

(a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or

(b) if the conditions in section 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.".

(**a**) Section 444A was inserted by regulation 6(7) of S.I. 2008/393.

Amendment of Small Companies Accounts Regulations

11.—(1) The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008(**a**) are amended as follows.

(2) In regulation 12 (definition of "provisions")—

(a) omit "and" at the end of paragraph (b), and

(b) at the end of paragraph (c) insert—

", and

(d) section 841(2)(a) (Companies Act accounts: provisions to be treated as realised losses) in that Part.".

(3) After paragraph 5 of Schedule 7 (interpretation of term "provisions") insert—

"**Realised losses**

6. The specified provisions for the purposes of section 841(2)(a) of the 2006 Act (Companies Act accounts: treatment of provisions as realised losses) are provisions of any of the kinds mentioned in paragraphs 1 and 2 of this Schedule.".

Amendment of Large and Medium-sized Companies Accounts Regulations

12.—(1) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(**b**) are amended as follows.

(2) In regulation 12 (definition of "provisions")—

(a) omit "and" at the end of paragraph (b), and

(b) at the end of paragraph (c) insert—

", and

(d) section 841(2)(a) (Companies Act accounts: provisions to be treated as realised losses) in that Part.".

(3) For paragraph 13(2)(b) of Schedule 8 (quoted companies: directors' remuneration report: directors' pensions) substitute—

"(b) the transfer value, calculated in accordance with regulations 7 to 7E of the Occupational Pension Schemes (Transfer Values) Regulations 1996(**c**), of the person's accrued benefits under the scheme at the end of the relevant financial year;".

(4) After paragraph 7 of Schedule 9 (interpretation of term "provisions") insert—

"**Realised losses**

8. The specified provisions for the purposes of section 841(2)(a) of the 2006 Act (Companies Act accounts: treatment of provisions as realised losses) are provisions of any of the kinds mentioned in paragraphs 1 and 2 of this Schedule.".

Name
Economic and Business Minister,
Department for Business, Enterprise and Regulatory Reform

Date

(**a**) S.I. 2008/409.
(**b**) S.I. 2008/410.
(**c**) S.I. 1996/1847; regulations 7 to 7E were inserted by regulation 4 of S.I. 2008/1050.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive 2006/46 of the European Parliament and the Council of 14th June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (OJ L 224, 16.8.2006, page 1). The Directive is also implemented by the Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 (S.I. 2008/393), the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (S.I. 2008/409), the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410), and by the Financial Services Authority using powers under the Financial Services and Markets Act 2000 (c.8).

Annex C of the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 made by the Financial Services Authority on 26th June 2008 (FSA 2008/32) requires certain publicly traded companies to prepare a corporate governance statement in implementation of articles 1.7 and 2.2 of Directive 2006/46.

Part 2 of the Regulations implements the Directive's requirements that where the corporate governance statement is a separate statement and not part of the directors' report, it must be filed with the registrar of companies and the auditor must give an opinion as to whether the information required to be shown in the statement as to internal control and risk management systems in relation to the financial reporting process and certain disclosures required by the Takeovers Directive (Directive 2004/25/EEC) is consistent with the annual accounts for the year in question. For the remaining information in the corporate governance statement, the auditor must check that the statement has been produced.

Part 3 of the Regulations amends Part 15 of the Companies Act 2006 (accounts and reports) and regulations made under that Part.

Regulation 10 amends section 444A of the Companies Act 2006 by revoking a provision requiring signature of the auditor's report that will become spent on 1st October 2009.

Regulation 11 amends regulation 12 of, and Schedule 7 to, the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (S.I. 2008/409) to specify provisions for the purposes of section 841(2)(a) of the Companies Act 2006 (treatment of provisions as realised losses). Regulation 12(1), (2) and (4) makes the corresponding amendments to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410).

Regulation 12(3) updates a cross-reference in paragraph 13 of Schedule 8 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (quoted companies: directors' remuneration report).

A transposition note has been prepared which sets out how Directive 2006/46 is transposed into UK law. An Impact Assessment of the effect that the implementation of Directive 2006/46 will have on the costs of business, charities or voluntary bodies has also been prepared. Both are available from the Department for Business, Enterprise and Regulatory Reform, Corporate Law and Governance Directorate, 1 Victoria Street, London SW1. They are also available electronically at www.berr.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament. Otherwise, an Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities or voluntary bodies.

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2009 No. 0000

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