

**EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006 (COMMENCEMENT NO. 1, TRANSITIONAL
PROVISIONS AND SAVINGS) ORDER 2006**

2006 No. 3428

AND

**THE COMPANIES (REGISTRAR, LANGUAGES AND TRADING DISCLOSURES)
REGULATIONS 2006**

2006 No. 3429

- 1.** 1.1 This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006 brings into force specific provisions of the Companies Act 2006.

2.2 With effect from 20 January 2007, the following provisions of the Companies Act 2006 connected with Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (the “Transparency Obligations Directive”) will be commenced:

- the provisions on company communications to shareholders and others, which include provisions facilitating electronic communication;
- provisions concerning a public company’s right to investigate who has an interest in its shares;
- Section 463 of the Companies Act 2006, which sets out a statutory basis of directors’ liability to the company in relation to the Directors’ Report (including the Business Review) and the Directors’ Remuneration Report.

The provisions in the Companies Act 2006 enabling the exercise of powers to make orders or regulations by statutory instrument are also being commenced on 20 January 2007.

2.3 With effect from 6 April 2007, the following provisions in the Companies Act 2006 will be commenced:

- Section 1063 which relates to fees payable to the Registrar of Companies;
- Section 1281, which amends Part 9 of the Enterprise Act 2002 to enable public authorities, in certain circumstances, to disclose information where the information is to be used in civil proceedings or otherwise for the purpose of establishing, enforcing or defending legal rights.

2.4 The Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006 will also repeal a number of free-standing provisions of the Companies Act 1985 with effect from 6 April 2007.

2.5 Both the instruments that this EM covers implement Directive 2003/58/EC of the European Parliament and of the Council amending the Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies (respectively the “First Company Law Amendment Directive” and the “First Company Law Directive”). They provide that certain documents can be filed electronically by companies with the registrar of companies (i.e. Companies House), and can be accessed electronically by searchers, and also for information about a company to be included on its websites and in its electronic documents.

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

3.1 The Department regrets that the Regulations and certain provisions of the Order will come into force less than 21 days after they have been laid. The Department experienced unexpected difficulties in preparing the Order, including in respect of the need to take account of comments from various sources including outside bodies. The Department accepts that this is not an adequate reason for failing to comply with the “21-day rule”. It is highly unlikely, however, that anyone will be put at a disadvantage as a result of this non-compliance. The First Company Law Amendment Directive requires implementation by 1 January 2007; and the Companies Act 2006 provides that certain of its provisions will have effect on 1 January 2007 and requires the Regulations to come into force on that date. Relevant interest groups have therefore been expecting the Regulations and the provisions in question in the Order to come into force then: indeed, when the Department indicated that it was considering whether to bring them into force on a slightly later date which would have complied with the “21-day rule”, representations were received indicating that this would be unwelcome because of the expectation that the date would be 1 January.

4. Legislative Background

Companies Act 2006

4.1 The Companies Act 2006 was given Royal Assent on 8 November 2006. It started its passage through Parliament in November 2005 as the Company Law Reform Bill, after the “Company Law Reform” White Paper was published in March 2005. Its name was then changed to the Companies Bill as a result of an amendment made during Commons committee proceedings. The Companies Act 2006 has substantially rewritten company law to make it easier to understand and more flexible, especially for small businesses. The Act partly restates some of the previous Companies Acts 1985 and 1989; partly rewrites some of the previous Companies Acts 1985 and 1989 to make the provisions simpler and easier to understand; and partly introduces new provisions.

The First Company Law Directive

4.2 The First Company Law Directive (68/151/EEC), as regards disclosure requirements in respect of certain types of companies, was originally adopted in 1968. Section I of the First Company Law Directive requires that basic company documents

be disclosed by filing with a company registry (in the UK, Company Registries are maintained for England and Wales, Scotland and Northern Ireland, and the UK is also responsible for ensuring that the Directive is implemented in Gibraltar) and by publication in the national gazette either of the full or partial text of the document or of a reference to the document deposited in the company registry. It also requires that those documents be available for inspection. In addition, the First Company Law Directive specifies minimum information that companies must include on their letters and order forms. The provisions of the First Company Law Directive are already implemented in UK law, for the most part by means of provisions in the the Companies Act 1985 which are re-enacted, with some changes, in the Companies Act 2006.

4.3 The First Company Law Directive assumes the use of paper documents. The First Company Law Amendment Directive (2003/58/EC), to which the instruments that are the subject of this memorandum relate, updates the First Company Law Directive by reflecting the use of information technology and electronic communications.

The First Company Law Directive - Legislative mechanism

4.4 The Companies Act 2006 has been drafted in such a way as to implement the First Company Law Directive in full. Most provisions of that Act are not yet in force, and the Government has announced its intention of consulting on overall plans for implementation early in 2007. It would therefore be premature to bring into force all those provisions of the Act which give effect to the Directive, as some are necessarily linked to other provisions of the Act on which decisions as to timing have yet to be taken. Where the relevant provisions are more or less free-standing, and can be brought into force without creating difficulties in respect of other, as yet unimplemented, aspects of the Act, the Government has chosen to transpose the Directive in UK law by commencing the relevant sections of the 2006 Act by the Order to which this memorandum relates; for other aspects of the Directive, however, the Regulations to which this memorandum relates have been made under the European Communities Act 1972.

4.5 Transposition notes are provided at Annex A.

4.6 Directive 2004/109/EC is largely implemented by rules made by the Financial Services Authority. However, these rules are supported to some extent by provisions of the Companies Act 2006 and the transposition notes for this Directive are, therefore, provided at Annex B.

4.7 As stated in paragraphs 2.1 and 4.4, the Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006 brings only some of the provisions of the Companies Act 2006 into force. Some of the provisions brought into force refer to expressions and concepts defined in parts of the Act not yet brought into force. This has resulted in the need for the transitional adaptations contained in Schedule 1 to the Order. Most of these take the approach of applying expressions and concepts defined in the Companies Act 1985 to the provisions brought into force.

4.8 The Order also includes a number of transitional provisions in Schedule 5 which provide a transition from the regime under the Companies Act 1985 to the

regime introduced by the provisions of the Companies Act 2006 being commenced by the Order.

5. Territorial Extent and Application

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Margaret Hodge MBE MP, Minister of State for Industry and the Regions, has made the following statement regarding Human Rights:

“In my view the provisions of the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 are compatible with the Convention rights.”

6.2 As the Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006 is subject to negative resolution procedure and does not amend primary legislation, no statement is required in respect of it.

7. Policy background on the First Company Law Directive

7.1 As explained above, the focus of the First Company Law Amendment Directive is to accommodate changes in communications technology since the First Company Law Directive was agreed in 1968. The key changes are that:

- Company registries are required to allow companies to file all the “basic documents” (specified in Article 2 of the First Company Law Directive) electronically;
- Company registries are required to allow requests for inspection of these documents to be made electronically;
- Company registries are required to offer electronic copies of these documents to those inspecting the register;
- Company registries have to keep all these documents in electronic form, whether submitted electronically or in paper form;
- Member states are able to use an electronic alternative to the publication of documents in the national gazette; and
- It is made clear that the information requirements for letters and order forms apply equally to electronic letters and order forms, with additional, less onerous requirements for websites.

The current UK position

7.2 In practice, the Companies Act 1985 already allows the Registrar to accept electronic filing of all documents covered by the First Company Law Directive, although specific directions as to the form and manner of filing any particular document electronically have to be given by the Registrar. The Registrar has for some time had mechanisms for the electronic filing of a number of those documents.

7.3 The Companies Act 1985 also already allows the Registrar to keep documents in electronic form, and to provide for inspection by electronic means. The Companies Act 1985 already requires companies to file the necessary accounting documents covered by this directive. Legislation is however necessary to impose formal

obligations on the Registrar in relation to electronic filing, so as to transpose the directive properly in domestic law

Consultation

7.4 Provisions giving effect to the First Company Law Amendment Directive form part of the Companies Act 2006, and were published in draft as part of the consultation on the draft clauses of the Bill which became that Act (then, the Company Law Reform Bill) in Summer 2005. Given the decision to implement the provisions through a combination of commencement of certain provisions of the 2006 Act, and separate regulations, the draft instruments were subject to a further consultation in November- December 2006. The only comments received in either consultation were minor matters of drafting. This tends to confirm the Department's view that, while the principle of ensuring that the legal framework can accommodate developments in electronic communications is very important, the practical impact of these instruments themselves will be relatively minor given existing arrangements in the UK.

Guidance

7.5 Companies House will update its detailed guidance to users as it increases the range of its electronic facilities.

8. Impact

8.1 A Regulatory Impact Assessment relating to the implementation of the First Company Law Directive is attached to this memorandum.

8.2 The impact on the public sector should be negligible, as the instruments essentially apply to companies.

9. Contact

9.1 Maureen Beresford at the Department of Trade and Industry (telephone number: 0207 215 3342 or e-mail: Maureen.Beresford@dti.gsi.gov.uk) can answer any queries regarding these instruments.

The First Company Law Amendment Directive 2003/58/EC

Regulatory Impact Assessment

The First Company Law Amendment Directive, Part 35 of the Companies Act 2006 and the Companies (Registrar, Languages and Trading Disclosures) Regulations) 2006.

1. Introduction

This RIA explains the impact of the First Company Law Amendment Directive (Directive 2003/58/EC of the European Parliament and the Council, which amends the First Company Law Directive (Council Directive 68/151/EEC).

The Directive is aimed at ensuring that certain documents can be filed electronically by companies with the national registrar of companies (i.e. Companies House in the United Kingdom¹), and can be accessed electronically by searchers. In addition it states that certain company information, already required to be disclosed on hard-copy company letters and order-forms, must also appear on the electronic equivalents.

2. Objective

Overall, the changes should help meet the important objectives of: -

- making company information more easily and rapidly accessible by interested parties;
- increasing the use of modern technology in the field of company disclosures;
- simplifying significantly the disclosure formalities imposed upon companies; and
- ensuring essential information safeguards are in place for those dealing with limited liability companies via electronic means.

These objectives run alongside the aims of the Companies Act 2006, and were consulted on as part of the wider consultation on the Bill.

¹ Currently, Companies House provides the company registries only in England and Wales and in Scotland. The company registry in Northern Ireland is part of the Department of Enterprise, Trade and Industry: but in due course it too will become part of Companies House, under the Companies Act 2006.

3. Options

The First Company Law Amendment Directive was agreed in 2003, in order to update the First Company Law Directive in the light of subsequent developments in electronic communication technologies. Given that the existing requirements of the First Company Law Directive form part of community law, the necessary amendments needed also to be made at community level.

Option 1 – Do Nothing

This was a non-starter. Not implementing the Directive could have led to the Government facing infraction proceedings before the European Court of Justice since, under Community law, the provisions of the Directive have to be implemented by rules, which have legally binding effect in some way.

Option 2 – Implementation of Directive

The Directive principally deals with filing company records electronically. Many UK companies already use this option, and send information to Companies House in electronic form. Through implementation of the Directive, companies will continue to have the option to file electronically or not. There is no scope for additional options.

The Directive has now been implemented through the provisions of the Companies Act 2006 brought into force by article 2 of the Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006 and through the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006.

4. Business Sectors Affected

All businesses will be affected if they are companies registered with Companies House. They will be able to return information in electronic form if they wish to do so.

5. Issues of Equity and Fairness

This Directive will affect all businesses that are companies registered with Companies House in the same way.

6. Benefits and costs

Benefits

The main benefits arising from these instruments are in relation to extending the options for companies to comply with statutory disclosure requirements by electronic means. There are seven categories of information required to be publicly disclosed under the First Company Law Directive, relating to incorporation, constitution of the company, particulars of officers, details of the registered office, annual returns of capital, annual accounts and winding up, nullity and striking off of the company.

In the UK, these requirements are fulfilled by duties (“company filing requirements”) placed upon companies, their officers and insolvency officeholders to file documents at Companies House, where a public file is maintained by the Registrar of Companies. There are separate Registrars in respect of England and Wales, Scotland and Northern Ireland². There is also a registry in Gibraltar for which the United Kingdom is responsible under the Directive.

Much progress has been made within the United Kingdom over recent years to facilitate the electronic filing of documents by companies. In particular, companies already have the option of filing by either paper or electronic means documents related to incorporation, company officer details, the registered office and annual returns. The new instruments, in extending the electronic filing facility to the other documents listed, could if every company took up the option of e-filing cover around 4.5 million filings a year.

To date, take up of the option to satisfy statutory filing requirements arising from the First Company Law Directive by electronic means, has been relatively well received with almost 30% of such documents being submitted electronically. There have been significant developments in the filing of incorporation documents and over 85% of new company incorporations are now effected through electronic means.

Whether a document is supplied to Companies House on paper or electronically, the information contained remains essentially the same. Accordingly, the main potential saving to business will relate to the cost of the postage saved by submitting by electronic means. *Total* potential direct savings, therefore, can be estimated at about £230,000 for every million of additional filings (second class stamp x 1 million documents.). Clearly, however, the extent to which this cost benefit will be achieved will depend on the degree of take up of the increased ability to file documents by electronic means.

The instruments have the following additional, potentially more significant, benefits, but it is not possible to quantify these accurately in terms of cost savings: -

- Improved speed of availability of documents for users of company information as, due to faster transmission, electronically submitted documents will appear on the Companies House file earlier than those sent by post;

² See footnote on first page.

- Important additional safeguards to those dealing with companies by electronic means, particularly in the field of internet purchasing, as companies will be required to disclose in such communications their limited liability status and other essential information; and
- Companies will be permitted to publish information in a foreign language (as well as that of their own Member State), to attract investors and customers from other countries.
- When using e-filing the system performs the basic checks on forms and cross-referencing, these checks increase accuracy at the time of submitting the form and therefore reduce the chances of rejection.
- Companies may find it quicker to use e-filing and Companies House will generate an automatic email acknowledgement.

Compliance Costs Estimates

There are considered to be no compliance costs in respect of the electronic submission of documents to Companies House. Submission of documents by electronic means will be entirely voluntary, and any company that wishes to submit documents by paper means, as at present, will be able to continue to do so. Electronic submission of documents will be possible for all companies with e-mail facilities or access to the web.

The instruments also provide that companies must include, in electronic-form business letters and on any website, details of the company's registration, registered number and legal form, the location of its registered office and, where appropriate, the fact that the company is being wound up. The costs of these should be no more than a one-off amendment to the company's electronic pro-formas and websites to include these details, with no ongoing costs thereafter. Many companies which make use of electronic communications will already include these details as a matter of course on electronic, as on paper, communications.

16. Accordingly, there will be no compliance costs for a typical business other than the costs associated with inserting statutory information on websites and electronic letters and order forms where this is not already done.

Other costs

COSTS TO THE EXCHEQUER

Companies House already has systems in place to accept the majority of documents electronically, and to make them electronically available to searchers. Any additional costs for facilitating filing and access to other documents electronically are therefore likely to be small, and will generally be absorbed into continuing development costs of Companies House systems. To the extent that any significant new costs arise, these would be passed on to users of the services (who would always have the choice of whether to use them or not) in the form of fees.

Publicity about the extended online filing facilities will take place as part of the regular communications between Companies House and its users through existing publications such as "The Register." Accordingly, there are no anticipated additional publicity costs.

ENFORCEMENT COSTS

The instruments include provision for sanctions, of an equivalent nature to those currently existing for companies in respect of paper documents, where companies are in default of their disclosure requirements on electronic letters. Defaults in this regard will be dealt with in the same way as defaults in connection with papers documents through the existing regulatory channels. It is not considered that any significant additional enforcement costs will arise from this.

7. Small Firms Impact Tests

The ability to file returns to Companies House will apply equally to small and large companies, private and public. It is recognised that not all small companies will want to file their returns via electronic means, and they will still be able to return hard copies of their documents. This Directive will allow them to file information electronically and reap any benefits such as cost of postage and on-line checking that is offered by e-filing.

Small firms will not be adversely affected by these proposals. Both the Federation and Small Business and the Forum of Private Business have been part of a working group who were regularly consulted on the Companies Bill and are well aware of this Directive and its benefit to business.

8. Competition Assessment

Having looked at the competition filter there appears to be no competition issues as a result of this Directive.

9. Enforcement and Compliance

Companies will not be compelled to take up e-filing with Companies House therefore there are no enforcement and compliance elements to this aspect of these instruments. Companies who currently do not put their details on their electronic documents and publications, however, will incur the costs referred to in section 5 above under "Compliance Costs Estimates".

10. Monitoring and Review

Where the facility already exists to submit documents by electronic means, Companies House separately records the level of up take of use of such filing

facilities. The need for any further steps to facilitate electronic filing will be considered in line with ongoing assessment of the services provided by Companies House.

Compliance with the requirement to disclose company and registration details on electronic documents and websites will be assessed by DTI following any defaults in this respect drawn to its attention.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Margaret Hodge

Margaret Hodge
Minister of State for Industry and the Regions

Date 20th December 2006

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ANNEX A

TRANSPOSITION NOTES

Directive 2003/58/EC of the European Parliament and of the Council amending Council Directive 68/151/EEC as regards disclosure requirements in respect of certain types of companies

These instruments serve to implement Directive 2003/58/EEC, which amends section I of Directive 68/151/EEC (the First Company Law Directive), primarily to enable companies to register certain documents electronically and searchers to access them electronically.

The following table sets out the requirements of the amending Directive and the provisions which implement them in the Companies Act 2006 (as brought into force by the Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006) and in the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006.

Article	Objective	Implementation
2.	(Which amends Article 2.1(f) of the First Company Law Directive) requires certain accounting documents to be filed.	<i>Part 35</i> of the Act contains the relevant filing requirements (which are restated from the Companies Act 1985).
3.	(So far as it amends Article 3.2.) Company Registries must allow companies to file electronically all basic documents (those specified in Article 2 of the First Company Law Directive, and those to which Article 3 of the First Company Law Directive is applied by other legislation).	<i>Section 1078</i> lists the documents which are now subject to the Directive disclosure requirements under Article 2 of the First Company Law Directive as amended. <i>Section 1068(5)</i> provides that all such documents may be delivered to the Registrar in electronic form. <i>Regulation 3</i> , in substituting the word “copy” for the phrase “office copy” in certain provisions of the Companies Act 1985 and elsewhere, ensures that electronic copies are able to satisfy the relevant requirement.
3.	(So far as it also amends Article 3.2.) Company Registries must allow requests for inspection of such documents to be made electronically.	<i>Section 1089(2)</i> provides that applications in respect of such documents may be submitted electronically.
3.	(So far as it also amends Article 3.2.) Company Registries must offer electronic copies of such documents to those inspecting the register (subject to a permitted derogation in respect of documents filed before 1 January 2007).	<i>Section 1090(2)</i> provides that copies of such documents must be provided in electronic form if the applicant so chooses (subject to <i>section 1090(3)</i> which takes advantage of the permitted derogation).
3.	(So far as it also amends Article 3.2.) Company Registries must keep all such documents (whether submitted electronically or in hard copy) in electronic form.	<i>Section 1080(3)</i> provides that information from such documents must be kept in electronic form.

3.	(So far as it amends Article3.3.) In the case of electronic copies, Company Registries need only provide certified copies if they are asked to do so. Member States need to take measures to ensure the authenticity of electronic certified copies	<i>Section 1091</i> contains provision about certifying copies and allows the Secretary of State to make regulations about how electronic copies are certified. <i>Regulation 2</i> sets out the detailed provisions.
3.	(So far as it amends Article 3.4.) The option is provided to Members States of using an alternative to publication in the National Gazette as a means of publicising information received	<i>Section 1077</i> provides that notices must be published either in the Gazette, or in accordance with <i>section 1116</i> . The latter section enables the Secretary of State to make regulations specifying alternative means of publication. However, it is not intended to make any immediate use of this flexibility, and <i>section 1116</i> is therefore not yet being brought into force.
4.	(Which inserts a new Article 3a.) This provides that, while documents must be submitted in a language permitted by the language rules of the member state in question, voluntary translations in other Community languages must also be accepted.	<i>Sections 1106 and 1107</i> provide that companies may deliver certified translations of documents. The languages and types of document in respect of which this facility is available are to be specified in regulations made by the Secretary of State, and <i>regulation 5</i> provides that this facility covers the documents subject to the Directive disclosure requirements and all the official languages of the EU.
5.	(Which replaces the previous Article 4). This provides that certain information (already currently required on hard copy letters and order forms) must be stated in documents in any form and displayed on websites.	<i>Regulation 6</i> and <i>Schedules 1 and 2 to the Regulations</i> amend the Companies Act 1985 and the Companies (Northern Ireland) Order 1986 so that their provisions about disclosure of company particulars extend to electronic documents and websites as well as hard copy documents.
6.	This provides that that there must be appropriate penalties for breach of new Articles 2(1)(f) and 4 of the First Company Law Directive.	<i>Regulation 6</i> and <i>Schedules 1 and 2 to the Regulations</i> extend existing offences relating to company documents and create a new offence relating to websites.

ANNEX B

TRANSPOSITION NOTES

Transparency Obligations Directive (2004/109/EC)

1. Sections 1265, 1266, 1267, 1268, 1270, 1271, and 1272 in Part 43 (Transparency obligations and related matters) of the Act enable the FSA to implement Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. Section 1266 inserts seven new sections into Part 6 of the Financial Services and Markets Act 2000; sections 89A, 89B, 89C, 89D, 89E, 89F and 89G. The new sections give power to the competent authority (at present the Financial Services Authority (“FSA”)) to make rules for the purposes of the Transparency Directive (2004/109/EC) (“Transparency Directive”) and connected regulatory purposes. Sections 1267 and 1268 insert three and four sections, respectively, into Part 6 of FSMA (89H to 89N) setting out the regulatory powers of the FSA in connection with the Directive. Section 1270 inserts new sections 90A and 90B into FSMA, which set out the issuers’ liability in damages for disclosures required under the Transparency Directive, and section 1271 inserts a new section 100A into FSMA setting out provisions in relation to the exercise of the FSA’s powers where the UK is a host member state.

2. The Transparency Directive imposes minimum harmonisation requirements on the information to be provided to the public about issuers whose securities are traded on a regulated market and the control of votes attached to shares in those issuers. It permits Home Member States to impose more stringent requirements on entities that they regulate but Host Member States, i.e. those states in which the issuers securities are traded on a regulated market but whose competent authority are not responsible for primary oversight of that issuer, are not permitted to impose any requirements more stringent than those contained in the Transparency Directive.

3. There are three main categories of obligation that are imposed under the Transparency Directive and that the FSA’s transparency rules will implement in respect of UK markets and issuers:

(a) requirements for issuers to make public, at regular intervals, information about their financial position and the progress and management of the business of the issuer;

(b) requirements for holders of votes attached to shares of issuers to notify the issuers when the number of votes they control reaches specified proportions of the total votes available; and

(c) requirements for issuers to treat the holders of the same securities equally.

4. The detailed and technical provisions about the required notifications, disclosures and treatment of security-holders will be prescribed in rules made by the FSA under the new rule-making power at section 89A of the Financial Services and Markets Act 2000. The FSA is required by that Act to carry out consultation and a cost benefit analysis when making any rules under this power.

5. Having the power to make these rules will promote the harmonisation of practice with other EU jurisdictions, and help enhance investor confidence through increased transparency of the financial markets.

6. Responsibility for the transposition of the Transparency Directive lies both with HM Treasury and with the FSA. The measures in the Companies Act that implement the Transparency Directive are the responsibility of HM Treasury.

7. The table below describes the substantive provisions in the Act implementing the Transparency Directive.

Part 43: Transparency obligations and related matters		
Article	Objective	Implementation
1.	Sets out scope of the Directive and two derogations from the requirements of the Directive. The Member States may apply the derogations in respect of securities issued by the government, local government or a state's national central bank.	<i>Part 43</i> of the Act inserts new provisions into the Financial Services and Markets Act 2000 ("FSMA 2000") to give the Financial Services Authority power to make Transparency Rules. Most provisions in the Transparency Directive will be implemented by the FSA's Transparency Rules. Other provisions in the Act or in FSMA 2000 implement the other requirements. If the derogations are to be implemented, the FSA's Transparency Rules will do this.
2.	Provides various definitions used in the Directive.	These will be applied in Transparency Rules, or apply in relation to the implementation of the Article to which they relate.
3.	Limits the circumstances in which Member States may impose more stringent requirements than those contained in the Directive on issuers of securities and holders of interests in those issuers' shares.	Transparency Rules and new FSMA 2000 section 100A(2) introduced by <i>section 1271</i> of the Act.
4.	Requires issuers of securities which are traded on regulated markets to make public its annual financial report consisting of its audited financial statements and the management report.	Transparency Rules: see in particular new sections 89A and 89C of FSMA 2000, inserted by <i>section 1266</i> of the Act.
5.	Requires issuers of shares or debt securities which are traded on a regulated market to make public a half-yearly financial report.	Transparency Rules: see in particular new sections 89A and 89C of FSMA 2000, inserted by <i>section 1266</i> of the Act.
6.	Requires issuers whose shares are traded on a regulated market to make public an interim quarterly statement.	Transparency Rules: see in particular new sections 89A and 89C of FSMA 2000, inserted by <i>section 1266</i> of the Act.
7.	Requires Member States to ensure that responsibility for the information to be drawn up and made public in accordance with Articles 4, 5, 6 and 16 lies at least with the issuer or its administrative, management or supervisory bodies and to ensure that their laws, regulations and administrative provisions on liability apply to the issuers, the bodies referred to in this article or the persons responsible within the issuers.	Provisions relating to liability inserted into FSMA 2000 as new sections 90A and 90B by <i>section 1270</i> of the Act.

8.	Provides various exemptions from the requirements of articles 4, 5 and 6 including to optional exemptions.	Transparency Rules.
9.	Provides that where a shareholder with a significant level of holding acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights in the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.	Transparency Rules: see in particular new sections 89A and 89B of FSMA 2000, inserted by <i>section 1266</i> of the Act.
10.	The notification requirements in Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the cases set out in the Article or a combination of them. (Voting rights acquired through agreement or interest).	Transparency Rules.
11.	Exempts shares provided to or by the members of the ESCB in certain circumstances from the notification requirements imposed by Articles 9 and 10.	Transparency Rules.
12.	Sets out the information that must be included in the notification under Articles 9 and 10 and includes provision on the timing of the notification and when aggregation of holdings required. Paragraph (6) requires the issuer to make public all information contained within a notification within 3 days.	Transparency Rules.
13.	Requires the holders of financial instruments, which are to be specified by the Commission, to notify the issuer of their control of votes in accordance with the requirements in Article 9.	Transparency Rules.
14.	Requires an issuer of shares admitted to trading on a regulated market to make public the proportion of its own shares that it holds when those proportions reach, exceed or fall below the thresholds of 5% or 10%.	Transparency Rules: see in particular new sections 89A and 89C of FSMA 2000, inserted by <i>section 1266</i> of the Act.
15.	Requires the Member State to ensure that an issuer of shares traded on a regulated market, makes public the total number of voting rights and capital at the end of each month during which the number changes.	Transparency Rules.
16.	Requires issuers of securities to make public information about any changes in the rights attached to their securities and any new loan issues and any guarantee or security in respect of such loans.	Transparency Rules: see in particular new sections 89A and 89C of FSMA 2000, inserted by <i>section 1266</i> of the Act.

17.	Requires issuers of shares admitted to trading on a regulated market to treat their shareholders, who are in the same position, equally. It provides for information to be distributed in particular ways and for shareholders to be able to exercise their rights in specified ways.	Transparency Rules. See also <i>Section 1143 and Schedule 5</i> of the Act in relation to communications by an issuer. <i>Paragraph 10 of Schedule 5</i> sets out the requirements for an issuer of shares wishing to communicate by means of a website.
18.	Makes similar provision as that contained in Article 17 but in respect of issuers whose debt securities are admitted to trading on a regulated market.	Transparency Rules. See also <i>Section 1143 and Schedule 5</i> of the Act in relation to communications by an issuer. <i>Paragraph 11 of Schedule 5</i> sets out the requirements for an issuer of debt securities wishing to communicate by means of a website.
19.	Requires issuers to file information that they are required to make public under the Directive, with the FSA and permits the FSA to publish that information itself. It also requires issuers to inform the FSA and the regulated market to which its securities are admitted of any proposed change to its instrument of incorporation.	Transparency Rules.
20.	Sets out the rules for determining which language the issuer must use to disclose regulated information in various circumstances.	Transparency Rules.
21.	Requires issuers to disclose regulated information in a manner ensuring fast access to such information on a non-discriminatory basis. Also requires each Member State to have an officially appointed mechanism for the central storage of regulated information.	Transparency Rules.
22.	Requires the competent authorities of the Member States (for the UK it is the FSA) to draw up guidelines to create an electronic network at national level to share information between the various competent authorities, operators of regulated markets and national company registers. Such guidelines must aim to further facilitate public access to be disclosed under this Directive, Directive 2003/6/EC (the Market Abuse Directive) and Directive 2003/71/EC (Prospectus Directive).	The FSA will draw up guidelines in accordance with the obligations under this Article.
23.	Enables the FSA to exempt issuers based in third countries from certain disclosure requirements if there are equivalent provisions in the third country. Requires the FSA to ensure that where a third country issuer is regulated in the UK for EU purposes, any information which may be important to the public in the Community is disclosed in accordance with Articles 20 and 21.	Transparency Rules.

24.	<p>Requires each Member State to designate a central competent authority responsible for ensuring that the Directive is applied and to give that competent authority specified powers which are necessary for the performance of its functions.</p> <p>Permits each Member State to designate a competent authority for examining that information is drawn up in accordance with the relevant reporting framework.</p>	<p>The central competent authority in the UK will be the FSA, by virtue of the amendments being inserted into Part 6 of FSMA 2000.</p> <p>The FSA already has various powers under FSMA 2000. Other powers for the FSA to perform its functions are contained in new FSMA 2000 sections 89H to 89N inserted by <i>sections 1267 and 1268</i> of the Act.</p> <p>The Act provides power to designate a competent authority for reporting framework purposes by amending the Companies (Audit, Investigations and Community Enterprise) Act 2004. See <i>Schedule 15 (Part 2)</i> of the Act.</p>
25.	<p>Imposes a requirement for professional secrecy on those who work for the competent authority and requires cooperation between the competent authorities of the various Member States.</p>	<p>FSMA 2000 already contains provisions relating to professional secrecy for those who work for the FSA and the Companies (Audit, Investigations and Community Enterprise) Act 2004 also contains provisions in relation to authorities appointed under that Act.</p>
26.	<p>Provides for host Member States to take action in relation to infringements where an issuer or security holder continues to infringe the requirements of the Directive.</p>	<p>New section 100A of FSMA 2000 introduced by <i>section 1271</i> of the Act.</p>
27.	<p>Sets out the committee procedure for the Commission to make implementing measures required by the Directive.</p>	<p>No implementing provision required.</p>
28.	<p>Requires, without prejudice to the right of Member States to impose criminal penalties, Member States to ensure, in conformity with their national law that at least the appropriate administrative measure may be taken or civil and/or administrative penalties imposed in respect of the persons responsible.</p>	<p><i>Schedule 15 (Part 1)</i> of the Act amends section 91 of FSMA 2000 to enable the FSA to impose financial penalties for breach of the Transparency Rules.</p>
29.	<p>Requires a right of appeal to the courts to be in place.</p>	<p>No further implementation is required. FSMA 2000 already makes provision for appeals of FSA decisions to the Financial Services and Markets Tribunal and to the Court of Appeal.</p>
30 – 35	<p>These articles contain transitional and final provisions, including the date by which the Directive must be transposed – 20 January 2007.</p>	<p>No specific implementation is required for most of these provisions. New sections 89B(4) and 89D(1) introduced by section 1266 of the Act make provision for transitional arrangements.</p>