

EXPLANATORY MEMORANDUM TO
THE ACCOUNTING STANDARDS (PRESCRIBED BODIES) (UNITED STATES OF AMERICA AND JAPAN) (AMENDMENT) REGULATIONS 2023

2023 No. 975

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2015 in order to extend those Regulations for periodic review by the Secretary of State at five yearly intervals. The instrument also inserts a new date by which the Secretary of State must complete a review and compile a report setting out the conclusion of the review. The Secretary of State must publish the first review report before 30th September 2028.

2.2 This instrument also amends the Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2015 to place an obligation on a UK incorporated parent company preparing group accounts according to the accounting standards of one of the US or Japanese bodies prescribed in regulation 2 of the 2015 Regulations to disclose in a note to their accounts the date of the company's incorporation in the UK and the number of financial years remaining in which it may prepare accounts under these Regulations. After four financial years, the company, if it has not already done so, must transition to preparing group accounts according to UK Generally Accepted Accounting Principles or UK International Financial Reporting Standards.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England, Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland. It will also extend by agreement to Northern Ireland.

4.3 The UK Government is responsible for the operation and regulation of company law in England and Wales, and in Scotland. The Northern Ireland administration has agreed that, while the operation and regulation of companies remains a transferred matter within the legislative competence of the Northern Ireland Assembly, amendments to the Companies Act 2006 and legislation regulating business entities should be made in the same terms for the whole of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Regulations substitute a new regulation 8 (review) and omit regulation 9 (review) of the Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2015.
- 6.2 The new regulation 8(1) requires the Secretary of State to conduct a periodic review of the Regulations and to publish a report of the conclusions. The new regulation 8(2) mandates that the report should consider the objectives of the Regulations, how far these have been met, whether they remain appropriate and, if so, whether they could be achieved through lighter regulation. The new regulation 8(3) requires the first review report to be published before 30th September 2028. The new regulation 8(4) requires subsequent review reports to be published periodically at intervals of not more than five years.
- 6.3 The Regulations also insert a new regulation 5A to place an obligation on companies preparing group accounts according to the accounting standards of a body prescribed in regulation 2 of the 2015 Regulations to disclose in a note to their accounts, first, the date of the company's incorporation in the UK and second, the number of financial years remaining in which it may prepare accounts under these Regulations.

7. Policy background

What is being done and why?

- 7.1 A post-implementation review of the 2015 Regulations has been carried out and published in 2023, ahead of these Regulations. The Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amendment) Regulations 2022 extended the 2015 Regulations for a single year to enable this review to be conducted.
- 7.2 This post-implementation review targeted a survey on UK incorporated, US- or Japanese-listed companies potentially within scope of the legislation to understand its impacts. The review concluded that the 2015 Regulations were meeting their objectives to provide an extended transition period for companies in scope to convert to UK accounting principles for their company reporting here whilst protecting the integrity of the UK's accounting and reporting frameworks. The survey found that the regulatory easement is one factor, among many, which encourages businesses to domicile in the UK. Respondents cited cost savings from the existence of the easement. The survey did not find evidence that the easement has harmed the integrity of the UK accounting and reporting frameworks.
- 7.3 The review found some evident uncertainties about the interaction of the transition period with the time limited nature of the Regulations. The review recommended extension of the regulatory easement with two reforms to improve its operation for business and counter any abuse. First, the review proposed, that the legislation should be subject to periodic, five yearly reviews of its effectiveness instead of an expiry date, to provide more clarity to businesses about availability of the easement. Second, the review proposed that any company taking advantage of the regulatory easement should be made to indicate the duration of its entitlement to this in its accounts, to

ensure understanding this is a transitional concession to facilitate conversion to UK accounting principles.

- 7.4 This instrument implements the review's recommendations.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.5 The 2015 Regulations provide a regulatory easement of the UK's corporate reporting rules to allow UK- or Japanese-listed companies who have chosen to domicile in the UK an extended transition period of up to four financial years from their dates of UK incorporation to convert to UK accounting principles for the purposes of filing their accounts, so they can manage and minimise their costs of accounting conversion. The 2015 Regulations, as amended by the 2022 Regulations, have an expiry date on 30th September 2023.

Why is it being changed?

- 7.6 The review of the Regulations found that the regulatory easement was delivering its objectives and recommended it should be extended. However, it found some confusion amongst business respondents to its survey over the interaction between the four year transition period and the time-limited nature of the Regulations. This may have been caused by lack of clarity in the Regulations, which do not specify that the four year easement is curtailed by the expiry of the legislation. In addition, several eligible companies seemed to have used the Regulations simply to postpone accounting conversion.

What will it now do?

- 7.7 The instrument extends the Regulations and the regulatory easement which they provide to help support the choices of companies within scope to locate their headquarters in the UK. The Regulations are made subject to periodic five yearly reviews by the Secretary of States, instead of having an expiry date, to provide more clarity to businesses about full availability of the transition period easement. The Regulations also require a company using the Regulations to note in its account the date of its UK incorporation and its remaining entitlement to the easement in financial years. This is to ensure understanding that this is a transitional concession to facilitate the required conversion to UK accounting principles.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Department does not intend to consolidate this instrument into the relevant legislation.

10. Consultation outcome

- 10.1 No consultation has been carried out in respect of this instrument.

11. Guidance

- 11.1 No guidance is being provided in respect of this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because this measure is zero net cost. The PIR concluded that the regulations provide a benefit to the companies in scope by them not having to transition in an accelerated time frame, i.e., 4 financial years from the date of incorporation, instead of 18 months. The 2012 regulations were scored as a regulatory benefit under the EANDCB methodology. Their extension in 2015 was treated as a zero net cost. Similarly in this case, compared to a do-nothing counterfactual – i.e., let the regulations lapse and losing the regulatory benefit – making the regulations permanent leads to a zero net cost, i.e., the benefit of extending is offset by the lost benefit in the counterfactual.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 A statutory review clause is included in the 2015 Regulations and this instrument amends those Regulations by inserting requirements for five yearly reviews by the Secretary of State, with a first review report to be published no later than 30th September 2028.

15. Contact

- 15.1 Chris Tollady at the Department for Business and Trade, telephone: 020 7215 1672 or email: chris.tollady@businessandtrade.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Andrew Death, Deputy Director for Corporate Reporting, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Hollinrake MP, Parliamentary Under Secretary at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.