

**EXPLANATORY MEMORANDUM TO**  
**THE REPORTS ON PAYMENTS TO GOVERNMENTS (AMENDMENT)**  
**REGULATIONS 2015**

**2015 No. 1928**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by The Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Reports on Payments to Governments Regulations 2014 (S.I. 2014/3209) (“the 2014 Regulations”). Firstly, it rectifies errors in the 2014 Regulations arising from some unduly restrictive definitions in them: the most significant correction is to ensure that (as required by Chapter 10 of the Accounting Directive) the subsidiary undertakings whose payments to Governments are to be included in the consolidated reports of UK parent undertakings include overseas subsidiary undertakings.
- 2.2 Secondly, the instrument addresses specific issues relating to the operation of the Companies House register in relation to documents delivered to the Registrar under the 2014 Regulations by partnerships or limited partnerships, namely public inspection of those documents and language requirements for those documents.

**3. Matters of special interest to Parliament**

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

- 3.1 The instrument is made in reliance on section 2(2) of the European Communities Act 1972 and section 1102 of the Companies Act 2006. The Department recognises that the amendments dealing with the unduly restrictive definitions (which are made wholly in reliance on section 2(2) of the European Communities Act 1972) could have been made partly in reliance on the more specific powers contained in sections 468 of the Companies Act 2006 and sections 15 and 17 of the Limited Liability Partnerships Act 2000. (The 2014 Regulations were made partly in reliance on those powers.)
- 3.2 However, the use of those specific powers is likely to have necessitated the use of the affirmative resolution procedure for this instrument (as a result of section 473(3) of the Companies Act 2006 and section 17(4) and (5)(b) of the Limited Liability Partnerships Act 2000). The Department considers that there are good reasons in this case for relying solely on section 2(2) to make the amendments to the definitions. Use of section 2(2) has enabled the instrument to be made using the negative resolution procedure and therefore to be made significantly faster than if the affirmative procedure were to be used. The Department’s main reasons for wanting to make these amendments quickly are as follows:

- 3.3 The Department wishes to limit the cost to businesses. The 2014 Regulations apply in relation to financial years beginning on or after 1<sup>st</sup> January 2015 (regulation 3(1)). The first financial year in respect of which UK undertakings have to produce reports under the 2014 Regulations will end on 31<sup>st</sup> December for some UK undertakings. It is therefore possible that a UK parent undertaking may choose to prepare a consolidated report and deliver it to the registrar very early in 2016. The Department considers it desirable to give undertakings as much notice as possible of the corrections to the errors in the 2014 Regulations.
- 3.4 Businesses are already setting up systems to gather the information required to meet the reporting requirements. It is in the interests of legal certainty to make the amendments to rectify the errors as soon as possible in order to limit the costs to business in adapting their systems to comply with the requirements.
- 3.5 In so far as they relate to undertakings within the scope of Chapter 10 of the Accounting Directive, the changes are necessary to fulfil an EU obligation (i.e. to ensure the proper implementation of requirements in Chapter 10). There are also good reasons to make the changes in respect of limited liability partnerships (which are not within the scope of Chapter 10) in the same instrument: there would be uncertainty if the changes for limited liability partnerships were not made at the earliest opportunity; it could give the misleading impression that overseas subsidiaries of limited liability partnerships are to be treated differently from those of other undertakings. (There would also be unnecessary drafting complications.)
- 3.6 The Department wishes to reassure the Committee that the Department's intention is not to evade the additional Parliamentary scrutiny which follows from the affirmative procedure. The 2014 Regulations were debated in Parliament last year and the corrections are not introducing a new policy. The policy intention explained at that time was to implement Chapter 10 of the Accounting Directive fully. The Government is not departing from its long-standing policy on the preferred use of specific domestic powers.

- 3.7 The free issue procedure applies to this instrument.

*Other matters of interest to the House of Commons*

- 3.8 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The 2014 Regulations implemented Chapter 10 of the EU Accounting Directive (2013/34/EU). The proposal for a Directive of the European Parliament and of the Council on the annual financial statements and related reports of certain types of undertakings 16250/11 was submitted to the Commons and Lords Scrutiny Committees on 20 December 2011. The proposal was cleared by the Commons Scrutiny Committee in Report 50, Session 2012. The Lords Scrutiny Committee cleared the proposal on 24 July 2012.
- 4.2 The 2014 Regulations were debated in the House of Lords and House of Commons on 25 November 2014 and came into force on 1 December 2014. Undertakings are required to prepare reports for financial years which begin on or after 1 January 2015.

- 4.3 The 2014 Regulations are firstly amended to change the definitions used in those Regulations of “undertaking”, “subsidiary undertaking” and “parent undertaking” and to relabel the current definition of “undertaking” as “UK undertaking”. The main purpose of these changes is to ensure that, as required by Chapter 10 of the Accounting Directive, a UK parent undertaking has to include in its consolidated report payments made by its foreign subsidiary undertakings (and not just those made by its UK subsidiary undertakings).
- 4.4 The Accounting Directive, Article 1(1)(b) and Annex II, applies the reporting requirements to some partnerships and limited partnerships. Articles 45 and 46 of the Directive require publication of the reports as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC. Part 35 of the Companies Act 2006 makes provision about the Registrar of Companies (Companies House), including provision about public notice of receipt of certain documents, inspection of the register and language requirements for documents delivered to the Registrar (translation). Some of the provisions of Part 35 apply only in relation to companies (while others are of more general application). Apart from the documents required by the 2014 Regulations to be filed by some partnerships and limited partnerships, in the UK a partnership is not required to file any information with the Registrar, and limited partnerships are required by the Limited Partnerships Act 1907 to file only limited categories of information with the Registrar. Consequently, not all elements of Part 35 of the Companies Act 2006 currently apply to these entities in the same way as they apply to companies.
- 4.5 Accordingly, changes are needed to ensure that partnerships and limited partnerships covered by the 2014 Regulations are treated in a similar way to companies as regards the publication on the Companies House register of their reports on payments to governments, including public inspection and language requirements. This is achieved by applying (with appropriate modifications) particular provisions of Part 35 of the Companies Act 2006 to such reports.
- 4.6 An amended Transposition Note for the 2014 Regulations (as amended by this instrument) is submitted with this Memorandum.

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

- 5.1 The instrument extends to all of the United Kingdom (reflecting the extent of the 2014 Regulations).
- 5.2 This instrument applies throughout the United Kingdom (reflecting the application of the 2014 Regulations).

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

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The 2014 Regulations implemented Chapter 10 of the EU Accounting Directive (2013/34/EU). The aim of Chapter 10 and the UK implementation is to require UK extractives undertakings which are large undertakings or public interest entities to report the payments that they make to governments across the world. The Directive

requires UK parent undertakings to prepare a consolidated report, covering payments made to governments by subsidiary undertakings included in the parent's consolidated group accounts, whether the subsidiary undertakings are UK or overseas undertakings.

- 7.2 The Prime Minister announced that the UK would implement Chapter 10 of the Accounting Directive early to demonstrate leadership and support for the transparency agenda. The 2014 Regulations were debated in both Houses in November 2014.
- 7.3 We have identified errors in the implementation of the 2014 Regulations, deriving from unduly restrictive definitions contained in those Regulations. This instrument corrects the errors. The aim is to ensure that Chapter 10 of the Directive, and the UK Government's domestic policy, have been implemented correctly. Failure to correct the errors could lead to some UK parent undertakings not reporting the full details of the extractives payments made by their subsidiary undertakings.
- 7.4 The UK Government's intention, in line with Chapter 10 of the Directive, is that a consolidated report prepared by a UK parent undertaking under regulations 8 and 9 (which implement Article 44(1) of the Directive) should cover payments made to governments not only by UK subsidiary undertakings but also by foreign subsidiary undertakings of the UK parent.
- 7.5 All stakeholders agree that this is the correct approach and it was discussed during both the EU negotiations and the UK implementation process. However, we believe that, on a strict reading of the 2014 Regulations, they only require UK parent undertakings to cover in their consolidated report payments made by their UK subsidiary undertakings.
- 7.6 This arises as a result of unduly restrictive definitions of "subsidiary undertaking" and "undertaking" in regulation 2(1) of the 2014 Regulations. These definitions only cover UK entities. Therefore, in order to correctly implement Chapter 10 of the Directive and to properly reflect the UK Government's intentions, this instrument amends the relevant definitions, so that all subsidiary undertakings (both UK and overseas ones) have to be included in the consolidated report.
- 7.7 The instrument also addresses a separate implementation issue arising from Chapter 10 of the Directive: The Directive requires publication of reports on payments to governments in accordance with the disclosure requirements contained in Chapter 2 of Directive 2009/101/EC. The 2014 Regulations require reports on payments to Governments to be delivered to the registrar. The Directive covers (in addition to companies) certain UK partnerships and limited partnerships. Part 35 of the Companies Act 2006 makes provision about public inspection of the register for companies and the language requirements for documents delivered to the registrar by companies. (Those provisions have been applied (with modifications) to limited liability partnerships.)
- 7.8 The Department is not aware of any partnerships or limited partnerships that will be required to deliver a report on payments to Governments. However, in line with Chapter 10 of the Directive, this instrument applies (with modifications) the provisions of Part 35 of the Companies Act 2006 relating to public inspection and language requirements to documents delivered to the registrar under the 2014 Regulations by partnerships or limited partnerships. This approach will ensure that Companies House is able to make reports from partnerships or limited partnerships available to third parties in line with the approach taken to such reports by companies.

## ***Consolidation***

- 7.9 This is the first amendment to the 2014 Regulations and we do not believe that it is necessary to consolidate the regulations at this time.

## **8. Consultation outcome**

- 8.1 This instrument does not introduce any new requirements beyond those consulted on in 2014. The consultation explained that the UK was implementing Chapter 10 of the Accounting Directive.
- 8.2 The consultation on the Department's approach to implementation of Chapter 10 of the Accounting Directive was drawn to the attention of a wide range of interested parties including industry representatives, civil society organisations and accounting firms. There was broad support for our proposals. All responses to the consultation are available on the gov.uk website
- 8.3 Since the purpose of this instrument is to ensure that the 2014 Regulations carry out the policy intent a separate consultation on the provisions of this instrument was not necessary.

## **9. Guidance**

- 9.1 The UK Government does not intend to provide guidance. Companies House will provide guidance related to completing the pro-forma to submit the reports. Industry guidance may be made available.

## **10. Impact**

- 10.1 The 2014 Regulations require undertakings to report on the payments they make to governments, and require parent undertakings to include in consolidated reports information about payments made by their subsidiary undertakings. The amending Regulations ensure that such subsidiary undertakings include overseas subsidiary undertakings, as required by Chapter 10 of the Directive.
- 10.2 Companies House will be required to make reports on payments to governments from partnerships or limited partnerships available on the public register and to ensure that the public are able to inspect these reports. In line with their approach for companies, Companies House will publish notice of the receipt of such reports from partnerships or limited partnerships, and will accept certified translations of such reports.
- 10.3 An Impact Assessment has not been prepared for this instrument: the Impact Assessment for the 2014 Regulations was prepared and based on the assumption that the 2014 Regulations would implement Chapter 10 of the Directive fully, including the requirement to report on overseas subsidiaries as part of a consolidated report. Therefore there are no new impacts requiring assessment.

## **11. Regulating small business**

- 11.1 The 2014 Regulations (as amended by this instrument) may apply to activities that are undertaken by small businesses. The 2014 Regulations (as so amended) impose duties to prepare reports on the directors of UK undertakings that are large undertakings or public interest entities (as defined in regulation 2) which are active in the extractives sector. If such an undertaking is a parent undertaking whose directors are required to prepare a consolidated report covering payments made by the parent undertaking's subsidiary undertakings, the subsidiary undertakings will need to

collect information to enable the parent undertaking to prepare the consolidated report. It is possible that such subsidiary undertakings may be small businesses.

## **12. Monitoring & review**

- 12.1 The EU Commission will review the Directive by 21 July 2018. In order to inform that review, the 2014 Regulations include a three year review clause. Therefore we would expect the UK review to inform the wider EU Commission review.
- 12.2 The success criteria for this instrument are that it successfully amends the 2014 Regulations to ensure that the original policy intent for the UK implementation of Chapter 10 of the Accounting Directive is fully reflected in the legislation.

## **13. Contact**

- 13.1 Maureen Beresford at the Department for Business, Innovation and Skills (telephone: 0207 215 3342 or email: [Maureen.beresford@bis.gsi.gov.uk](mailto:Maureen.beresford@bis.gsi.gov.uk)) can answer any queries regarding the instrument.