Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, sections 473(3), 484(3) and 1290 of the Companies Act 2006 and section 17(4) and (5)(a) of the Limited Liability Partnerships Act 2000 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No. XXXX

COMPANIES

PARTNERSHIP

LIMITED LIABILITY PARTNERSHIPS

The Companies and Partnerships (Accounts and Audit) Regulations 2013

Made - - - -	***
Coming into force - -	***

The Secretary of State is a Minister designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation, and in relation to auditors and the audit of accounts.

In exercise of the powers conferred by that section and by sections 409(1) and (2), 468, 484(1) and 1292 of the Companies Act 2006(**c**) and section 15 of the Limited Liability Partnership Act 2000(**d**) the Secretary of State makes the following Regulations.

In accordance with paragraph 2(2)(**e**) of Schedule 2 to the European Communities Act 1972, sections 473(3), 484(3) and 1290 of the Companies Act 2006 and section 17(4) and (5)(a) of the Limited Liability Partnership Act 2000, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

(**a**) S.I. 2007/193 and S.I. 2007/1679.
(**b**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).
(**c**) 2006 c. 46.
(**d**) 2000 c. 12.
(**e**) Paragraph 2(2) was amended by section 27(2)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Companies and Partnerships (Accounts and Audit) Regulations 2013 and shall come into force on the first day of the month following that in which they are made.

(2) Regulations 2, 5 and 6 apply in relation to a financial year of a company beginning on or after 1 October 2013.

(3) Regulation 3 applies in relation to a financial year of a LLP beginning on or after 1 October 2013.

(4) Regulation 4 applies to a financial year of a qualifying partnership beginning on or after 1 October 2013 and auditors appointed in respect of that financial year.

(5) In respect of the financial year of a qualifying partnership beginning on or before 30 September 2013 and ending on or before 29 September 2014, references in the Partnerships (Accounts) Regulations 2008(**a**) to Part 15 of the Companies Act 2006, the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008(**b**) or the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(**c**) are to the provisions of that Part and those Regulations as they had effect on 30 September 2013.

(6) In paragraphs (4) and (5), "financial year" and "qualifying partnership" have the same meanings as in the Partnerships (Accounts) Regulations 2008.

(7) In these Regulations—

"the 2006 Act" means the Companies Act 2006;

"the 2008 LLP Regulations" means the Limited Liability Partnerships (Accounts and Audit)(Application of Companies Act 2006) Regulations 2008(**d**); and

"LLP" means limited liability partnership registered under the Limited Liability Partnerships Act 2000.

Amendments to the 2006 Act

2.—(1) The 2006 Act is amended as follows.

(2) In section 384(**e**) (companies excluded from the small companies regime)—

(a) in subsection (2), after paragraph (c) insert—

"(ca) an e-money issuer,"; and

(b) in subsection (2)(d) omit "an e-money issuer,".

(3) Section 448 (unlimited companies exempt from obligation to file accounts and reports) is amended as follows.

(4) In paragraph (b) of subsection (3)(**f**)—

(a) omit the "or" preceding sub-paragraph (iii),

(b) in that sub-paragraph after "partnership" insert "which is not a limited partnership,", and

(c) after that sub-paragraph insert—

", or

(iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company."

(**a**) S.I. 2008/569.
(**b**) S.I. 2008/409.
(**c**) S.I. 2008/410.
(**d**) S.I. 2008/1911, amended by S.I. 2011/99; there are other amending instruments but none is relevant.
(**e**) s.384(2) was amended by the Financial Services Act 2012 (c.51) and S.I. 2007/2932.
(**f**) s.448(3)(b) was substituted by regulation 13(a) of SI 2008/393.

(5) In the words after that paragraph, for "or a Scottish partnership" substitute ", a Scottish partnership which is not a limited partnership or a Scottish partnership which is a limited partnership".

(6) For subsection (5) substitute—

"(5) In this section—

"general partner" means—

(a) in relation to a Scottish partnership which is a limited partnership, a person who is a general partner within the meaning of the Limited Partnerships Act 1907(**a**); and

(b) in relation to an undertaking incorporated in or formed under the law of any country or territory outside the United Kingdom and which is comparable to a Scottish partnership which is a limited partnership, a person comparable to such a general partner;

"limited partnership" means a partnership registered under the Limited Partnerships Act 1907; and

the "relevant accounting reference period", in relation to a financial year, means the accounting reference period by reference to which that financial year was determined."

(7) In section 467 (companies excluded from being treated as medium-sized)—

(a) in subsection (1), after paragraph (b) (but before the "or" following it) insert—

"(ba) an e-money issuer,";

(b) in subsection (2), after paragraph (c) insert—

"(ca) an e-money issuer,"; and

(c) in subsection (2)(d) omit "an e-money issuer,".

(8) In section 474 (minor definitions for the purposes of Part 15), in the definition of "e-money issuer", for "means" substitute—

"means—

(a) an electronic money institution, within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99), or

(b) ".

(9) In section 539 (minor definitions for the purposes of Part 16), in the definition of "e-money issuer", for "means" substitute—

"means—

(a) an electronic money institution, within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99), or

(b) ".

Amendments to the 2008 LLP Regulations (which apply provisions of the Companies Act 2006 to LLPs, with modifications)

3.—(1) The 2008 LLP Regulations are amended as follows.

(2) In regulation 5, in the modified version of section 384 of the 2006 Act applied by that regulation (LLPs excluded from the small LLPs regime)—

(a) in subsection (2), after paragraph (c) insert—

"(ca) an e-money issuer,"; and

(b) in subsection (2)(d) omit "an e-money issuer,".

(3) In regulation 26, in the modified version of section 467 of the 2006 Act applied by that regulation (LLPs excluded from being treated as medium-sized)—

(**a**) 1907 c.24.

(a) in subsection (1), after paragraph (b) (but before the "or" following it) insert—

"(ba) an e-money issuer,";

(b) in subsection (2), after paragraph (c) insert—

"(ca) an e-money issuer,"; and

(c) in subsection (2)(d) omit "an e-money issuer,".

Amendments to the Partnerships (Accounts) Regulations 2008

4.—(1) The Partnerships (Accounts) Regulations 2008 are amended as follows.

(2) In regulation 2—

(a) in paragraph (1) in the definition of "the accounts" for ", director's report" substitute "and reports" and omit "and the auditor's report"; and

(b) omit paragraph (2).

(3) For regulation 3 substitute the following—

"**Qualifying partnerships**

3.—(1) A "qualifying partnership" is a partnership formed under the law of any part of the United Kingdom each of whose members or, in the case of a limited partnership, each of whose general partners is—

(a) a limited company;

(b) an unlimited company each of whose members is a limited company;

(c) a Scottish partnership which is not a limited partnership, each of whose members is a limited company; or

(d) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company.

(2) Each reference in paragraph (1) to a limited company includes a reference to any comparable undertaking incorporated in a country or territory outside the United Kingdom.

(3) The reference in paragraph (1)(b) to an unlimited company includes a reference to any comparable undertaking incorporated in a country or territory outside the United Kingdom.

(4) The reference in paragraph (1)(c) to a Scottish partnership which is not a limited partnership includes a reference to any undertaking comparable to such a Scottish partnership incorporated in or formed under the law of a country or territory outside the United Kingdom.

(5) The reference in paragraph (1)(d) to a Scottish partnership which is a limited partnership includes a reference to any undertaking comparable to such a Scottish partnership incorporated in or formed under the law of a country or territory outside the United Kingdom; and in relation to such an undertaking the reference in that paragraph to the general partners is to be construed as a reference to the members of the undertaking comparable to general partners.

(6) The requirements of these Regulations apply without regard to any change in the members (or in the members of any member) of a qualifying partnership which does not result in it ceasing to be a qualifying partnership.

References to members of a qualifying partnership

3A.—(1) The references in regulations 4 to 15 to the members, or any member, of a qualifying partnership are to be construed as follows.

(2) Where the qualifying partnership is not a limited partnership its members are, for the purposes of those regulations—

(a) its members (irrespective of their place of incorporation or the law under which they were formed);

(b) where any of its members is an unlimited company, the limited companies which are the members of that unlimited company;

(c) where any of its members is a Scottish partnership which is not a limited partnership, the limited companies which are the members of that Scottish partnership; and

(d) where any of its members is a Scottish partnership which is a limited partnership, the limited companies which are the general partners of that Scottish limited partnership.

(3) Where the qualifying partnership is a limited partnership its members are, for the purposes of those regulations—

(a) its general partners (irrespective of their place of incorporation or the law under which they were formed);

(b) where any of its general partners is an unlimited company, the limited companies which are the members of that unlimited company;

(c) where any of its general partners is a Scottish partnership which is not a limited partnership, the limited companies which are the members of that Scottish partnership; and

(d) where any of its general partners is a Scottish partnership which is a limited partnership, the limited companies which are the general partners of that Scottish limited partnership.

(4) Each reference in paragraphs (2) and (3) to a limited company includes a reference to any comparable undertaking incorporated in a country or territory outside the United Kingdom.

(5) The references in paragraphs (2)(b) and (3)(b) to an unlimited company include references to any comparable undertaking incorporated in a country or territory outside the United Kingdom.

(6) The references in paragraphs (2)(c) and (3)(c) to a Scottish partnership which is not a limited partnership include references to any undertaking comparable to such a Scottish partnership incorporated in or formed under the law of a country or territory outside the United Kingdom.

(7) The references in paragraphs (2)(d) and (3)(d) to a Scottish partnership which is a limited partnership include references to any undertaking comparable to such a Scottish partnership incorporated in or formed under the law of a country or territory outside the United Kingdom; and in relation to such an undertaking the references in those paragraphs to the general partners are to be construed as references to the members of the undertaking comparable to general partners."

(4) In regulation 4 in sub-paragraph (a) of paragraph (1), for "director's report" substitute "reports".

(5) In regulation 6—

(a) for paragraphs (1) and (2) substitute—

"(1) This regulation applies where none of the members of a qualifying partnership is a limited company.

(2) But this regulation is subject to regulation 7 and does not apply where—

(a) any member of the qualifying partnership is an undertaking which is incorporated in a member State other than the United Kingdom and is comparable to a limited company; and

(b) the latest accounts of the partnership have been or are to be appended to the accounts of that undertaking and published under the law of that member State in accordance with the provisions of the Fourth or Seventh Directive."; and

(b) for sub-paragraph (a) of paragraph (3) substitute—

"(a) must make the latest accounts available for inspection by any person, without charge and during business hours as follows—

(i) where a qualifying partnership has a principal place of business in the United Kingdom, at that principal place of business;

(ii) where the qualifying partnership has no principal place of business in the United Kingdom, but at least one of its members has a principal place of business or a head office in the United Kingdom, at a member's principal place of business or head office in the United Kingdom nominated by the members of the qualifying partnership for the purposes of this regulation;

(iii) where the qualifying partnership has no principal place of business in the United Kingdom and none of its members has a principal place of business or a head office in the United Kingdom, at an address in the United Kingdom nominated by the members of a qualifying partnership, and".

Amendments to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008

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

(2) In Schedule 2 for sub-paragraph (6) of paragraph 8 and in Schedule 6 for sub-paragraph (6) of paragraph 34 substitute—

"(6) In sub-paragraph (1) "member", in relation to a qualifying undertaking which is a qualifying partnership, has the same meaning as in the Partnerships (Accounts) Regulations 2008.

(7) In this paragraph—

"dealt with on a consolidated basis" and "qualifying partnership" have the same meanings as in the Partnerships (Accounts) Regulations 2008;

"qualifying undertaking" means—

(a) a qualifying partnership, or

(b) an unlimited company each of whose members is—

(i) a limited company,

(ii) another unlimited company each of whose members is a limited company,

(iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or

(iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company.

(8) In sub-paragraph (7) the references to a limited company, another unlimited company, a Scottish partnership which is not a limited partnership or a Scottish partnership which is a limited partnership include a comparable undertaking incorporated in or formed under the law of a country or territory outside the United Kingdom.

(9) In sub-paragraph (7) "general partner" means—

(a) in relation to a Scottish partnership which is a limited partnership, a person who is a general partner within the meaning of the Limited Partnerships Act 1907, and

(b) in relation to an undertaking incorporated in or formed under the law of any country or territory outside the United Kingdom and which is comparable to a Scottish partnership which is a limited partnership, a person comparable to such a general partner.

(10) In sub-paragraphs (7), (8) and (9) "limited partnership" means a partnership registered under the Limited Partnerships Act 1907."

Amendments to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

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

(2) In Schedule 4 for sub-paragraph (6) of paragraph 7 substitute—

"(6) In sub-paragraph (1) "member", in relation to a qualifying undertaking which is a qualifying partnership, has the same meaning as in the Partnerships (Accounts) Regulations 2008.

(7) In this paragraph—

"dealt with on a consolidated basis" and "qualifying partnership" have the same meanings as in the Partnerships (Accounts) Regulations 2008;

"qualifying undertaking" means—

(a) a qualifying partnership, or

(b) an unlimited company each of whose members is—

(i) a limited company,

(ii) another unlimited company each of whose members is a limited company,

(iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or

(iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company.

(8) In sub-paragraph (7) the references to a limited company, another unlimited company, a Scottish partnership which is not a limited partnership or a Scottish partnership which is a limited partnership include a comparable undertaking incorporated in or formed under the law of a country or territory outside the United Kingdom.

(9) In sub-paragraph (7) "general partner" means—

(a) in relation to a Scottish partnership which is a limited partnership, a person who is a general partner within the meaning of the Limited Partnerships Act 1907, and

(b) in relation to an undertaking incorporated in or formed under the law of any country or territory outside the United Kingdom and which is comparable to a Scottish partnership which is a limited partnership, a person comparable to such a general partner.

(10) In sub-paragraphs (7), (8) and (9) "limited partnership" means a partnership registered under the Limited Partnerships Act 1907."

Revocation

7. The following are revoked—

(a) the Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations 2005(**a**);

(**a**) S.I. 2005/1987 which amended S.I. 1993/1820 which is now revoked.

(b) the Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations (Northern Ireland) 2006(**a**).

Name
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
Date Department for Business, Innovation and Skills

(**a**) S.R. (NI) 2006 No 354 which amended S.R. (N.I.) 1994 No 133 which is now revoked.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend certain accounting and auditing provisions in the Companies Act 2006 ("the 2006 Act") and certain provisions of the 2006 Act as they are applied to LLPs by the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (S.I. 2008/1911). The Regulations also make amendments to the Partnerships (Accounts) Regulations 2008 (S.I. 2008/569) ("the 2008 Partnerships Regulations").

Regulation 2 amends section 448 of the 2006 Act. Where certain conditions are met section 448(1) exempts the directors of an unlimited company from the obligation which would otherwise arise under Chapter 10 of Part 15 of the 2006 Act to deliver accounts and reports in relation to the company to the registrar of companies. Section 448(3) provides that this exemption is not available in relation to certain descriptions of unlimited company. The purpose of section 448(3)(b) is to ensure that the exemption is not available in relation to unlimited companies covered by Council Directive 78/660/EEC on the annual accounts of certain types of companies (O.J. L222, 14.8.1978, p.11). However, it is drafted in such a way that the exemption is available to certain unlimited companies which are covered by that Directive. Regulation 2 remedies this defect by amending section 448(3) and replacing section 448(5).

Regulation 2 also amends the definition of e-money issuers in the Companies Act 2006 to take into account changes made to the regulation of the activity of e-money issuing under the Electronic Money Directive 2009/11/EC (O.J. L267, 10.10.2009, p.7) and applies these changes to limited liability partnerships, where this has not already been done in the Electronic Money Regulations 2011 (SI 2011/99). It ensures that e-money issuers are excluded from certain exemptions to accounting and auditing requirements under the 2006 Act.

Regulation 4 amends the 2008 Partnerships Regulations. It amends the United Kingdom's implementation, in respect of partnerships, of Council Directive 90/605/EEC (O.J. L317, 16.11.1990, p.60), which amended Council Directive 78/660/EEC and Council Directive 83/349/EEC on consolidated accounts (O.J. L193, 18.7.1983, p.1), and of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (O.J. L157, 9.6.2006, p.87).

Regulation 4(3) replaces regulation 3 of the 2008 Regulations with new regulations 3 and 3A. New regulation 3 provides a new definition of "qualifying partnership", replacing the definition in regulation 3(1) and (4) of the 2008 Regulations, and also re-enacts (with clarifications) the provision in existing regulation 3(3) dealing with the effect of changes in the constitution of a qualifying partnership. The purpose of providing for a new definition is to ensure that the "qualifying partnerships" covered by the 2008 Regulations are those United Kingdom partnerships to which Council Directive 78/660/EEC applies.

New regulation 3A defines references in regulations 4 to 15 of the 2008 Regulations to the members of a qualifying partnership. It replaces the provision made for that purpose by existing regulation 3(2) and (4) of the 2008 Regulations, read with existing regulation 2(2). The new provisions correct defects in the existing provisions and clarify their effect. They do not re-enact an existing provision which includes in the concept of a member of a qualifying partnership the members of certain connected partnerships.

Regulation 4(5) of these Regulations amends regulation 6 of the 2008 Regulations, which imposes requirements necessary to enable the United Kingdom to take advantage of the option to derogate in Article 47(1a) of Council Directive 78/660/EEC. The amendments correct defects in existing regulation 6(1) to 6(3), ensuring that the requirement in regulation 6(3) for partnership accounts to be available for inspection applies where the Directive requires it to apply.

Regulations 5 & 6 make amendments to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (S.I. 2008/409) and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) to take account of the changes to the 2008 Partnership Regulations.

Regulation 7 corrects an oversight in the 2008 Regulations by revoking the Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations 2005 (S.I. 2005/1987) and the Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations (Northern Ireland) 2006 (NI) 2006 No 354). These are spent as they amend instruments which have been revoked.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Business Environment Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H OET or from www.gov.uk/bis and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

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