Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, section 17(6) of the Limited Liability Partnerships Act 2000, section 18A(8) of the Companies (Audit, Investigations and Community Enterprise) Act 2004, sections 484(3), 1252(11) and 1290 of the Companies Act 2006 and paragraphs 1(1), 15 and 38(1) to (3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.0000

EXITING THE EUROPEAN UNION
AUDITORS

The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 2

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) ("the 1972 Act"), sections 15 and 17 of the Limited Liability Partnerships Act 2000(**2**) ("the 2000 Act"), section 18A of the Companies (Audit, Investigations and Community Enterprise) Act 2004(**3**) ("the 2004 Act"), sections 484(1), 519A(5), 1239(1)(b), (2) and (5)(d), 1241(2)(c), 1246(1), 1252(1), (4)(a) and (8) and 1292(1) and (2) of the Companies Act 2006(**4**) ("the 2006 Act") and sections 8(1) and 23(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**5**) ("the 2018 Act").

The Secretary of State is a Minister designated(**6**) for the purposes of section 2(2) of the 1972 Act in relation to auditors and the audit of accounts.

In accordance with paragraph 2(2) of Schedule 2 to the 1972 Act, section 17(6) of the 2000 Act, section 18A(8) of the 2004 Act, sections 484(3), 1252(11) and 1290 of the 2006 Act, and paragraphs 1(1), 15 and 38(1) to (3) of Schedule 7 to the 2018 Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(**1**) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(**2**) 2000 c. 12.
(**3**) 2004 c. 27.
(**4**) 2006 c. 46.
(**5**) 2018 c. 16.
(**6**) S.I. 2007/1679.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2018.

2. These Regulations come into force on exit day(**7**), except for Part 5 which comes into force 21 days after the day on which it is made.

PART 2

Amendment of primary legislation

CHAPTER 1

Part 16 of the Companies Act 2006

Amendment of Part 16 of the Companies Act 2006

3. Part 16 of the Companies Act 2006 (audit) is amended in accordance with regulations 4 to 9.

4. In section 479A (subsidiary companies: conditions for exemption from audit)(**8**)—

(a) in subsection (1)(b), after "an EEA State" insert "or part of the United Kingdom";

(b) in subsection (2)(c)—

(i) after "in accordance with" insert—

"(zi) if the undertaking is established in any part of the United Kingdom—

(aa) if the undertaking is a company, the requirements of Part 15 of this Act,

(bb) if the undertaking is not a company, the legal requirements which apply to the drawing up of consolidated accounts for that undertaking,";

(ii) in sub-paragraph (i), at the beginning, insert "if the undertaking is established in an EEA State,".

5. In section 494ZA (the maximum engagement period)(**9**)—

(a) in subsection (5)(a)(ii), omit "and" at the end;

(b) for subsection (5)(a)(iii) substitute—

"(iii) if the company is a private company and does not have an audit committee, a selection procedure that complies with the requirements of section 485B(4),

(iv) if the company is a public company and does not have an audit committee, a selection procedure that complies with the requirements of section 489B(4),";

(**7**) See section 20(1) of the European Union (Withdrawal) Act 2018 for the meaning of "exit day".

(**8**) Section 479A was inserted by regulation 7 of S.I. 2012/2301. Subsection (2)(c)(i) was substituted by regulation 10(2) of S.I. 2015/980.

(**9**) Section 494ZA was inserted by regulation 12(14) of S.I. 2017/516. Subsection (5) was amended by paragraph 20 of Schedule 1 to S.I. 2017/1164.

(c) in subsection (5)(b) after "Audit Regulation" insert "as it had effect immediately before exit day".

6. In section 494A (interpretation)(**10**)—

(a) for the definition of "audit committee" substitute—

""audit committee" means a body which performs—

(a) the functions referred to in—

(i) rule 7.1.3 of the Disclosure Guidance and Transparency Rules sourcebook made by the Financial Conduct Authority(**11**) (audit committees and their functions) under the Financial Services and Markets Act 2000(**12**), or

(ii) rule 2.4 of the Audit Committee Part of the Rulebook made by the Prudential Regulation Authority(**13**) (audit committee) under that Act,

as they have effect on exit day, or

(b) equivalent functions.";

(b) omit the definition of "Audit Directive";

(c) in the definition of "public interest entity"(**14**)—

(i) in paragraph (a), for "regulated market" substitute "UK regulated market";

(ii) in paragraph (b), for "other than one listed in Article 2 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and investment firms" substitute "which is a CRR firm within the meaning of Article 4(1)(2A) of that Regulation";

(iii) for paragraph (c), substitute—

"(c) a person who would be an insurance undertaking as defined in Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings(**15**) as that Article had effect immediately before exit day, were the United Kingdom a member State;";

(d) omit the definitions of "regulated market" and "transferable securities"(**16**).

7. In section 504(1) (senior statutory auditor)—

(a) omit paragraph (a) and the "or" after it;

(b) in paragraph (b), omit "if there is no applicable standard so issued,".

8. In section 519A (meaning of "public interest company", "non-public interest company" and "exempt reasons")(**17**)—

(a) in subsection (1), in the definition of "public interest company"(**18**)—

(**10**) Section 494A was inserted by paragraph 12 of Schedule 3 to S.I. 2016/649.
(**11**) Sourcebooks made by the Financial Conduct Authority are available on https://www.handbook.fca.org.uk/handbook and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where it is also available for inspection.
(**12**) 2000 c. 8. Part 9A was inserted by section 24(1) of the Financial Services Act 2012 (c. 21).
(**13**) The Rulebook is available on http://www.prarulebook.co.uk and copies of the rules referred to can be obtained from the Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA, where it is also available for inspection.
(**14**) The expression of "public interest company" in this definition was amended to "public interest entity" by regulation 12(15) of S.I. 2017/516.
(**15**) OJ No. L 374 31.12.91, p. 7.
(**16**) The definition of "transferable securities" was amended by paragraph 9(3) of Schedule 4 to S.I. 2017/701.
(**17**) Section 519A was inserted by section 18(3) of the Deregulation Act 2015 (c. 20).
(**18**) The definition of "public interest company" was substituted by paragraph 26(2) of Schedule 3 to S.I. 2016/649.

(i) in paragraph (a), for "regulated market" substitute "UK regulated market";

(ii) in paragraph (b), for "other than one listed in Article 2 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and investment firms" substitute "which is a CRR firm within the meaning of Article 4(1)(2A) of that Regulation";

(iii) for paragraph (c), substitute—

"(c) a person who would be an insurance undertaking as defined in Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings as that Article had effect immediately before exit day, were the United Kingdom a member State;";

(b) in subsection (2), omit the definitions of "regulated market"(**19**) and "transferable securities"(**20**).

9. In section 539 (minor definitions), in the definition of "MiFID investment firm"(**21**)—

(a) for "Article 4.1.1 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments," substitute "Article 2(1A) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012(**22**)";

(b) in paragraph (a), for "to which that Directive does not apply by virtue of Article 2 of that Directive" substitute "which is exempted from the definition of "investment firm" by Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)(**23**)".

CHAPTER 2

Part 42 of the Companies Act 2006

Amendment of Part 42 of the Companies Act 2006

10. Part 42 of the Companies Act 2006 (statutory auditors) is amended in accordance with regulations 11 to 26.

11. In section 1210 (meaning of "statutory auditor" etc)—

(a) in subsection (1)(c)(ii)(**24**), for "regulated market" substitute "UK regulated market";

(b) in subsection (3)—

(i) omit the definition of "bank"(**25**);

(ii) for the definition of "insurer" substitute—

""insurer" means a person who would be an insurance undertaking, as defined in Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 of

(**19**) The definition of "regulated market" was substituted by paragraph 26(2) of Schedule 3 to S.I. 2016/649.
(**20**) The definition of "transferable securities" was substituted by paragraph 26(2) of Schedule 3 to S.I. 2016/649, and amended by paragraph 9(4) of Schedule 4 to S.I. 2017/701.
(**21**) The definition of "MiFID investment firm" was inserted by regulation 3(7)(b) of S.I. 2007/2932, and amended by paragraphs 9(5)(a), (b) and (c) of Schedule 4 to S.I. 2017/701 and regulation 3 of S.I. 2018/786.
(**22**) OJ No. L 173 12.06.2014, p. 84.
(**23**) S.I. 2001/544.
(**24**) Section 1210(1)(c) was substituted by regulation 13(2)(a) of S.I. 2017/516.
(**25**) The definition of "bank" was amended by paragraph 42(3) of Schedule 2 to S.I. 2013/3115 and article 3(1) and Part 1 of the Schedule to S.I. 2012/1809.

the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings as that Article had effect immediately before exit day, were the United Kingdom a member State;";

(iii) omit the definition of "regulated market"(**26**).

12. In section 1223A (notification of matters relevant to other EEA States)(**27**)—

(a) in the heading, for "other EEA States" substitute "approved third country competent authorities";

(b) in subsection (2)—

(i) in paragraph (a), for "any other EEA State or part of an EEA State, implementing the Audit Directive" substitute "an equivalent third country or transitional third country";

(ii) in paragraph (b), for "EEA State other than the United Kingdom" substitute "equivalent third country or transitional third country";

(c) in subsection (3)—

(i) in paragraph (a), for "an EEA auditor" substitute "a third country auditor that has been approved by an approved third country competent authority";

(ii) in paragraph (b), for "EEA" substitute "approved third country".

13. In section 1224A (restrictions on disclosure)(**28**), omit subsection (5).

14. After section 1240 (information to be made available to public), insert—

"CHAPTER 4A

Equivalent Third Countries and Transitional Third Countries

Power to approve third countries as equivalent or transitional third countries

1240A.—(1) The Secretary of State may by regulations grant to a third country, or make provision for the grant to a third country of—

(a) approval as an equivalent third country,

(b) provisional approval, for a period of up to seven years, as an equivalent third country, or

(c) transitional approval, for a period of up to seven years, as a transitional third country,

in relation to the comparability of the third country's audit regulatory regime to the audit regulatory regime of the United Kingdom.

(2) Regulations under subsection (1) may (among other things)—

(a) specify the procedure for assessing the audit regulatory regime of a third country;

(b) set out the considerations which must be taken into account, or may be taken into account, by the Secretary of State when determining—

(i) whether the third country has an audit regulatory regime comparable to that of the United Kingdom,

(ii) whether to grant approval, provisional approval or transitional approval, and

(**26**) The definition of "regulated market" was inserted by regulation 13(2)(b) of S.I. 2017/516.
(**27**) Section 1223A was inserted by regulation 7(1) of S.I. 2007/3494.
(**28**) Section 1224A was inserted by regulation 8(1) of S.I. 2007/3494.