

**EXPLANATORY MEMORANDUM TO**  
**THE PAYMENTS TO GOVERNMENTS AND MISCELLANEOUS PROVISIONS**  
**REGULATIONS 2014**

**2014 No. 3293**

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

- 2.1 These Regulations transpose the payments to Governments reporting requirements in Article 1(5) of Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 (OJ L 294/13, 6.11.2013 p.15) (“the New Directive”). The New Directive amends 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. These regulations substitute Article 6 of Directive 2004/109/EC. The Regulations give the Financial Conduct Authority (“the FCA”) the requisite powers to enact their rules (the “transparency rules”).

- 2.2 The Regulations also transpose Article 1(1) of Directive 2014/51/EU of the European Parliament and of the Council (OJ L 153/1, 22.05.2014) which amends Directive 2003/71/EC. The deadline for this transposition is 31 March 2015.

- 2.3 The transposition deadline for the New Directive 2013/50/EU is 26 November 2015, but the Government is committed to legislating early on payments to Governments in respect of the New Directive 2013/50/EU. This new reporting requirement applies to EU listed extractive companies. The aim is to raise global standards of transparency in the extractives sector by requiring companies to report publicly the payments they make to governments in all their countries of operation.

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

- 3.1 The Treasury request that these Regulations are laid in Parliament for a shortened period than the 21 days. These Regulations will need to be in force by 17 December to give the FCA powers to make changes to their transparency rules in time for the 1 January 2015 deadline.

- 3.2 The Department for Business, Innovation and Skills (BIS) has made Regulations in the same policy area in respect of the Accounting Directive (AD), (The Reports on Payments to Governments Regulations 2014 - SI No. 3209), which applies to UK registered extractive companies. The Regulations drafted by BIS went through the affirmative procedure and were debated and approved by the House of Lords and the House of Commons on 25 November 2014. It is important that these Regulations for the Transparency Directive are aligned with those of the AD. This is to ensure that the payments to Governments reporting requirements are aligned and applied consistently across different industry sectors. These regulations could not have been laid sooner due to the later transposition deadline of the New Transparency Directive relative to the AD (see paragraphs 7.1 and 7.2).
- 3.3 Due to the Lough Erne G8 Leaders' international commitment announced in June 2013, there is a high expectation by stakeholders for this reporting requirement to be in force by the 1 January 2015 deadline.

#### **4. Legislative Context**

- 4.1 The Directive 2004/109/EC provides for the harmonisation of transparency requirements across the EU by requiring issuers of securities admitted to trading on a regulated market to disclose a minimum level of information to the public. The Directive was amended in 2013 by the New Directive 2013/50/EU following a review by the European Commission. The New Directive 2013/50/EU was adopted by the European Parliament and the Council on 22 October 2013 and published in the Official Journal on 6 November 2013.
- 4.2 The UK transposed Directive 2004/109/EC by way of provisions in Part 6 of Financial Services and Markets Act (FSMA) 2000 and by transparency rules made by the FCA in exercise of powers conferred on them by Part 6. In particular, section 89C(4) of FSMA specifies that the FCA may make rules requiring an issuer to make public, or to notify to the FCA, information required by Article 6 of the "transparency obligations directive", which is defined as the 2004 Directive in section 103(1) of FSMA. As a result, the FCA's power to make such rules is currently for the purposes of Article 6 of the 2004 Directive.
- 4.4 To enable the FCA to make rules in respect of the payments to Governments reporting requirements, these Regulations modify the definition of "the transparency obligations directive" in section 103(1) of FSMA as it applies in section 89C(4)(b) of FSMA. The modification will mean that the power of the FCA to make rules for the purposes of Article 6 of the transparency obligations directive is a power to make rules for the purposes of the 2013 New Directive.
- 4.5 The Government will transpose the remaining provisions of the 2013 New Directive in 2015 in line with the transposition deadline of 26 November 2015.

4.6 These Regulations will be reviewed when the Treasury takes the next step to transpose the 2013 New Directive. The Treasury anticipates that amendments to FSMA will be required to empower the FCA to make rules for the purposes of other provisions of the 2013 New Directive.

4.7 A transposition note has not been produced for these Regulations because only Article 6 of the 2013 New Directive is being transposed, and only in part.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 There are no human right impacts of these Regulations.

## **7. Policy background**

7.1 Article 1(5) of the New Directive now requires EU listed extractive companies to report their payments to governments around the world. The aim of this reporting requirement is to raise global standards of transparency in the extractives sector by requiring extractives companies to report publicly the payments they make to governments in all their countries of operation. This is intended to improve accountability, reduce the space for corruption and other illicit activities, and ensure that citizens benefit appropriately from the extraction of their natural resources. The extractives reporting element of the amended TD is being transposed by 1 January 2015, earlier than the transposition deadline of 26 November 2015.

7.2 This policy is in line with Chapter 10 of the AD, which applies to all large UK registered companies. In this case 'large' is defined as having a net turnover of £40million or more and an average number of employees of 250 or more. The extractives reporting element of the AD is being transposed by 1 January 2015, earlier than the transposition deadline of 20 July 2015.

7.3 This is in part response to the UK's G8 Presidency, where it was agreed in the Lough Erne G8 Leaders' communique that EU G8 countries (UK, France, Germany and Italy) "will quickly implement the EU Accounting and Transparency Directives" to raise global standards for extractives transparency.

## **8. Consultation outcome**

8.1 The FCA has consulted on how to amend its transparency rules with regards to this reporting requirement. BIS also consulted with stakeholders on the implementation of this reporting requirement.

## **9. Guidance**

9.1 The Treasury is not intending to issue any guidance in connection with these Regulations.

## **10. Impact**

10.1 The Regulations will empower the FCA to amend its transparency rules which apply to issuers with shares on a regulated market. The Regulations themselves have no impact on business. However, the rules made by the FCA pursuant to the modification in the Regulations will have a direct impact on UK listed extractive companies.

10.2 The impact on the public sector is neutral, there is no impact.

10.3 An Impact Assessment has been prepared for this instrument and will be published alongside the Statutory Instrument. The main affected groups are UK listed extractive companies, that are not registered in the UK (the Accounting Directive will account for UK registered extractive companies).

## **11. Regulating small business**

11.1 The Regulations will empower the FCA to amend its transparency rules to include the payments to Governments reporting requirements for extractive firms. In particular, this will not directly affect small listed companies. The scope of Article 1(5) of the New Directive extends only to those extractive companies which are listed on a regulated exchange (i.e. the Main Market of the London Stock Exchange and not the Alternative Investment Market). This restriction has the knock-on effect of excluding almost small and micro business (i.e. 0 to 49 persons).

## **12. Monitoring & review**

12.1 These Regulations will be reviewed when the Treasury takes the next step to transpose the remaining parts of the 2013 New Directive in 2015.

## **13 Contact Details**

If you have any queries regarding the instrument, please contact:

Manpreet Bassi at HM Treasury Tel: 020 7270 5739  
Email: Manpreet.Bassi@hmtreasury.gsi.gov.uk

Daniel Wright at HM Treasury Tel: 020 7270 7800  
Email: Daniel.Wright@hmtreasury.gsi.gov.uk