

**EXPLANATORY MEMORANDUM TO  
THE COMPANIES ACT 2006 (ANNUAL RETURNS) REGULATIONS 2011**

**2011 No. [XXXX]**

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.

**2. Purpose of the instrument**

2.1 These Regulations amend the requirements for a company's annual return under the Companies Act 2006 ("the 2006 Act") as regards:

- the information about members and their shareholdings; and
- the classification scheme that companies may use to describe their principal business activities.

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

3.1 None.

**4. Legislative Context**

4.1 The Regulations amend the provisions of the 2006 Act which deal with the required contents of a company's annual return (sections 854 to 858). Those provisions were previously amended by the Companies Act 2006 (Annual Return and Service Addresses) Regulations 2008 (SI 2008/3000) (the 2008 Regulations). Among other things, an annual return must contain the following information.

- Under section 855(1)(b), the company's principal business activities; and section 855(3) provides that this information may be given by reference to one or more categories of any prescribed system of classification. The 2008 Regulations provide that the classification system is the Standard Industrial Classification 2003 (SIC) with the addition of extra codes for non-trading, residents' property management and dormant companies.
- Under section 856A and section 856B, information about members and their shareholdings. The requirements differ depending on whether any of the company's shares were admitted to trading on a "regulated market" at any time during the period covered by the return. The expression "regulated market" is defined in section 1173 of the 2006 Act, essentially by reference to the meaning in Article 4.1(14) of the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC). These markets are subject to EU regulation. But not all of the markets on which the shares of a UK company might be admitted to trading are "regulated markets". For example, neither AIM nor the PLUS-quoted market operated by PLUS Markets plc is a "regulated market". Those two markets are, however, markets established under the rules of a UK recognised investment exchange and are therefore covered by the definition of "prescribed market"

which applies for the purposes of certain provisions of the Financial Services and Markets Act 2000 dealing with market abuse. All “regulated markets” are also covered by that definition.

- Under section 856A, a company which did not have any shares admitted to trading on a regulated market is required to provide the names of everyone who was a member of the company at any time during the return period, details of transfers of shares to and from such persons during the return period, and also the number of shares of each class held by each person who held shares in the company at the end of the return period; but there is no requirement to provide their addresses. The full information specified is required only in the first annual return after incorporation and then every third year; in the intervening two years, the company need only provide the particulars relating to those who became or ceased to be members during the return period and the shares transferred during that period.
- Under section 856B, a company which had shares admitted to trading on a regulated market must provide the name and address of every member who held 5% or more of the issued shares of any class of the company at any time during the return period, details of share transfers to and from such persons during the return period, and the number of shares held by every member who had a shareholding of this size at the end of the return period. The full information specified is required only in the first annual return after incorporation and then every third year; in the intervening two years, the company need only provide the particulars relating to those who came to hold or ceased to hold 5% or more of the issued shares of any class of the company at any time during the return period and the shares transferred during that period.

4.2 Sections 856A and 856B of the 2006 only draw a distinction between companies any of whose shares were traded on a “regulated market” and companies none of whose shares were traded on a “regulated market”. Therefore, the full requirements of section 856A currently apply to (for example) companies which did not have any shares traded on a regulated market during the period covered by the return but did have shares traded on AIM or PLUS-quoted.

4.3 With certain exceptions, UK companies whose shares are admitted to trading on a “regulated market” or another “prescribed market” are subject to the Disclosure and Transparency Rules (“DTR5”) made by the Financial Services Authority. Among other things, DTR5 requires a person to notify a company when, as a result of acquiring shares in the company, the percentage of voting rights held by that person as shareholder reaches certain percentage thresholds (starting at 3%). The company must then notify the market by forwarding the information to a Regulated Information Service provider. Insofar as these requirements apply to companies traded on regulated markets, DTR5 implements requirements of the Transparency Obligations Directive (Directive 2004/109/EC).

4.5 Every company must keep a register of members. The exact nature of these registers differs depending on whether the company issues certificates for its shares or is an issuer of “uncertificated” shares (ie shares the title to which is recorded in and transferred by means of the computer-based CREST system). However, in all cases, sections 116 and 117 of the 2006 Act (modified as appropriate by the Uncertificated

Securities Regulations 2001, SI 2001/3755) provide a public right, on request and payment of a fee, to inspect any company's register of members and/or obtain a copy of it except where (on application by the company) the court rules that access is not sought for a proper purpose. The conditions for public access to registers of members are prescribed by section 116 and the Companies (Company Records) Regulations 2008 (SI2008/3006;) and the fees are prescribed by the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 (SI2007/2612), modified as appropriate by the Uncertificated Securities Regulations 2001.

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4.6 Paragraph 13 of Schedule 1 to the Unregistered Companies Regulations 2009 (SI 2009/2436) apply sections 854 to 858 of the 2006 Act to unregistered companies with modifications. The requirements for annual returns also apply to a company not formed under companies legislation but that has registered under the 2006 Act of any former Companies Act.

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

5.1 This instrument applies to all of the United Kingdom.

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

Edward Davey, Minister for Employment Relations, Consumer and Postal Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Companies Act 2006 (Annual Returns) Regulations 2011 are compatible with the Convention rights.

## **7. Policy background**

- ***What is being done and why***

7.1 Every company is required to make key information available to the public. This is part of the price to be paid in return for the benefit of limited liability. This ensures sufficient transparency of information so that incorporation is not a cloak for those who own or control companies. The cheap, easy and anonymous availability of information filed with Companies House is greatly valued and widely used by credit reference agencies, companies' potential creditors, customers and suppliers, individuals for private law and other purposes, and by academic researchers and Government bodies as a source of statistics and evidence.

7.2 The main way in which companies are required to make key information public is by filing it with Companies House. The Annual Return is the principal means of ensuring that companies keep the public record up-to-date. The procedures for completing Annual Returns in practice ensure that companies only have to provide information that is different to that provided previously. For the majority of companies, the only information that is changed from the previous year is the date of the Return itself: for them, completing the Annual Return takes seconds, not hours.

7.3 The United Kingdom Standard Industrial Classification of Economic Activities (SIC) is used to classify business establishments and other standard units by the type of economic activity in which they are engaged. It provides a framework for

the collection, tabulation, presentation and analysis of data and its use promotes uniformity. In addition, it can be used for administrative purposes and by non-government bodies as a convenient way of classifying industrial activities into a common structure. The latest version is SIC 2007 which is identical to the EUROSTAT System NACE at the four digit class level and the United Nations system ISIC at the two digit Divisional level. The Office of National Statistics will not support use of the 2003 SIC after 2011. Therefore a decision had to be taken. The options were:

- not to provide any classification scheme for companies to use to describe their principal business activities; or
- to update the code - thereby enabling companies to describe their principal business activities by reference to the codes in the 2007 SIC; or
- to repeal the requirement to state principal business activities.

The Government decided to update the reference to SIC in the 2008 Regulations – because the information provided by companies is used in Government, private sector, and academia, for example by the Office of National Statistics to produce statistics on trends.

7.4 The current requirement for companies with share capital to provide information about their shareholders and their shareholdings (described in paragraph 4.1 above) has been reviewed in the light of the disclosure requirements under DTR5. A major consideration was the cost of providing details of share transfers for companies whose shares are publicly traded. The Government concluded that there was little or no benefit from having annually updated information about major shareholdings available at Companies House in addition to the public right of access to all companies' registers of members (see paragraph 4.5) and the availability online, since 1 September 2010, on the National Storage Mechanism at [www.hemscott.com/nsm.do](http://www.hemscott.com/nsm.do) of major shareholder notifications under DTR5. Therefore the 2006 Act is amended so that, in effect, no disclosure of shareholder details is required in the annual return of a company which was covered by the obligations under DTR5 throughout the period covered by the return. For other companies with shares admitted to trading on a “prescribed market” (see paragraph 4.1) – for example companies whose shares were admitted to trading on such a market for only part of the period or which are not covered by DTR5 – there are disclosure requirements, but they are not as extensive as those which currently apply. New section 856B only requires details in respect of persons who were significant shareholders as at the date of the annual return.

7.5 The amendments made by the Regulations use the expression “relevant market” to described “prescribed markets”. This is so as to avoid any confusion which might arise from the fact that “prescribed” is a defined term in the 2006 Act (see section 1167).

7.6 Disclosure requirements are also reduced for companies whose shares were traded during the return period on any other market (ie a market other than a “regulated market”) outside the UK. Treating such companies the same as companies whose shares were not publicly traded would (among other things) have risked putting the UK in breach of EU law as a result of imposing lesser disclosure burdens – taking account of any obligations under DTR5 – on a company with shares traded on a “prescribed market” which is not a “regulated market” (for example, AIM or PLUS-

quoted) than would be imposed on a company with shares traded on the equivalent of such a market elsewhere in the EU. Noting that the record at Companies House is not useful to anyone wanting up-to-date information on a company's shareholders, the Government concluded that it was not necessary to require the company to file information about transfers at Companies House. The new requirement for any such company is to provide details of their significant members and their shareholders as at the date of the Annual Return.

7.7 For the vast majority of companies with share capital, the Regulations do not change the requirement to provide information about their shareholders and their shareholdings. The change applies only to companies whose shares are publicly traded on a regulated market or on a non-regulated prescribed market or on a non-regulated market outside the UK.

7.8 The amended annual return provisions will apply to unregistered companies and companies authorised to register which have registered (see paragraph 4.6 above), and to any other entities to which the provisions of the 2006 Act which are being amended by these Regulations have been applied.

## **8. Consultation outcome**

8.1 The 2008 Regulations followed a Government commitment during the Parliament's consideration of the Companies Act 2006 that no company would be required to provide the names and addresses of all their shareholders in their Annual Returns; the then expectation was that private companies be required to provide the names of all shareholders and that public companies be required to provide the names and addresses of significant shareholders. Following consultation in 2007, the Government concluded that public companies whose shares were not traded on regulated markets should be subject to the same requirement as private companies.

8.2 After the 2008 Regulations were made, there were further representations arguing that AIM and PLUS-quoted companies should be treated the same as those traded on regulated markets as they are subject to the same disclosure requirements. These Regulations follow further discussions with stakeholders over this issue.

## **9. Guidance**

9.1 Companies House will update their guidance on Annual Returns; this is available on <http://www.companieshouse.gov.uk/about/gbhtml/gp2.shtml#ch1>. The guidance will be update in line with this instrument.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is [free text].

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is not to introduce a distinction based on the number of employees.

11.3 The basis for the final decision on what action to take to assist small business is that these Regulations will not affect any requirement applying to companies whose shares are not publicly traded.

## **12. Monitoring & review**

12.1 It is intended to review these Regulations in 2015.

## **13. Contact**

Anne Scrope at the Department for Business, Innovation and Skills, Tel: 0207 215 2194 or email: [anne.scrope@bis.gsi.gov.uk](mailto:anne.scrope@bis.gsi.gov.uk), can answer any queries regarding the instrument.