

Consultation on new Lloyd's Accounting Regulations: Implementation of the Audit Directive (2006/43/EC) and the Reporting Directive (2006/46/EC)

April 2008



HM TREASURY



HM TREASURY

**Consultation on new Lloyd's
Accounting Regulations:
Implementation of the Audit
Directive (2006/43/EC) and the
Reporting Directive (2006/46/EC)**

April 2008

© Crown copyright 2008

The text in this document (excluding the Royal Coat of Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be sent to:

Office of Public Sector Information
Information Policy Team
St Clements House
2-16 Colegate
Norwich
NR3 1BQ

Fax: 01603 723000

e-mail: HMSOlicensing@opsi.x.gsi.gov.uk

HM Treasury contacts

This document can be found in full on our website at:

hm-treasury.gov.uk

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hm-treasury.gov.uk

Printed on 100% recycled paper.

When you have finished with it please recycle it again.

ISBN 978-1-84532-459-9

PU555

CONTENTS

		Page
Executive Summary		3
Chapter 1	Introduction	5
Chapter 2	Changes to implement 2006/43/EC - The Audit Directive	9
Chapter 3	Changes to implement 2006/46/EC - The Reporting Directive	13
Chapter 4	Updates to take account of changes to The Companies Act	15
Chapter 5	Regulatory Impact Assessment	17
Annex A	The new Regulations	29

EXECUTIVE SUMMARY

This consultation document sets out the Treasury's proposals for implementing the Audit Directive (2006/43/EC) and the Reporting Directive (2006/46/EC), with respect to Lloyd's. The proposals also include provisions making consequential amendments in relation to other developments in company law since 2004 with relevance to reporting and disclosure at Lloyd's.

The purpose of the Audit Directive is to improve the credibility of financial information, by raising the quality and transparency of auditing. It clarifies the duties of statutory auditors and sets out certain principles to ensure their objectivity and independence, for example where audit firms are also providing their clients with other services. The Reporting Directive also seeks to improve the quality of financial reporting. It includes provisions for new disclosure requirements in relation to off-balance sheet transactions, and related party transactions.

The Department for Business Enterprise & Regulatory Reform (BERR) has principal responsibility for implementing these directives, and has brought provisions into force that apply to auditors and companies. Implementation also requires changes to the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 ("the 2004 Regulations"), for which the Treasury has responsibility. Consistent with wider government policy towards implementation of the directives, the Treasury intends to take a proportionate, risk-based approach in applying the changes as they affect Lloyd's, providing equivalence of treatment with other insurance entities and companies.

In making the changes, it is proposed to revoke the 2004 Regulations and replace them with a complete, updated, set. This will provide greater clarity and ease of use compared to the alternative approach of making amendments in a piecemeal fashion to the existing regulations.

The changes are discussed in detail in Chapters 2 to 4. They include:

- Changes to the procedure for appointing auditors, and new provisions regarding their dismissal and notification where they cease to hold office before the term is complete (see Chapter 2)
- New provisions on disclosure of auditors' remuneration (see Chapter 2)
- Extended disclosure about off-balance sheet transactions and related party transactions including, with regard to the latter, identification of transactions with related parties who are insurance or reinsurance intermediaries (see Chapter 3)
- A new statement of disclosure to auditors in the accounts, and amended provisions concerning managing agents' reports (see Chapter 4)

The new regulations are set out at Annex A. An impact assessment on the costs and benefits of the proposals is included in Chapter 5. Comments are invited on both. The deadline is 24 June 2008.

INTRODUCTION

1.1 The European Commission adopted an Action Plan in 2003 announcing measures to modernise company law and enhance corporate governance in the Community. Included within that plan was a short-term priority to confirm the collective responsibility of board members, increase transparency in transactions with related parties and off-balance sheet arrangements, and improve disclosure about corporate governance practices applied in a company.

1.2 Consequently, and against the background of financial scandals that occurred earlier in the decade, Directives 2006/43/EC on statutory audit (“the Audit Directive”) and 2006/46/EC on company reporting (which will be referred to as “the Reporting Directive” for the purposes of this document) have been introduced to enhance confidence in financial statements and annual reports.

1.3 The Audit Directive seeks to achieve this by increasing the credibility of financial reporting, reinforcing and harmonising the statutory audit function throughout the European Union. It establishes a set of basic principles for the conduct and oversight of statutory audits. It also introduces a requirement for external quality assurance and clarifies the duties of statutory auditors.

1.4 The Reporting Directive amends several accounts directives, of which the most relevant to this consultation document is 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings. Included in the amendments introduced by the directive are measures to extend disclosure requirements in respect of off-balance sheet transactions and related party transactions.

1.5 The full text of the directives can be viewed, free of charge, on the European Union law website at: <http://eur-lex.europa.eu/en/index.htm>

1.6 Implementation of these directives with respect to companies is the responsibility of the Department for Business Enterprise & Regulatory Reform (BERR). BERR consulted last year on its proposals. They have been implemented through the Statutory Auditors and Third Country Auditors Regulations 2007 (SI 2007/3494) and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410).

1.7 As was explained in BERR’s consultation documents, responsibility for implementing amendments to legislation applicable to organisations within the directives that are not companies falls to the Treasury. This document sets out such amendments as are required for Lloyd’s and market participants at Lloyd’s. Accordingly, the impact of the proposals is limited to those entities.

1.8 The proposed changes are described in Chapter 2 (those relating to the Audit Directive) and Chapter 3 (those relating to the Reporting Directive). In addition, changes consequential to the Companies Act 2006 are proposed. These are described in Chapter 4. Both the syndicate accounts and the Lloyd’s aggregate accounts, which present the cumulated picture of the syndicate accounts, are affected. The text discussing the amendments explains the impact on each.

1.9 In making the amendments, the Treasury proposes to revoke the existing regulations which contain the accounting provisions for Lloyd’s – the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2004 – and

replace them with a new, complete, set for ease of use. To further increase clarity, the majority of the Companies Act provisions which were applied to Lloyd's syndicates and aggregate accounts by reference in the 2004 Regulations have been written out.

Acronyms and legislative references

1.10 The following references and acronyms are used in this document:

"FSMA" – Financial Services and Markets Act 2000.

"The 2004 Regulations" – the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (SI 2004/3219).

"The new regulations" – the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 (which will replace the 2004 Regulations).

"The BERR Regulations" – the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410).

FSA – the Financial Services Authority.

Structure and content of the new regulations

1.11 The new regulations are attached at Annex A. They are being made under section 2(2) of the European Communities Act. Part 1 of the new regulations contains the interpretation provisions and provisions on the senior statutory auditor. Part 2 and Schedule 1 contain provisions relating to syndicate accounts. Schedule 1 is split into three parts. Part 1 contains the general provisions as to what must be included in the syndicate accounts. Part 2 contains provisions on the contents of the managing agent's report. Part 3 makes provisions in relation to the appointment and removal of auditors.

1.12 Part 3 and Schedule 3 to the new regulations contain the provisions relating to aggregate accounts. Lloyd's is exempt, under Article 4.2 of Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, from the requirement to produce consolidated accounts. Rather, it is required to produce aggregate accounts prepared by cumulating all the syndicate accounts. Schedule 3 is split into two parts. Part 1 contains the general provisions relating to the contents of the aggregate accounts and the annual report on the Lloyd's market which must be prepared by the Council of Lloyd's. Part 2 contains the equivalent provisions in relation to the appointment and removal of auditors as are set out in Part 3 of Schedule 1 for the syndicate accounts.

1.13 Schedule 2 to the new regulations contains provisions relevant to the disclosure of auditors' remuneration, which are relevant to both syndicate accounts and aggregate accounts.

Overall scope and extent of changes

1.14 It should be noted that many of the provisions from the 2004 Regulations have been carried over without change. **This consultation does not revisit issues addressed during the consultation for the 2004 Regulations about the general regime for syndicate and aggregate accounts at Lloyd's.** It is concerned only with amending those regulations in line with the directives referred to above and to reflect, where relevant, company law changes since the 2004 Regulations were made.

1.15 Comments are invited on the proposals set out in this document, either generally or in response to the specific questions posed.

Impact Assessment

1.16 HM Treasury has prepared an impact assessment into the costs and benefits of the proposed measures. This is set out in Chapter 5. A revised impact assessment, taking account of comments received in this consultation, will be published when the regulations are made.

HOW TO RESPOND

1.17 The consultation period will begin on 29 April 2008, running for eight weeks until 24 June 2008. Responses should be sent to:

David Beardsworth
Financial Stability & Risk Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Tel: 0207 270 4427

Fax: 0207 451 7524

Email: David.Bearsworth@hm-treasury.x.gsi.gov.uk

1.18 When responding, please state whether you are responding as an individual or representing the views of an organisation.

CONFIDENTIALITY

1.19 All written responses may be made public on HM treasury's website unless the respondent specifically requests otherwise in writing. In the case of electronic responses, standard confidentiality disclaimers that are included with e-mails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

1.20 Even where confidentiality is requested, if a request for disclosure of the consultation response is made in accordance with the Freedom of Information Act, and the response is not covered by one of the exemptions in that legislation, the Government will have to disclose the response in whole or in part.

2

CHANGES TO IMPLEMENT 2006/43/EC - THE AUDIT DIRECTIVE

2.1 This section describes the changes being proposed in relation to the Audit Directive. The provisions which need to be implemented for Lloyd's are:

Article 28 (audit reporting), which requires changes to the requirements for signature of accounts;

Article 37 (appointment of statutory auditors), which requires express provision to be made for the appointment of auditors;

Article 38 (dismissal and resignation of the auditor). Article 38.1 requires there to be rules preventing dismissal on improper grounds, and Article 38.2 requires notification of the responsible authority by the dismissed or resigning auditor and the audited entity. Changes are needed to address these issues; and

Article 49 (remuneration of the auditor) requires additional information to be disclosed in the accounts on the remuneration of the auditor.

2.2 These are discussed in more detail below. So far as possible the new regulations implement these obligations in relation to Lloyd's by making the same provisions for Lloyd's as have been made for companies and other insurance undertakings in the Companies Act 2006 and statutory instruments implementing these directives.

Audit reporting **2.3** Article 28 requires that audit reports should be signed by a statutory auditor, except in limited circumstances. Provision for this is made in regulations 11 - 13 (in relation to the syndicate accounts) and 22 - 24 (in relation to the aggregate accounts) of the new regulations. These provisions follow sections 505 and 506 of the Companies Act 2006. The definition of senior statutory auditor in regulation 3 is taken from section 504 of the Companies Act 2006.

Appointment of the auditor **2.4** Article 37 requires the auditor to be appointed by the members of the audited entity, or by a process independent of the managerial body of the entity.

2.5 Looking first at syndicate accounts, the managing agent is now responsible for the appointment of the auditor. This is not permissible under the terms of Article 37 as the managing agent lacks the necessary independence. Paragraphs 13 to 15 of Schedule 1 of the new regulations alter the position so as to require the "members of Lloyd's who participate in a syndicate" to appoint the statutory auditor, and to make provision for the term of office of an auditor and the deemed re-appointment of the auditor, in line with provisions applying to companies.

2.6 Equivalent provision in relation to the aggregate accounts is made in paragraphs 5 - 7 of Schedule 3. The effect here is that the appointment should be made by the members of the Society of Lloyd's, as being closest to the provision of Article 37 (which suggests that the appointers should be "the general meeting of shareholders or members of the audited entity").

Q1. Do you have any comments on the proposals for appointment of the auditor?

Dismissal of the auditor **2.7** The Audit Directive requires that an auditor can only be dismissed on proper grounds, and provides that divergence of opinions on accounting treatments or audit procedures shall not be proper grounds for dismissal. This requirement is being

implemented for Lloyd's, as with miscellaneous insurance undertakings, and other financial services entities, by the creation of a right to apply to the High Court for a remedy where an auditor has been removed from office. This provision in relation to syndicate accounts is set out at paragraph 16 of Schedule 1 of the new regulations. We propose to give the right to apply to the High Court to members of the syndicate, the Society of Lloyd's, and to the FSA.

2.8 Equivalent provision in relation to the aggregate accounts is made in paragraph 8 of Schedule 3. Here, the right to apply to the High Court is given to any member of the Society, and to the FSA.

Q2. Do you agree that the right to apply to the High Court should be given to the persons proposed?

Notification 2.9 Article 38.2 requires both the auditor and audited entity to give notice in any case where the auditor ceases to hold office before the end of his term, and to provide an adequate explanation therefore.

2.10 This obligation is implemented in Schedule 1, paragraphs 17 and 18 (in relation to syndicate accounts), and Schedule 3, paragraphs 9 and 10 (in relation to the aggregate accounts) of the new regulations. The notice required must be given to the appropriate audit authority. This is defined as the Secretary of State or a person he designates. It is proposed that the FSA will be so designated in relation to Lloyd's.

Q3. Do you agree that the FSA should be designated as the appropriate audit authority in relation to Lloyd's?

Disclosure of remuneration of the auditor

2.11 Article 49 of the Audit Directive amends directive 78/660/EEC to require disclosure of total fees charged by the auditor for statutory audit of the accounts, and other services. The requirement for such disclosure for the syndicate accounts is implemented by regulation 4(4) and for the aggregate accounts by regulation 17(6) of the new regulations. These give effect to Schedule 2 to the new regulations. Schedule 2 identifies the information which must be included in the note to the accounts (paragraphs 1 and 2); the types of service in respect of which disclosure is required (paragraph 3); and defines an "associate of auditor" (the remuneration for whose services must also be disclosed). These provisions follow closely the relevant provisions from the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008.¹

Sanctions

2.12 In the 2004 Regulations, sanctions for non-compliance with the requirements of the regulations are provided for by criminal offences. We propose to follow the same approach (also adopted in legislation implementing these obligations for companies, banks, insurance undertakings and other financial service entities). It will be a criminal offence under the new regulations for either the auditor or the managing agent and its officers (in relation to the syndicate accounts) or the Society of Lloyd's and members of the Council (in relation to the aggregate accounts) to fail to notify the appropriate audit authority (which as noted above, we propose should be the FSA) where an auditor ceases to hold office before the end of his term of office.

¹ S.I. 2008 No 489

2.13 The relevant provisions are contained in paragraphs 17(4) – (7) and 18(4) – (6) of Schedule 1 of the new regulations for the offence in relation to syndicate accounts, and paragraphs 9(4) – (7) and 10(4) – (6) of Schedule 3 for the offence in relation to the aggregate accounts.

Q4. Do you have any comments on the criminal offences proposed in relation to non-compliance with the new provisions?

3

CHANGES TO IMPLEMENT 2006/46/EC - THE REPORTING DIRECTIVE

3.1 This section sets out the changes being proposed in relation to implementation of the Reporting Directive (2006/46/EC) with regard to Lloyd's.

Valuation of financial instruments

3.2 Article 1.5 of the Reporting Directive allows financial instruments which may, under international accounting standards adopted by the Commission in accordance with Regulation 1606/2002/EC, be included in accounts at a fair value to be so included provided that the associated disclosures required in those standards are made. This provision has been implemented in paragraph 30(4) of Schedule 3 to the BERR Regulations², which is one of the provisions applied to Lloyd's syndicate accounts and Lloyd's aggregate accounts by paragraph 1(4) of Schedule 1 to the new regulations, and regulation 17(4) respectively.

Off-balance sheet transactions

3.3 Article 1.6 of the Reporting Directive requires details to be given of the nature and purpose of off-balance sheet arrangements. This requirement is implemented in paragraph 7 of Schedule 1 (in relation to syndicate accounts) and paragraph 1 of Schedule 3 (in relation to the aggregate accounts). The relevant information need only be given to the extent necessary to enable the financial position of the syndicate to be assessed, and that of the Lloyd's market with respect to the aggregate accounts.

Q5. Do you have any comments on the proposed provisions for disclosure in relation to valuation of financial instruments and reporting off-balance sheet transactions?

Related party transactions

3.4 Article 1.6 of the directive also requires the disclosure of information about related party transactions. This is being implemented in relation to insurance companies in paragraph 90 of Schedule 3 to the BERR Regulations. The application of that provision to Lloyd's syndicate accounts is modified by paragraph 1(5) of Schedule 1 to the new regulations to take account of the proposed repeal of sections 10 – 12 of Lloyd's Act 1982 (the divestment provisions) in the Legislative Reform (Lloyd's) Order.³ These provisions provide detailed rules prohibiting most associations between Lloyd's brokers and managing agents. If that Order proceeds, there will no longer be statutory barriers to such associations: it is appropriate for additional information to be disclosed in the accounts, to ensure that greater transparency is given to relationships between managing agents and brokers as a safeguard against potential conflicts of interest, and to ensure that the effects of transactions between the managing agent and related brokers on the financial position of the syndicate is apparent.

3.5 Accordingly, where the managing agent of a syndicate has any related parties who are insurance or reinsurance intermediaries they must be identified in the syndicate accounts. Where the managing agent has entered into material transactions with such intermediaries on behalf of the syndicate otherwise than under normal market conditions, particulars of the amount of such transactions must also be included in the accounts. Where the managing agent has not entered into any such transactions with its related intermediaries, a statement to that effect should be included in the accounts.

² S.I. 2008 No 410

³ See the Consultation Paper *Proposals for a Legislative Reform Order to amend Lloyd's Act 1982* published in March 2008

Q6. Do you have any comments on the proposals for reporting on related party transaction?

4

UPDATES TO TAKE ACCOUNT OF CHANGES TO THE COMPANIES ACT

4.1 The new regulations also update the implementation of Council Directive 91/674/EEC on the annual and consolidated accounts of insurance undertakings, as amended by Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003, so far as they apply to Lloyd's syndicate and aggregate accounts. These directives were implemented in the 2004 Regulations by the modification and incorporation by reference of the relevant provisions of the Companies Act 1985. Since the 2004 Regulations came into force, the provisions applied to Lloyd's have been amended, and the Companies Act 1985 itself has now been replaced by the Companies Act 2006. This needs to be reflected in the new regulations. We have chosen to write out the relevant provisions of the Companies Act 2006 in the new regulations, rather than simply incorporating them by reference, to make the new regulations more accessible.

Disclosure to auditors **4.2** Section 234ZA of the Companies Act 1985 (now section 418 of the Companies Act 2006) imposed a duty for a statement to be made in the accounts that the director has provided all relevant audit information and exercised all due care, skill, and diligence. This provision has been applied to Lloyd's in paragraph 11 of Part 2 of Schedule 1 to the new regulations in relation to the syndicate accounts, and in paragraph 4 of Schedule 3 to the new regulations in relation to the aggregate accounts.

Notes to accounts – managing agents' remuneration **4.3** Paragraph 5 of Schedule 1 of the new regulations repeats paragraph 6 of the Schedule to the 2004 Regulations, which made provision for the disclosure of information as to managing agents' remuneration. Paragraph 6 of Schedule 1 of the new regulations requires information about advances, credits and guarantees made to or on behalf of directors of a managing agent which have been charged to a syndicate. This applies section 413 of the Companies Act 2006, which reflects the requirements in Article 43(13) of directive 78/660/EEC, to managing agents.

Managing Agent's Report **4.4** Part 2 of Schedule 1 of the new regulations sets out the requirements to be satisfied in relation to the managing agent's report. It contains the provisions of section 234 of the Companies Act 1985 (which was previously applied to Lloyd's) and paragraphs from Schedule 7 to that Act (now Schedule 7 to the BERR Regulations) which were applied to Lloyd's under the 2004 Regulations.

4.5 Also added, in paragraphs 8 and 9 of Schedule 1 of the new regulations, are provisions in relation to sections 234ZZA and 234ZZB of the Companies Act 1985 (now contained in sections 416 to 418 of the Companies Act 2006). These sections were introduced to implement provisions in Directive 2003/51/EC (the Modernisation Directive).

4.6 They set out general requirements for directors' reports, and the need for a business review to be included. They include, at paragraph 8(1)(a), a requirement for the managing agent to include the names of the persons who at any time during the financial year were directors or partners of the managing agent. In addition, paragraph 10 of Schedule 1 sets out the information on the use of financial instruments by a syndicate which must be disclosed further to article 46 of Directive 78/660/EEC.

Annual report - aggregate accounts **4.7** The provisions in relation to the annual report required from the Council of Lloyd's with the aggregate accounts are set out in paragraphs 2 and 3 of Schedule 3 to the new regulations. They include, at paragraph 2(1)(a) a similar requirement (to that described in paragraph 4.6 above) to disclose those persons who were members of the Council of Lloyd's.

Q7. Do you have any comments on the proposals to incorporate amendments in the new regulations to update the provisions in line with changes to disclosure and reporting requirements in the Companies Act?

Other provisions **4.8** The other provisions of the new regulations repeat the relevant provisions of the 2004 Regulations, and the Companies Act 2006 with the modifications made by the 2004 Regulations where appropriate. For example, regulations 4 and 5 of the new regulations (preparation of syndicate's annual accounts and underwriting year accounts) repeat regulations 3 and 4 of the 2004 Regulations.

4.9 Regulation 6 applies section 414 of the Companies Act 2006 (previously section 233 of the Companies Act 1985), about approval and signing of the accounts. This was applied by reference to Lloyd's in the 2004 Regulations. There are no significant changes.

4.10 Regulations 7 (syndicate accounts to be sent to syndicate members, the Council of Lloyd's and the Authority), 8 (publication of syndicate accounts) and 26 (aggregate accounts and annual report of Council to be delivered to the Authority and published) of the new regulations repeat regulations 5, 6 and 15 of the 2004 Regulations. Regulation 9 (auditor's report) applies sections 495 and 496 of the Companies Act 2006 (previously section 235 of the Companies Act 1985) with the modifications made to that provision by the Schedule to the 2004 Regulations to the syndicate accounts. Regulation 21 (auditor's report) makes similar provision in relation to the aggregate accounts. Regulations 18 and 20 make provision for the approval and signature of the aggregate accounts and the annual report of the Council of Lloyd's, re-enacting the relevant provisions of the 2004 regulations.

4.11 Regulations 10 and 25 (duties of auditors) apply sections 498 to the syndicate accounts and the aggregate accounts respectively. Regulations 14 and 15 apply sections 434 and associated provisions, and 469 of the Companies Act 2006 respectively (previously sections 237, 240 and 242B of the Companies Act 1985), to the syndicate accounts with the modifications made to section 240 in the Schedule to the 2004 Regulations.

Sanctions

4.12 Following the approach of the 2004 Regulations, the penalties for breaches of the new regulations are set out, in regulation 16 in relation to the syndicate accounts. Equivalent sanctions are also provided for breaches of the requirements related to the aggregated accounts in regulation 27.

Q8. Do you any other comments about the overall approach being proposed, the new regulations, or the impact assessment (see following chapter)?

5

REGULATORY IMPACT ASSESSMENT

HM Treasury	Impact Assessment of regulations to implement Directives 2006/43/EC and 2006/46/EC, and make other reporting amendments, with respect to Lloyd's
-------------	--


Stage Consultation	Version 1	
--------------------	-----------	--

Available to view or download at: www.hm-treasury.gov.uk

Contact name for enquiries: Harry Rigg

Telephone number: 0207 270 4704

<p>What is the problem under consideration? Why is government intervention necessary? To give effect in UK law and to implement Directives 2006/43/EC and 2006/46/EC in relation to Lloyd's Syndicate and Aggregate Accounts, and to make consequential amendments subsequent to the enactment of the Companies Act 2006. This will help to ensure minimum levels of investor protection, and reduce the risk of future scandals and any adverse impact on investor confidence.</p>
<p>What are the policy objectives and the intended effects? The main objective of the legislation is to ensure that Lloyd's Syndicate and Aggregate accounts comply with the EU directives and so to increase their transparency. This will enhance confidence in the financial statements and annual accounts published by Lloyd's syndicates (and the Lloyd's aggregate accounts), allowing members and stakeholders to make comparable assessments of different syndicates by having access to complete and reliable information in relation to their financial arrangements.</p>
<p>What policy options have been considered? Please justify any preferred option. 1. Do nothing. 2. Give effect in UK law and implement Directives 2006/46/EC and 2006/43/EC in relation to Lloyd's Syndicate and Aggregate Accounts and make consequential amendments necessary for the implementation of the Companies Act 2006 in relation to Lloyd's. Policy option 2 is preferable as it will help to enhance confidence in Lloyd's financial statements and annual accounts. Also, if option 2 is not taken, the UK would be open to infraction proceedings from the European Commission.</p>
<p>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 03/2011</p>

<p>Ministerial Sign-off For consultation stage Impact Assessments:</p> <p><i>I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options</i></p> <p>Signed by the responsible Minister:  Date: 28/4/2008</p>

Policy Option		Description	
ANNUAL COSTS One off (Transition) £ - Yrs - Average Annual Cost (excluding one-off) £ 0.02m		Description and scale of key monetised costs by 'main affected groups' Additional audit costs incurred due to extra disclosure requirements, related party and off-balance sheet transactions, and recording and verifying non-audit work performed by accountants. Total Cost (PV) £.0.19m	
Other key non-monetised costs by 'main affected groups'			
ANNUAL BENEFITS One off £ - Yrs - Average Annual Benefit (excluding one-off) £ 2.2m		Description and scale of key monetised benefits by 'main affected groups' Benefits arising from increased transparency for Lloyd's members increasing confidence and market efficiency. Total Benefit (PV) £ £ 20.48m	
Other key non-monetised benefits by 'main affected groups'			
Increased investor confidence may attract additional investment.			
Key Assumption/Sensitivities/Risks Key assumptions: Discount Rate of 3.5% , Cost incurred on an annual basis, Cost calculated on the basis of accounts fees of £30-£50 an hour. Discount period is assumed to be 10 years (in line with IA guidance).			
Price Base Year 2007	Time Period Years 10	Net Benefit Range (NPV) £ 20.12m – 20.3m	NET BENEFIT (NPV Best estimate) £ 20.21m

What is the geographic coverage of the policy/option?	UK wide			
On what date will the policy be implemented?	December 2008			
Which organisation(s) will enforce the policy?	FSA			
What is the total annual cost of enforcement for these organisations?	To be confirmed			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 7,661			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Med	Large
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)			£ (Increase - Decrease)	
Increase of	£ 330.146	Decrease of	£ 77.769	Net Impact
				£ 252,377
Key:			Annual Cost: Constant Prices	(Net) Present Value

Evidence Base for Summary Sheets

1. PROPOSAL

1.1 Give effect in UK law and implement Directive 2006/43/EC (“the Audit Directive”) and Directive 2006/46/EC in relation to Lloyd’s syndicate and aggregate accounts; and update the Lloyd’s accounting regulations to take account of amendments made to the Companies Act 1985 since 2004, and the replacement of that Act by of the Companies Act 2006.

1.2 This impact assessment will focus on the costs and benefits of making these amendments in relation to Lloyd’s syndicate and aggregate accounts.

2. THE AUDIT DIRECTIVE

OBJECTIVES OF THE AUDIT DIRECTIVE

2.1 The overall objective of the Audit Directive is to clarify the duties of statutory auditors in Member States and to provide for their independence and ethical standards. It also introduces a requirement for external quality assurance; provides for public oversight of the audit profession, including third country auditors; and improves cooperation between oversight bodies in the EU.

2.2 The Department for Business, Enterprise and Regulatory Reform (BERR) has already conducted a public consultation on the impact of this Directive on audit firms. One of the objectives of this Impact Assessment is to evaluate the impact of these measures on Lloyd’s syndicate and aggregate accounts.

2.3 Unlike in some member states, the existing UK framework for statutory audits of entities already provides for a significant proportion of the areas covered by the Audit Directive. Examples include the Directive’s proposals on:

- Education and qualifications (Articles 3-14);
- Registration provisions (Articles 15-20);
- Ethics (articles 21-25)

PROVISIONS REQUIRED IN RELATION TO LLOYD’S

2.4 There are some areas where specific additional provisions need to be made in the legislative framework in relation to Lloyd’s. These are:

(a) Audit reporting.

Article 28 of the Audit Directive requires the audit to be signed by the statutory auditor, except in limited circumstances. HM Treasury intends to provide for this requirement in regulations 11 to 13 of the draft Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) 2008 in relation to syndicate accounts, and regulations 22 to 24 (in relation to the aggregate accounts).

(b) Appointment of the Auditor.

Article 37 of the Audit Directive requires the appointment of an auditor to be by persons independent of the executive organs of the organisation. At present the auditor of the syndicate accounts is appointed by the managing agent, and the auditor of the aggregate accounts is appointed by the Council of Lloyd’s.

HM Treasury intend to provide for this in relation to syndicate accounts by requiring the members of Lloyd's who participate in a syndicate to appoint a statutory auditor, and in relation to aggregate accounts by requiring the members of the Society of Lloyd's to appoint the auditor.

(c) Dismissal and resignation of auditors.

Article 38.1 of the Audit Directive requires Member States to ensure that statutory auditors or audit firms are only dismissed where there are proper grounds.

In line with the approach taken for Building Societies, I&Ps and Friendly Societies, HM Treasury intends to provide for this requirement by granting various persons a right to apply to the High Court for a remedy.

In relation to syndicate accounts the right to apply to the High Court has been given to members of the Syndicate, the Society of Lloyd's and to the FSA. The equivalent provisions in relation to aggregate accounts are given to any member of the Society or to the FSA.

(d) Notification of resignation of auditor.

Article 38.2 of the Audit Directive requires both the auditor and audited entity to give notice in any case where the auditor ceases to hold office before the end of his term, and to provide an adequate explanation therefore. At present section 344 of the Financial Services and Markets Act 2000 does not require an explanation to be given if the auditor does not consider this necessary. HM Treasury intends to implement this obligation in relation to Lloyd's in Schedule 1, paragraphs 17 and 18 (in relation to syndicate accounts), and Schedule 3, paragraphs 9 and 10 (in relation to the aggregate accounts).

(e) Remuneration of the Auditor

Article 49 of the Audit Directive requires disclosure of total fees charged by the auditor for statutory audit of the accounts, and other services. HM Treasury therefore intends to implement this requirement by regulation 4(4) (syndicate accounts), regulation 17(6) (aggregate accounts) and Schedule 2 to the regulations.

BACKGROUND TO THE AUDIT DIRECTIVE

2.5 The Audit Directive was adopted on 17 May 2006 and published in the Official Journal of the European Communities on 9 June 2006. The purpose of this Directive is "to improve the credibility of financial information and to strengthen protection in the European Union against financial scandals". The full text can be found at www.europa.eu.int.

3. DIRECTIVE 2006/46/EC ON COMPANY REPORTING

OBJECTIVES OF THE DIRECTIVE

3.1 The Directive on company reporting seeks to "further enhance confidence in the financial statements and annual reports published by European companies to provide shareholders and other stakeholders (e.g. employees, suppliers and Members) with reliable, complete, and easily accessible information".

3.2 The Directive amends Council Directives:

- 78/660/EC on the annual accounts of certain types of companies ("the Fourth Directive"),
- 83/349/EEC on consolidated accounts ("the Seventh Directive"),
- 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions ("the Bank Accounts Directive")
- 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings ("the Insurance Accounts Directive").

PROVISIONS REQUIRED IN RELATION TO LLOYD'S

3.3 The amendments required by the Directive are being implemented in provisions in the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 ("the BERR Regulations") which will be applied to Lloyd's.

3.4 However, there are two specific areas where provisions need to be made to the legislative framework in relation to Lloyd's:

(a) Off-balance sheet arrangements – Paragraph 6 of Article 1 of the Directive requires details to be given of the nature and purpose of off-balance sheet arrangements, and transactions with related parties. HM Treasury intends to implement these requirements in paragraph 7 of Schedule 1 of the draft Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) in relation to syndicate accounts, and paragraph 1 of Schedule 3 (in relation to aggregate accounts).

(b) Related party transactions - Paragraph 6 of Article 1 of the Directive also requires information to be provided on related party transactions. This obligation is implemented in the BERR Regulations. HM Treasury intend to modify these regulations in their application to Lloyd's syndicates to provide for additional information to be disclosed in the syndicate accounts. These accounts will be required to identify any related parties of the managing agent of the syndicate who are brokers, and, where material transactions have been entered into with such brokers otherwise than on market conditions, to disclose the amount of transactions transacted with such brokers during the year.

BACKGROUND TO DIRECTIVE 2006/46/EC ON COMPANY REPORTING

3.5 As part of the European Commission's broader program of company law reform it published an Action Plan in May 2003 containing some legislative measures aimed at enhancing the credibility of financial statements and annual reports published by European Companies.

3.6 This directive focuses on the linked objectives of increasing confidence in corporate governance frameworks and improving investor confidence through increased transparency and better information on companies.

3.7 The measures in the directive contribute to several of the aims that the Government believes to be important to industry, namely:

- increased financial stability and market confidence
- extending investment opportunities across the EU
- improving access to capital by companies across borders

3.8 Research by academics including "The Benefits of Transparency" by Christian Leuz, Capital Ideas Journal, July 2006 and "International Differences in the Cost of Equity Capital", by Hail, Luzi and Leuz, December 2005 - concludes that there is a link between transparency and cost of capital of certain institutions. They found that firms from countries with more extensive disclosure requirements, stronger securities regulation and stricter enforcement mechanisms (as enabled by a high quality legal infrastructure) had significantly lower cost of capital.

3.9 This is because where there are increased disclosure requirements, investors are better placed to assess the risks and benefits of their investments and so enable them to make more efficient investment decisions.

3.10 The requirements of this Directive are broadly consistent with existing UK law and practice. Informal stakeholder soundings in response to the proposals indicate that Government should support its broad principles. The Department for Business Enterprise and Regulatory Reform (BERR) has met with representatives and stakeholders of entities affected by the Directive to discuss the implementation proposals.

4. ADDITIONAL AMENDMENTS REQUIRED

4.1 To take account of the amendments to the Companies Act 1985 since the 2004 regulations came into force, and its replacement by the Companies Act 2006, several changes are required:

a) Disclosure to Auditors – section 234ZA imposes a duty to make a statement that the director has provided all relevant audit information and exercise all due care, skills and diligence. HM Treasury intends to apply this provision in paragraph 14 of part 2 of Schedule 1 to the draft regulations.

b) Notes to Account, directors' remuneration – to apply section 413 of the Companies Act 2006 to managing agents, HM Treasury intends to extend the requirement for notes in the syndicates annual accounts to include information about advances, credits and guarantees made to or on behalf of directors of a managing agent which have been charged to a syndicate (see Schedule 1 paragraph 6).

c) Managing Agent Reports – the provisions set out in Directive 2003/51/EC (“The Modernisation Directive”) in relation to annual reports apply to insurance undertakings such as Lloyd’s. Paragraphs 8(2) and 9 of Schedule 1, and paragraphs 2 and 3 of Schedule 3 to the new regulations set out these requirements.

5. OPTIONS

OPTION	AVERAGE COST PER ANNUM (PRESENT VALUE)	AVERAGE BENEFITS PER ANNUM (PRESENT VALUE)
a) No Intervention	-	-
b) Amend the existing framework in order to implement the Directives. In order to make the changes transparent we will revoke the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2004 and lay the new regulations.	£24,824	£ 1.86 m

6. RISK, UNCERTAINTY AND UNINTENDED CONSEQUENCES

6.1 The provisions in Directives 2006/43/EC and 2006/46/EC arose because the Commission had concerns that investor confidence had been badly compromised following corporate scandals such as WorldCom, Enron and Parmalat. The Commission’s view was that making financial arrangements more transparent and requiring companies to give information relevant to good corporate governance would reduce the risk of future corporate scandals in Europe.

6.2 Analysis of the cost of the loss in investor confidence based on the fall in stock market wealth following the failure of Enron and WorldCom in July 2002 was estimated at 0.36% of Gross Domestic Product or \$38.2 billion in the first year. (See Graham, Carol/Litan, Robert/Sukhtanker, Sandip 2002 – “The bigger they are, the harder they fall: an estimate of the costs of the crisis in corporate governance”).

6.3 It is therefore imperative that any reasonable steps that are taken by the Commission to mitigate this risk are treated constructively.

7. WHO WILL BE AFFECTED

7.1 Managing Agents, all accountancy firms who carry out statutory audits for Lloyd's syndicate and aggregate accounts, and all Lloyd's members.

8. EQUITY AND FAIRNESS

8.1 The Government considers that the measures introduced will not have a disproportionate impact on the groups identified.

9. IMPACT ON SMALL FIRMS

9.1 The Government's view is that there will not be a disproportionate impact on small business.

10. IMPACT ON COMPETITION

10.1 The requirements will affect all accountancy firms that carry out statutory audits for Lloyd's syndicate and aggregate accounts. It is not expected that the legislation will affect any auditors more than others or restrict innovation. However, the increase in transparency may increase competition between syndicates and make the Lloyd's market more efficient.

SPECIFIC IMPACT TESTS - CHECKLIST

Type of testing undertaken	Results in Evidence Base? (Y/N)	Results annexed? (Y/N)
Competition Assessment	Y	No
Small Firms Impact Test	Y	No
Legal Aid	N/A	N/A
Sustainable Development	N/A	N/A
Carbon Assessment	N/A	N/A
Other Environment	N/A	N/A
Health Impact Assessment	N/A	N/A
Race Equality	N	Y
Disability Equality	N	Y
Gender Equality	N	Y
Human Rights	N/A	N/A
Rural Proofing	N/A	N/A

Annexes

A

OPTION	Average COSTS PER ANNUM (Present Value)	Average BENEFITS PER ANNUM (Present Value)
A	-	-
B	£24,824	£ 1.86 m

B PRESENT VALUE CALCULATIONS

BENEFITS (OPTION B)

	YEAR	DISCOUNT FACTOR	BENEFIT
T ₀	2008	3.5%	£ 2.2 m
T ₁	2009	3.5%	£ 2.12 m
T ₂	2010	3.5%	£ 2.05 m
T ₃	2011	3.5%	£ 1.98 m
T ₄	2012	3.5%	£ 1.92 m
T ₅	2013	3.5%	£ 1.85 m
T ₆	2014	3.5%	£ 1.79 m
T ₇	2015	3.5%	£ 1.73 m
T ₈	2016	3.5%	£ 1.67 m
T ₉	2017	3.5%	£ 1.61 m
T ₁₀	2018	3.5%	£ 1.56 m

TOTAL BENEFIT (PRESENT VALUE) = £ 20.48 m

AVERAGE ANNUAL BENEFIT = £ 1.86 m

COSTS (OPTION B)

	YEAR	DISCOUNT FACTOR	COSTS
T ₀	2008	3.5%	£19,870 – £38,750
T ₁	2009	3.5%	£19,198 – £37,440
T ₂	2010	3.5%	£18,549 – £36,173
T ₃	2011	3.5%	£17,920 – £34,949
T ₄	2012	3.5%	£17,315 – £33,767
T ₅	2013	3.5%	£16,731 – £32,627
T ₆	2014	3.5%	£16,164 – £31,523
T ₇	2015	3.5%	£15,618 – £30,456
T ₈	2016	3.5%	£15,089 – £29,427
T ₉	2017	3.5%	£14,579 – £28,431
T ₁₀	2018	3.5%	£14,086 – £27,470
		Total:	£185,119 – £361,013

TOTAL COSTS (PRESENT VALUE) = £185,119 – £361,013

AVERAGE ANNUAL COST = £24,824

ADMINISTRATIVE BURDENS

TOTAL COSTS EXCLUDING SET-OFF

	YEAR	DISCOUNT FACTOR	COSTS
T ₀	2008	3.5%	£28,920 - £47,800
T ₁	2009	3.5%	£27,943 - £46,184
T ₂	2010	3.5%	£26,997 - £44,621
T ₃	2011	3.5%	£26,083 - £43,111
T ₄	2012	3.5%	£25,201 - £41,653
T ₅	2013	3.5%	£24,350 - £40,248
T ₆	2014	3.5%	£23,526 - £38,885
T ₇	2015	3.5%	£22,731 - £37,571
T ₈	2016	3.5%	£21,962 - £36,299
T ₉	2017	3.5%	£21,219 - £35,071
T ₁₀	2018	3.5%	£20,502 - £33,885
		Total:	£269,434 - £446,112

COSTS EXCLUDING SET-OFF (PRESENT VALUE) = £269,434 - £446,112 = £357,773

**ADMINISTRATIVE BURDENS
SET-OFF**

	YEAR	DISCOUNT FACTOR	REDUCTION IN COSTS
T ₀	2008	1.0%	£ 9,050
T ₁	2009	3.5%	£ 8,744
T ₂	2010	3.5%	£ 8,448
T ₃	2011	3.5%	£ 8,162
T ₄	2012	3.5%	£ 7,886
T ₅	2013	3.5%	£ 7,620
T ₆	2014	3.5%	£ 7,362
T ₇	2015	3.5%	£ 7,113
T ₈	2016	3.5%	£ 6,873
T ₉	2017	3.5%	£ 6,603
T ₁₀	2018	3.5%	£ 6,416
		Total:	£ 84,277

SET-OFF (PRESENT VALUE) = £ 84,277

C KEY ASSUMPTIONS AND FACTS**Syndicate accounts**

- As of 31 December 2007 there were **118 syndicate accounts** (including syndicates in run off).
- Accountants' fees per 4-hour day (£120-£200). Based on hourly rate of £30 per hour for small Enterprises and £50 per hour for Medium – Large.
- Accountants' fees per 8-hour day (£240 -£400). Based on hourly rate of £30 per hour for small Enterprises and £50 per hour for Medium – Large.
- Members of Lloyd's who participate in a syndicate appoint the statutory auditor at the syndicates at Annual General meeting.

Aggregate accounts

- Accountants' fees per 4-hour day (£120-£200). Based on hourly rate of £30 per hour for small Enterprises and £50 per hour for Medium – Large.
- Accountants' fees per 8-hour day (£240 -£400). Based on hourly rate of £30 per hour for small Enterprises and £50 per hour for Medium – Large.
- Members of the Society of Lloyd's appoint the auditor at the Annual General meeting.

D. COST/BENEFIT COMPARISONS

OPTION A (Cost/Benefit Comparison)

There are no benefits to failing to implement these directives. On the contrary, the Lloyd's market might suffer from a lack of confidence. Not implementing the directives would also put the UK at risk of infraction proceedings from the EU.

OPTION B (Cost/Benefit Comparison)

Costs

The main effects of implementing the directives are that audit entities must disclose the total fees charge for the statutory audit of the accounts, and other services. Additional reporting on off-balance sheet arrangements and related party transactions may also be required. As such these costs are classified as administrative burdens.

It is likely that audit entities will need to perform extra checks to ensure that all non-audit work has been disclosed and that the work has been correctly valued at arm's length valuations. This may require an independent auditor other than the one who had performed the services in question.

Costs based on accountants fees' for 1 day's work.

Small syndicate accounts =	£30 X 8 hours X 118	= £ 28,320
Large syndicate accounts =	£50 X 8 hours X 118	= £ 47,200
Annual Accounts =	£50 X 12 X 1	= £ 600

However, the off-setting measure of revoking the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 and replacing them with the more accessible form of the new regulations should reduce the administrative burdens. The reduction is based on the assumption that an hour of compliance and accounts staff time will be saved per account per year.

Syndicate Accounts =	£50 x 1 hour x 118	= £9,000
Aggregate Account =	£50 x 1 hour x 1	= £ 50
		= £ 9,050

Therefore, the net affect of the legislation on administrative burdens in 2007 prices
= £357,773 - £84,227 = £273,496

Discounting to 2005 prices gives = £330,146 - £77,769 = £252,377

Benefits

The main beneficial effect of the legislation will be an increase in transparency, enabling members to evaluate syndicates more effectively. Even if this only increases the overall return on syndicate investments' by 0.01% this would equate to £ 2.2 m.

E. EQUALITY ASSESMENTS

The Legislation should have no impact on race, disability or gender equality.

 STATUTORY INSTRUMENTS

2008 No.

INSURANCE

 The Insurance Accounts Directive (Lloyd's Syndicate and
 Aggregate Accounts) Regulations 2008

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury, being a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the authorisation of the carrying on of insurance business and the regulation of such business and its conduct, in exercise of the powers conferred on them by that section, makes the following Regulations:

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008.

(2) These Regulations come into force on [] and apply in relation to financial years beginning on or after 31st December 2008.

Interpretation

2.—(1) In these Regulations—

“the 2006 Act” means the Companies Act 2006(c);

“the 2008 Regulations” means the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(d);

“appropriate audit authority” means—

(a) the Secretary of State, or

(b) if the Secretary of State has delegated functions under section 1252 of the Companies Act 2006 to a body whose functions include receiving notice that an auditor of a syndicate or of the aggregate accounts has ceased to hold office, that body.

“the Authority” means the Financial Services Authority;

(a) S.I. 1997/2781.

(b) 1972 c.68.

(c) 2006 c.46.

(d) S.I. 2008/410.

“the Council of Lloyd's” means the Council constituted by section 3 of Lloyd's Act 1982;

“financial year” means the period of 12 months beginning on 1st January;

“Lloyd's byelaws” means the byelaws made under Lloyd's Acts 1871 to 1982(a);

“managing agent” means a person who is permitted by the Council of Lloyd's, in the conduct of his business as an underwriting agent, to perform, for a member of Lloyd's, one or more of the following functions—

- (a) underwriting contracts of insurance at Lloyd's;
- (b) reinsuring such contracts in whole or in part;
- (c) paying claims on such contracts;

“syndicate” means one or more persons, to whom a syndicate number has been assigned by or under the authority of the Council of Lloyd's, carrying out or effecting contracts of insurance written at Lloyd's;

“syndicate's annual accounts” means the accounts prepared in accordance with regulation 4(2)(a) of these Regulations.

(2) In these Regulations any reference to the accounts required by or prepared under regulation 4 is a reference to the annual accounts, annual report and auditor's report required by or prepared under paragraph (2) of that regulation.

(3) In these Regulations an underwriting year of account is closed—

- (a) at the time when a contract of reinsurance to close that year of account, which complies with the requirements in the Lloyd's byelaws, takes effect; or
- (b) in the case of a syndicate which consists of a single corporate member, at the time when an amount representing the provision for all known and unknown liabilities attributable to the closing year of account, is included in the underwriting account for the following underwriting year.

(4) Other expressions used in these Regulations have the meanings ascribed to them by the 2006 Act.

Senior Statutory Auditor

3. In these Regulations—

(1) “senior statutory auditor” means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with the standards or guidance mentioned in section 504(1) of the Companies Act 2006.

(2) The person identified as senior statutory auditor must be eligible for appointment as auditor of the syndicate in question (see Chapter 2 of Part 42 of the Companies Act 2006).

(3) The senior statutory auditor is not, by reason of being named or identified as senior statutory auditor or by reason of his having signed the auditor's report, subject to any civil liability to which he would not otherwise be subject.

PART 2

SYNDICATE ACCOUNTS

Preparation of syndicate's annual accounts

4.—(1) Managing agents must prepare or cause to be prepared the accounts and reports required by paragraph (2), in respect of—

- (a) each syndicate that they manage on 31st December; and

(a) 1871 c. xxi; 1911 c. lxii; 1951 c. viii; 1982 c. xiv.

- (b) any syndicate that they were the last managing agent to manage during the preceding year and which has no managing agent on 31st December.
- (2) Managing agents must, for the financial year preceding 31st December, in respect of each syndicate—
- (a) prepare annual accounts;
 - (b) prepare an annual report; and
 - (c) cause to be prepared an auditor's report on those accounts and that annual report.
- (3) The accounts and annual report required by paragraph (2) must—
- (a) be prepared within a period of 3 months beginning immediately after the end of the syndicate's financial year;
 - (b) state that they are prepared under this regulation; and
 - (c) comply with the requirements in Schedule 1 to these Regulations.
- (4) The accounts required by paragraph (2)(a) must also contain the information on auditor remuneration required by Schedule 2 to these Regulations.
- (5) Schedules 1 and 2 to these Regulations have effect.

Preparation of syndicate underwriting year accounts

5.—(1) Managing agents must, in respect of each syndicate to which regulation 4(1) refers, prepare or cause to be prepared underwriting year accounts in accordance with paragraph (2), unless—

- (a) no underwriting year of that syndicate has been closed in the preceding financial year or is being closed at the end of that financial year; or
 - (b) the members of the syndicate for each underwriting year included in the underwriting year accounts, agree unanimously, in writing, that no underwriting year accounts shall be prepared in respect of that syndicate.
- (2) The underwriting year accounts must be an account which—
- (a) is prepared on an underwriting year basis; and
 - (b) gives a true and fair view of the result of that underwriting year at closure.
- (3) The accounts required by this regulation must—
- (a) be prepared within a period of 3 months beginning immediately after the end of the syndicate's financial year; and
 - (b) state that they are prepared under this regulation.
- (4) Managing agents must cause to be prepared an auditor's report on the underwriting year accounts required by this regulation stating whether a true and fair view is given of the result of the underwriting year at closure.
- (5) Part 42 of the Companies Act 2006 (statutory auditors) applies to an auditor appointed for the purposes of this regulation subject to any necessary modifications to take account of the fact that the syndicate is unincorporated, as it applies to the person appointed for the purposes of regulation 4 or the person appointed to report on the aggregate accounts under section 1210 of the Companies Act 2006 (meaning of "statutory auditor")**(a)**.

Approval and signing of accounts

6.—(1) A syndicate's annual accounts must be approved and signed by the syndicate's managing agent and, where the managing agent is a body corporate or a partnership, the accounts must be approved by the board of directors or partners and signed by a director or partner of the managing agent, authorised to sign on its behalf.

(a) Section 1210 was amended by regulation 15(1) of S.I. 2008/565, and by regulation 14 of S.I. 2008/567.

(2) The signature must be on the syndicate's balance sheet.

(3) Every copy of the balance sheet which is circulated, published, issued or delivered to the Authority must state the name of the person who signed it on behalf of the syndicate's managing agent.

Accounts to be sent to syndicate members, the Council of Lloyd's and the Authority

7.—(1) The managing agent responsible for the preparation of the accounts of a syndicate must send a copy of the accounts prepared under regulations 4 and 5 to every member of Lloyd's who participates in that syndicate and to the Council of Lloyd's, within 3 months from the end of the financial year.

(2) The managing agent responsible for the preparation of the accounts of a syndicate must send a copy of the accounts prepared under regulations 4 and 5 to the Authority within 6 months from the end of the financial year.

(3) References in this regulation to sending include references to using electronic communications for sending copies of those documents to such address as may for the time being be notified to the managing agent by that person for that purpose.

Publication of syndicate accounts

8. Where a managing agent has sent accounts to the Council of Lloyd's under regulation 7, the Council must—

- (a) make available, on reasonable notice, those accounts for inspection by any person without charge and during business hours at the Council's head office for a period of three years from the date of signature of each document; and
- (b) supply to any person upon request a copy of those accounts (or such part of those accounts as may be requested) at a price not exceeding the administrative cost of making the copy, for a period of three years from the date of signature of each document.

Auditor's report

9.—(1) A syndicate's auditor must make a report to the syndicate's members on all annual accounts of the syndicate of which copies are to be sent to the syndicate members during the auditor's tenure of office.

(2) The auditor's report must include—

- (a) an introduction identifying the annual accounts that are the subject of the audit and the financial reporting framework that has been applied in their preparation; and
- (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.

(3) The report must state clearly whether, in the auditor's opinion, the annual accounts—

- (a) give a true and fair view—
 - (i) in the case of an individual balance sheet, of the state of affairs of the syndicate as at the end of the financial year; and
 - (ii) in the case of an individual profit and loss account, of the profit or loss of the syndicate for the financial year;
- (b) have been properly prepared in accordance with the relevant financial reporting framework; and
- (c) have been prepared in accordance with the requirements of the 2008 Regulations and these Regulations.

(4) The report on the syndicate's annual accounts must also state whether in the auditor's opinion the information given in the managing agent's report for the financial year for which the annual accounts are prepared is consistent with those accounts.

(5) The auditor's report—

- (a) must be unqualified or qualified, and
- (b) must include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report.

Duties of auditors

10.—(1) A syndicate's auditor, in preparing the audit report, must carry out such investigations as will enable the auditor to form an opinion as to—

- (a) whether adequate accounting records have been kept on behalf of the syndicate; and
- (b) whether the syndicate's annual accounts are in agreement with the accounting records and returns.

(2) If the auditor is of the opinion—

- (a) that adequate accounting records have not been kept; or
- (b) that the syndicate's annual accounts are not in agreement with the accounting records,

the audit report shall state that fact.

(3) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the audit report shall state that fact.

(4) If the requirements of Schedule 1, paragraph 5 are not complied with in the annual accounts the audit report must include, so far as the auditor is reasonably able to do so, a statement giving the required particulars.

Signature of auditor's report

11.—(1) The syndicate's auditor's report must state the name of the auditor and be signed and dated.

(2) Where the auditor is an individual, the report must be signed by that individual.

(3) Where the auditor is a firm, the report must be signed by the senior statutory auditor in his own name, for and on behalf of the auditor.

Names to be stated in copies of auditor's report published or filed

12.—(1) Every copy of the syndicate's auditor's report that is published by or on behalf of the syndicate or the Council of Lloyd's under regulation 8 or which is sent to the Authority under regulation 7(2) must—

- (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
- (b) if the conditions in regulation 13 are met, state that a resolution has been passed and notified to the Authority in accordance with regulation 13(2)(b).

(2) The copy of the auditor's report delivered to the Authority and to the Council of Lloyd's must be signed and dated by the auditor.

(3) For the purposes of this regulation, the syndicate is regarded as publishing the report if it publishes, issues, circulates or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

Circumstances in which names may be omitted

13.—(1) The auditor's name and (where the auditor is a firm) the name of the person who signed the report as senior statutory auditor may be omitted from copies of the report circulated, published, issued or delivered where the conditions in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) and regulation 12 are that the managing agent responsible for preparing the syndicate's accounts—

- (a) considering on reasonable grounds that statement of the name would create or be likely to create a serious risk that the auditor or senior statutory auditor, or any other person, would be subject to violence or intimidation, has resolved that the name should not be stated; and
- (b) has given notice of the resolution to the Authority, stating—
 - (i) the name and number of the syndicate,
 - (ii) the year to which the report relates, and
 - (iii) the name of the auditor and (where the auditor is a firm) the name of the person that signed the report as senior statutory auditor.

Requirements in connection with publication of statutory accounts

14.—(1) If a managing agent publishes any of the statutory accounts of a syndicate, they must be accompanied by the auditor's report on those accounts.

(2) If a managing agent publishes non-statutory accounts of a syndicate, it must publish with them a statement indicating—

- (a) that they are not the syndicate's statutory accounts;
- (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been sent to the Authority under regulation 7(2) of these Regulations; and
- (c) whether an auditor's report has been made on the syndicate's accounts for any such financial year, and if so whether the report—
 - (i) was qualified or unqualified, or included a reference to any matters to which the auditor drew attention by way of emphasis without qualifying the report, or
 - (ii) contained a statement under regulation 10(2), (3) or (4).

(3) The managing agent must not publish the auditor's report on the syndicate's statutory accounts with non-statutory accounts.

(4) References in this paragraph to the publication by a managing agent of "non-statutory accounts" are to the publication of any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the syndicate otherwise than as part of the syndicate's statutory accounts.

(5) A syndicate's "statutory accounts" are its accounts for a financial year specified in regulations 4(2)(a), 4(2)(b) and 5 (1) as required to be sent to the Authority under regulation 7(2).

Delivery and publication of accounts in euros

15.—(1) The amounts set out in the syndicate's annual accounts may also be shown in the same accounts translated into euros.

(2) When complying with regulation 7(2) the managing agent may send to the Authority an additional copy of the syndicate's annual accounts in which the amounts have been translated into euros.

(3) In both cases—

- (a) the amounts must have been translated at the exchange rate prevailing on the date to which the balance sheet is made up; and
- (b) that rate must be disclosed in the notes to the accounts.

(4) For the purposes of regulation 14 any additional copy of the syndicate's annual accounts sent to the Authority under sub-paragraph (2) above shall be treated as statutory accounts of the syndicate.

(5) In the case of such a copy, references in regulation 14 to the auditor's report on the syndicate's annual accounts must be read as references to the auditor's report on the annual accounts of which it is a copy.

Penalties for non-compliance

16.—(1) If the managing agent of a Lloyd's syndicate fails to comply with regulation 4(1), within the period referred to in regulation 4(3), the managing agent and every person who was a director or partner of it immediately before the end of that period, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If the managing agent of a Lloyd's syndicate fails to comply with regulation 5(1), within the period referred to in regulation 5(3), the managing agent and every person who was a director or partner of it immediately before the end of that period, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) If accounts which are approved under regulation 6 do not comply with the requirements of these Regulations, the managing agent of the Lloyd's syndicate and every person who was a director or partner of the managing agent at the time when the accounts were approved who—

- (a) knew that they did not comply, or was reckless as to whether they complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,

is guilty of an offence and liable on conviction on indictment, to a fine, and on summary conviction to a fine not exceeding the statutory maximum.

(4) If an annual report which is approved under paragraph 12 of Schedule 1 does not comply with the requirements of these Regulations, the managing agent of the Lloyd's syndicate and every person who was a director or partner of the managing agent at the time when the accounts were approved who—

- (a) knew that they did not comply, or was reckless as to whether they complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,

is guilty of an offence and liable on conviction on indictment, to a fine, and on summary conviction to a fine not exceeding the statutory maximum.

(5) If a managing agent fails to comply with regulation 7(1), it and every person who was a director or partner of the managing agent at the time when the failure took place is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) If a managing agent fails to comply with regulation 7(2), it and every person who was a director or partner of the managing agent at the time when the failure took place is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) If a copy of the syndicate auditor's report is sent to the Authority or published without the statement required by regulation 12, the managing agent, and every person who was a director or partner of the managing agent at the time when the failure took place is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) If a managing agent contravenes any provision of regulation 14, the managing agent and every person who was a director or partner of the managing agent at the time when the contravention took place, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) It is a defence for a person charged with an offence under this regulation to show that he took all reasonable steps for securing that the requirements in question would be complied with.

(10) Sections 1127 and 1128 of the 2006 Act apply.

PART 3

AGGREGATE ACCOUNTS

Preparation of aggregate accounts by Council of Lloyd's

17.—(1) The members of the Council of Lloyd's must prepare aggregate accounts in respect of each financial year by cumulating all the syndicate's annual accounts prepared in accordance with regulation 4 for that year.

- (2) The aggregate accounts must consist of—
- (a) an aggregate balance sheet as at the last day of the year; and
 - (b) an aggregate profit and loss account.

Those accounts are referred to in these Regulations as the “aggregate accounts”.

- (3) The aggregate accounts must—
- (a) be prepared within the period of 6 months beginning immediately after the end of the financial year; and
 - (b) state that they are prepared under these Regulations.

(4) The aggregate accounts must comply with the provisions of Schedule 3 to the 2008 Regulations, other than the provisions (or parts of provisions) set out in paragraph (5) as to—

- (a) the form and content of the aggregate balance sheet and aggregate profit and loss account; and
- (b) additional information to be provided by way of notes to the accounts.

(5) The provisions are the following—

- (a) paragraphs 11(2), 68, 71, 72, 79, 81, 82(2), 83; and
- (b) in paragraph 2(2) the words from “save that none” to the end of that paragraph.

(6) The aggregate accounts must also contain the information on auditor remuneration required in Schedule 2 to these Regulations and comply with the provisions set out in paragraph 1 of Schedule 3 to these Regulations.

(7) Schedule 3 to these Regulations has effect.

Approval and signing of aggregate accounts

18.—(1) The aggregate accounts must be approved by the Council of Lloyd's and signed on behalf of the Council by a member of the Council.

(2) The signature must be on the aggregate balance sheet.

(3) Every copy of the aggregate balance sheet which is circulated, published or issued must state the name of the person who signed it on behalf of the Council.

(4) The copy of the aggregate balance sheet which is delivered to the Authority must be signed on behalf of the Council by a member of the Council.

Preparation of annual report by the Council of Lloyd's

19. The members of the Council of Lloyd's must prepare an annual report on the insurance business carried on by the members of Lloyd's which complies with the requirements set out in paragraphs 2 to 4 of Schedule 3.

Approval and signing of annual report

20.—(1) The annual report prepared under regulation 19 above must be approved by the Council of Lloyd's and signed on behalf of the Council by a member of the Council.

(2) Every copy of the annual report which is circulated, published or issued, must state the name of the person who signed it on behalf of the Council.

(3) The copy of the annual report which is delivered to the Authority must be signed on behalf of the Council by a member of the Council.

Auditor's report

21.—(1) The members of the Council of Lloyd's must obtain an auditor's report on the aggregate accounts.

(2) The auditor's report shall include—

- (a) an introduction identifying the aggregate accounts that are the subject of the report and the financial reporting framework that has been applied in their preparation;
- (b) a description of the scope of the review carried out by the auditor and identifying the standards in accordance with which the review was conducted; and
- (c) a clear statement as to whether, in their opinion, the aggregate accounts have been properly prepared in accordance with the requirements of these Regulations and the 2008 Regulations which apply to the aggregate accounts, and whether those accounts are correctly aggregated.

(3) The auditor's report—

- (a) must be either unqualified or qualified; and
- (b) must include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report.

(4) The auditor's report must state whether, in the auditor's opinion, the annual report of the Council of Lloyd's—

- (a) is consistent with the aggregate accounts for the same financial year; and
- (b) has been prepared in accordance with these Regulations.

Signature of auditor's report

22.—(1) The auditor's report must state the name of the auditor and be signed and dated.

(2) Where the auditor is an individual, the report must be signed by that individual.

(3) Where the auditor is a firm, the report must be signed by the senior statutory auditor in his own name, for and on behalf of the auditor.

Names to be stated in copies of auditor's report published or filed

23.—(1) Every copy of the auditor's report which is published by or on behalf of the Council of Lloyd's must—

- (a) state the name of the auditors and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor; or
- (b) if the conditions in regulation 24 are met, state that a resolution has been passed and notified to the Authority in accordance with regulation 24(2)(b).

(2) The copy of the auditor's report delivered to the Authority must be signed and dated by the auditor.

(3) For the purposes of this regulation, the Council is regarded as publishing the report if it publishes, issues, circulates or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

Circumstances in which names may be omitted

24.—(1) The auditor's name, and (where the auditor is a firm) the name of the person who signed the report as senior statutory auditor may be omitted from copies of the report circulated, published, issued or delivered where the conditions in sub-paragraph (2) are met.

(2) The conditions referred to in paragraph (1) and in regulation 23 are that the Council of Lloyd's—

- (a) considering on reasonable grounds that statement of the name would create or be likely to create a serious risk that the auditor, senior statutory auditor, or any other person, would be subject to violence or intimidation, has resolved that the name should not be stated; and
- (b) has given notice of the resolution to the Authority, stating—
 - (i) the year to which the report relates, and
 - (ii) the name of the auditor and (where the auditor is a firm) the name of the person that signed the report as senior statutory auditor.

Duties of auditors

25.—(1) The auditor of the aggregate accounts must, in preparing the auditor's report, carry out such investigations as will enable the auditor to form an opinion as to whether the aggregate accounts are properly prepared and a correct aggregation of the syndicate accounts which have been cumulated to prepare them.

(2) If the auditor is of the opinion that the aggregate accounts are not properly prepared or not a correct aggregation of the syndicate accounts which have been cumulated to prepare them, that fact must be stated in the auditor's report.

(3) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the auditor's report, that fact must be stated in the auditor's report.

Aggregate accounts and annual report of Council to be delivered to the Authority and published

26.—(1) The Council of Lloyd's must deliver to the Authority a copy of the aggregate accounts and its annual report on each financial year within a period of 6 months from the end of that year.

(2) The Council of Lloyd's must—

- (a) make available, on reasonable notice, the latest aggregate accounts and its latest annual report for inspection by any person, without charge and during business hours, at the Council's head office; and
- (b) supply to any person upon request a copy of those accounts or that report (or such part of them as may be requested) at a price not exceeding the administrative cost of making the copy.

Penalties for non-compliance

27.—(1) If the members of the Council of Lloyd's fail to comply with the requirement in regulation 17(1) within the period referred to in regulation 17(3) to prepare aggregate accounts, every person who was a member of the Council of Lloyd's immediately before the end of the period for preparing the accounts and reports for the financial year in question commits an offence, and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If aggregate accounts which are approved under regulation 18 do not comply with the requirements of the 2008 Regulations applied by these Regulations and these Regulations, every member of the Council of Lloyd's who—

- (a) knew they did not comply, or was reckless as to whether they complied, and

(b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,
commits an offence and is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum.

(3) In the case of failure to comply with the requirement in regulation 19 to prepare an annual report, every person who was a member of the Council of Lloyd's immediately before the end of the period for preparing the accounts and reports for the financial year in question commits an offence, and is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum.

(4) If an annual report is approved which is approved under regulation 20 does not comply with the requirements of these Regulations, every member of the Council of Lloyd's who—

(a) knew it did not comply, or was reckless as to whether it complied, and

(b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence, and is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum.

(5) If a copy of the auditor's report is sent to the Authority or published without the statement required by regulation 23, every member of the Council of Lloyd's who is in default is guilty of an offence, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In the event of failure to deliver a copy of the aggregate accounts and the report of the Council of Lloyd's to the Authority under regulation 26, every member of the Council of Lloyd's who is in default is guilty of an offence, and is liable on conviction on indictment to a fine, and on summary conviction to a fine not exceeding the statutory maximum.

(7) It is a defence for a person charged with an offence under this regulation to show that he took all reasonable steps for securing that the requirements in question would be complied with.

PART 4

Regulation by the Authority

Functions of the Authority

28.—(1) The Authority has responsibility for administering the system of regulation of Lloyd's syndicates and the Council of Lloyd's provided for by these Regulations.

(2) Proceedings for an offence under these Regulations may be instituted only—

(a) by the Authority or the Secretary of State; or

(b) by or with the consent of the Director of Public Prosecutions.

(3) In exercising its power to institute proceedings for an offence under these Regulations, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.

(4) The Authority may increase any fee which it charges managing agents under the Financial Services and Markets Act 2000 to take account of the expenses incurred in carrying out its functions under these Regulations.

PART 5

Revocation and consequential provision

Revocation

29. The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004^(a) are revoked, but continue to apply to financial years beginning before 31st December 2008.

Consequential amendment

30. —(1) In section 1210 of the Companies Act 2006 (meaning of “statutory auditor” etc.), for subsection (1)(e) substitute—

“(e) a person appointed as auditor for the purposes of regulation 4 of the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 or appointed to report on the “aggregate accounts” within the meaning of those Regulations,”

(2) In relation to financial years beginning before 31st December 2008, subsection (1)(e) of that section is to continue to have effect without the substitution made by sub-paragraph (1).

[2008] *Name*
Name
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulation 4(3)

SYNDICATE ACCOUNTS

PART 1

GENERAL PROVISIONS

Syndicate's annual accounts

1.—(1) The syndicate's annual accounts must be prepared in accordance with this paragraph.

(2) Annual accounts must comprise—

- (a) a balance sheet as at the last day of the financial year; and
- (b) a profit and loss account.

(3) The accounts must—

- (a) in the case of the balance sheet, give a true and fair view of the state of affairs of the syndicate as at the end of the financial year; and
- (b) in the case of the profit and loss account, give a true and fair view of the profit or loss of the syndicate for the financial year.

(4) Subject to sub-paragraph (5) the accounts must comply with the provisions of Schedule 3 to the 2008 Regulations, other than the provisions (or parts of provisions) set out in in sub-paragraph (7), as to—

- (a) the form and content of the balance sheet and profit and loss account; and

^(a) S.I. 2004/3219.

(b) additional information to be provided by way of notes to the accounts.

(5) The information required by paragraph 90 of Schedule 3 to the 2008 Regulations must be given by the managing agent in relation to any transactions entered into by the managing agent on behalf of the syndicate and must—

(a) identify any related party who is an insurance or reinsurance intermediary within the meaning of Article 2 of Directive 2002/92/EC of the European Parliament and of the Council on insurance mediation; and

(b) include particulars of the amount of transactions entered into with any related party within sub-paragraph (5)(a).

(6) Where the managing agent has related parties within the meaning of sub-paragraph (5)(a), but there have been no transactions with them which require disclosure under paragraph 90 of Schedule 3, the accounts must contain a statement to that effect, and identify any such related parties.

(7) The provisions in Schedule 3 to the 2008 Regulations referred to in sub-paragraph (4) are—

(a) paragraphs 11(2), 68, 71, 72, 82(2), 83; and

(b) in paragraph 2(2) the words from “save that none of the following” to the end of the paragraph.

(8) The syndicate’s annual accounts must also include a description of funds which members are required to hold at Lloyd’s.

(9) The description of funds referred to in sub-paragraph (8) need not include particulars of funds held by members of the syndicate.

Compliance with Regulations

2.—(1) Where compliance with—

(a) Schedule 3 to the 2008 Regulations; and

(b) these Regulations

would not be sufficient to give a true and fair view, the additional information necessary to achieve this must be given in the accounts or in a note to them.

(2) If in special circumstances compliance with any of the provisions referred to in sub-paragraph (1) is inconsistent with the requirement to give a true and fair view, the managing agent must depart from that provision to the extent necessary to give a true and fair view.

(3) Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

Information about related undertakings

3. The syndicate’s annual accounts must comply with the requirements of regulation 7 of the 2008 Regulations (including the application of Schedule 4 to those regulations) as to information about related undertakings of the managing agent to be given in notes to the syndicate’s accounts.

Information about employee numbers and staff

4. The syndicate’s annual accounts must comply with the requirements of section 411 (information about employee numbers and costs) of the Companies Act 2006 in relation to the syndicate as if references in it to a company were treated as references to the managing agent.

Information about emoluments of managing agents and other benefits of managing and others

5.—(1) The information specified in sub-paragraph (2) must be given in notes to the syndicate’s annual accounts.

- (2) The information is—
- (a) the aggregate amount charged to a syndicate by its managing agent, in respect of emoluments paid to the managing agent’s directors, the active underwriter and (where applicable) the run-off manager of the syndicate, in the last financial year; and
 - (b) the specific amount charged to a syndicate by its managing agent in respect of emoluments paid to the syndicate’s active underwriter and (where applicable) its run-off manager in the last financial year.
- (3) In this paragraph, “emoluments”—
- (a) includes salaries, fees and bonuses, sums paid by way of expenses allowance (so far as they are chargeable to United Kingdom income tax) and, subject to paragraph (b), the estimated money value of any other benefits received by the person concerned otherwise than in cash; but
 - (b) does not include any of the following, namely—
 - (i) the value of any share options granted or the amount of any gains made on the exercise of any such options;
 - (ii) any contributions paid, or treated as paid, in respect of the person concerned under any pension scheme or any benefits to which that person is entitled under any such scheme; or
 - (iii) any money or other assets paid, received or receivable under any long term incentive scheme.
- (4) In this paragraph—
- “active underwriter” means, in relation to a syndicate, the individual at or deemed by the Council to be at, the underwriting box with principal authority to accept risks on behalf of the members of the syndicate;
- “run-off manager” means, in relation to a run-off syndicate, the person who has principal authority to negotiate or place contracts of reinsurance or negotiate and settle the payment of claims on contracts of insurance or reinsurance on behalf of the members of the syndicate;
- “run-off syndicate” means a syndicate which no longer accepts new or renewal insurance business (other than the variation or extension of risks previously underwritten, or reinsurance to close of an earlier year of account of that syndicate).

Information about directors’ benefits: advances and credit

6.—(1) The information specified in sub-paragraph (2) must be given in notes to the syndicate’s annual accounts.

- (2) The information is—
- (a) details of any advance or credit granted by the managing agent to its directors, or, where the managing agent is a partnership, to its partners, and charged to the syndicate by the managing agent, namely—
 - (i) the amount of the advance or credit,
 - (ii) an indication of the interest rate,
 - (iii) its main conditions, and
 - (iv) any amounts repaid;
 - (b) the totals of the amounts stated under subparagraphs (a)(i) and (a)(iv).
- (3) References in this paragraph to the directors or partners of the managing agent are to the persons who were a director or a partner at any time in the financial year to which the accounts relate.
- (4) The requirements of this section apply in relation to every advance or credit subsisting at any time in the financial year to which the accounts relate—
- (a) whenever it was entered into,

- (b) whether or not the person concerned was a director or partner of the managing agent in question at the time it was entered into.

Off-balance sheet arrangements

- 7.—(1) If in any financial year—
- (a) a syndicate is or has been party to an arrangement that is not reflected in its balance sheet, and
 - (b) at the balance sheet date the risks or benefits arising from that arrangement are material,
- the information required by this paragraph must be given in notes to the syndicate's annual accounts.
- (2) The information required is—
- (a) the nature and business purpose of the arrangement; and
 - (b) the financial impact of the arrangement on the syndicate.
- (3) The information need only be given to the extent necessary for enabling the financial position of the syndicate to be assessed.

PART 2

MANAGING AGENT'S REPORT

Managing agent's report: general requirements

- 8.—(1) The managing agent's report for a financial year must state—
- (a) the names of the persons who at any time during the financial year were directors or partners of the managing agent; and
 - (b) the principal activities of the syndicate in the course of the year and any significant change to those activities in the year.
- (2) The managing agent's report shall contain—
- (a) particulars of any important events affecting the syndicate which have occurred since the end of the financial year;
 - (b) an indication of likely future developments in the business of the syndicate; and
 - (c) an indication of the activities (if any) of the syndicate in the field of research and development.

Managing agents' report: business review

- 9.—(1) The managing agent's report must contain a business review.
- (2) The business review must contain—
- (a) a fair review of the business of the syndicate; and
 - (b) a description of the principal risks and uncertainties facing the syndicate.
- (3) The review required is a balanced and comprehensive analysis of—
- (a) the development and performance of the syndicate's business during the financial year; and
 - (b) the position of the syndicate's business at the end of that year,
- consistent with the size and complexity of the business.
- (4) The review must include to the extent necessary for an understanding of the development, performance or position of the insurance business of the syndicate—
- (a) analysis using financial key performance indicators; and

- (b) where appropriate analysis using other key performance indicators, including information relating to environmental matters and employee matters.

“Key performance indicators” means factors by reference to which the development, performance or position of the insurance business of the syndicate can be measured effectively.

(5) The review must where appropriate include references to and additional explanations of amounts included in the syndicate accounts.

(6) Nothing in this paragraph requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the managing agent, be seriously prejudicial to the interests of the syndicate.

Financial instruments

10.—(1) In relation to the use of financial instruments by a syndicate, the managing agent’s report must contain an indication of—

- (a) the financial risk management objectives and policies of the syndicate, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used; and
- (b) the exposure of the syndicate to price risk, credit risk, liquidity risk and cash flow risk,

unless such information is not material for the assessment of the assets, liabilities, financial position and profit or loss of the syndicate.

(2) In sub-paragraph (1) the expressions “hedge accounting”, “price risk”, “credit risk”, “liquidity risk” and “cash flow risk” have the same meaning as they have in Council Directive 78/660/EEC on the annual accounts of certain types of companies, and in Council Directive 83/349/EEC on consolidated accounts(a).

Statement as to disclosure of information to auditors

11.—(1) The managing agent’s report must contain a statement to the effect that, in the case of each of the persons who were directors, or, where the managing agent is a partnership, of each of the persons who were partners, of the managing agent at the time the report is approved,

- (a) so far as the director or partner is aware there is no relevant audit information of which the syndicate’s auditors are unaware; and
- (b) the director or partner has taken all the steps that he ought to have taken to become aware of any relevant audit information and to establish that the syndicate’s auditors are aware of that information.

(2) In sub-paragraph (1) “relevant audit information” means information needed by the syndicate’s auditor in connection with preparing their report.

(3) For the purposes of sub-paragraph (1), a director or partner of the managing agent is regarded as having taken all the steps that he ought to have taken in order to do the things mentioned in sub-paragraph (1)(b) if the director or partner has—

- (a) made such enquiries of fellow directors or partners and of the syndicates’ auditors for that purpose, and
- (b) taken such other steps (if any) for that purpose,

as were required by his duty as a director or partner of the managing agent of the syndicate to exercise due care, skill and diligence.

(4) Where the managing agent’s report containing the statement required by this paragraph is approved but the statement is false, every director or partner of the managing agent who—

- (a) knew that the statement was false, or was reckless as to whether it was false, and

(a) O.J.L222 of 14.8.1978, page 11, and O.J. L193 of 18.7.1983, page 1, as amended in particular by Directives 2001/65/EEC and 2003/51/EEC of the European Parliament and of the Council (O.J. L238 of 27.12.2001, page 28, and O.J. L178 of 17.7.2003, page 16).

(b) failed to take reasonable steps to prevent the report from being approved
commits an offence.

(5) A person guilty of an offence under sub-paragraph (4) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum, or both;
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or both.

Approval and signing of managing agent's report

12.—(1) The managing agent's report must be approved and signed by the syndicate's managing agent and where the managing agent is a body corporate or a partnership the report must be approved by the board of directors or partners and signed by a director or partner of the managing agent, authorised to sign on its behalf.

(2) Every copy of the managing agents' report which is circulated, published, or issued shall state the name of the person who signed the balance sheet on behalf of the syndicate's managing agent.

(3) Every copy of the managing agents' report which is delivered to the Authority must be signed on behalf of the managing agent by a director or partner of the managing agent, authorised to sign on its behalf.

PART 3

AUDITORS

Appointment of syndicate auditors

13.—(1) The members of Lloyd's who participate in a syndicate must appoint its auditor or auditors for each financial year by ordinary resolution.

(2) For each financial year for which the auditor or auditors is or are to be appointed, the appointment must be made before the end of the period of 28 days beginning with—

- (a) the end of the time allowed under regulation 4(3)(a) of these Regulations for preparing the accounts required by regulation 4; or
- (b) if earlier, the day on which copies of the accounts prepared under regulation 4 for the previous financial year are sent out under regulation 7(1).

This is the "period for appointing auditors".

(3) Where no appointment has been made under paragraph (1) by the end of the period for appointing auditors, and the auditor in office is not deemed to be re-appointed under paragraph 14(2)—

- (a) the managing agents must within one week from the end of that period give notice of the Authority of that fact, and
- (b) the Authority must appoint an auditor of the syndicate to fill the vacancy as soon as possible.

(4) If the managing agents fail to give the notice required by this paragraph, an offence is committed by—

- (a) the managing agent, and
- (b) every director or partner of the managing agent who was in default.

(5) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Term of office of auditors of syndicate

14.—(1) An auditor or auditors of a syndicate hold office in accordance with the terms of their appointment, subject to the requirements that—

- (a) they do not take office until any previous auditor or auditors cease to hold office; and
- (b) they cease to hold office at the end of the next period for appointing auditors unless re-appointed.

(2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless—

- (a) Lloyd's byelaws require actual reappointment; or
- (b) the deemed reappointment is prevented by the members of the syndicate under paragraph 15; or
- (c) the members of the syndicate have resolved that the auditor should not be re-appointed.

Prevention by members of deemed re-appointment of auditor

15.—(1) An auditor of a syndicate is not deemed to be re-appointed under paragraph 14 if the managing agent has received notices under this paragraph from members of the syndicate representing at least the requisite percentage of the total voting rights of all members of the syndicate who would be entitled to vote on a resolution that the auditor should not be re-appointed.

(2) The “requisite percentage” is 5%, or such lower percentage as is specified for this purpose in Lloyd's byelaws.

(3) A notice under this paragraph—

- (a) may be in hard copy or electronic form;
- (b) must be authenticated by the person or persons giving it; and
- (c) must be received by the managing agent before the end of the financial year immediately preceding the time when the deemed re-appointment would have effect.

Removal of auditor on improper grounds

16.—(1) Where an auditor of a syndicate is removed from office an application may be made to the High Court under this paragraph.

(2) The persons who may make such an application are—

- (a) any member of the syndicate who was a member at the time the auditor was removed;
- (b) the Society of Lloyd's; or
- (c) the Authority.

(3) If the court is satisfied that the removal was—

- (a) on grounds of divergence of opinion on accounting treatments or audit procedures; or
- (b) on any other improper grounds,

it may make such order as it thinks fit for giving relief in respect of the removal.

(4) The court may, in particular—

- (a) declare that any decision to remove an auditor, or to appoint a new auditor in place of the auditor, is void;

- (b) require the members of the syndicate to re-appoint the auditor until the next general meeting of the syndicate; and
- (c) give directions as to the conduct of the syndicate's affairs in the future.

Duty of auditor to notify appropriate audit authority

17.—(1) Where the auditor of the syndicate ceases to hold office before the end of his term of office, the auditor must notify the appropriate audit authority.

(2) The notice must—

- (a) inform the appropriate audit authority that the auditor has ceased to hold office; and
- (b) be accompanied by a statement of the reasons for the auditor's ceasing to hold office.

(3) The auditor must give notice under this paragraph—

- (a) if the auditor resigns, at the same time as the auditor first informs the managing agent of the syndicate of his resignation (whether by notice or otherwise); and
- (b) in any other case, not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.

(4) A person ceasing to hold office as auditor who fails to comply with this paragraph commits an offence.

(5) If that person is a firm an offence is committed by—

- (a) the firm, and
- (b) every officer of the firm who is in default.

(6) A person guilty of an offence under this paragraph is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) In proceedings for an offence under this paragraph it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

Duty of managing agent to notify appropriate audit authority

18.—(1) Where an auditor of the syndicate ceases to hold office before the end of his term of office, the managing agent of the syndicate must notify the appropriate audit authority.

(2) The notice must—

- (a) inform the appropriate audit authority that the auditor has ceased to hold office; and
- (b) be accompanied by a statement of the reasons for his ceasing to hold office.

(3) The managing agent must give notice under this paragraph—

- (a) if the auditor resigns, not later than the end of the period of fourteen days beginning with the date on which the auditor first informs the managing agent of his resignation (whether by notice or otherwise); and
- (b) in any other case, not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.

(4) If the managing agent fails to comply with this paragraph, an offence is committed by—

- (a) the managing agent; and
- (b) every director or partner of the managing agent who was in default.

(5) A person guilty of an offence under this paragraph is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) In proceedings for an offence under this paragraph it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

SCHEDULE 2

Regulations 4(4) and 17(6)

AUDITOR'S REMUNERATION

Disclosure required in notes to accounts: auditor's remuneration

1.—(1) The following information must be disclosed in—

- (a) the notes to the syndicate's annual accounts, and
- (b) the notes to the aggregate accounts.

(2) In this paragraph "the auditor" refers to the syndicate's auditor in the case of the syndicate's annual accounts, and to the auditor of the aggregate accounts in the case of the aggregate accounts.

2.—(1) There must be disclosed in a note to the syndicate annual accounts and to the aggregate accounts—

- (a) the amount of any remuneration receivable by the auditor for the auditing of the syndicate's annual accounts, or the aggregate accounts, as the case may be, and
- (b) the amount of any remuneration receivable in respect of the financial year by—
 - (i) the auditor, or
 - (ii) any person who was, at any time during that financial year, an associate of the auditor within the meaning of paragraph 4,

for the supply of other services to the syndicate or to the managing agent of the syndicate (in the case of the syndicate's annual accounts), or to the Society or the Council of Lloyd's (in the case of the aggregate accounts).

(2) Where the remuneration includes benefits in kind, the nature and estimated money-value of those benefits must also be disclosed in a note.

(3) Separate disclosure is required in respect of the auditing of the accounts in question and of each type of service specified in paragraph 3, but not in respect of each service falling within a type of service.

(4) Separate disclosure is required in respect of services supplied to the syndicate or the Council of Lloyd's on the one hand, and to associated pension schemes on the other.

(5) Where more than one person has been appointed as auditor in respect of the financial year, separate disclosure is required in respect of the remuneration of each such person and his associates.

(6) Disclosure is not required of remuneration receivable for the supply of services falling within paragraph 3(j) supplied by a distant associate of the auditor where the total remuneration receivable for all those services supplied by that associate does not exceed either—

- (a) £10,000, or
- (b) 1% of the total audit remuneration received by the auditor in the most recent financial year of the auditor which ended no later than the end of the financial year of the syndicate or syndicates to which the syndicate accounts or aggregate accounts relate.

(7) In sub-paragraph (6)(b)—

- (a) "financial year of the auditor" means—
 - (i) the period of not more than 18 months in respect of which the auditor's profit and loss account is required to be made up (whether by law or in accordance with the auditor's constitution (if any)), or

- (ii) failing any such requirement, the period of 12 months beginning with 1st April;
 - (b) “total audit remuneration received” means the total remuneration received for the auditing pursuant to legislation (including that of countries and territories outside the United Kingdom) of any accounts of any person.
- (8) In this paragraph “remuneration” includes payments in respect of expenses and benefits in kind.

Disclosure of auditor’s remuneration etc: list of types of service

3.—(1) The types of service in respect of which disclosure is required are—

- (a) either—
 - (i) the auditing of accounts of associates of the managing agent responsible for managing the syndicate pursuant to legislation (including that of countries and territories outside Great Britain), in the case of the syndicate’s annual accounts; or
 - (ii) the auditing of accounts of associates of the Society of Lloyd’s pursuant to legislation (including that of countries and territories outside Great Britain) in the case of the aggregate accounts;
- (b) other services supplied pursuant to such legislation;
- (c) other services relating to taxation;
- (d) services relating to information technology;
- (e) internal audit services;
- (f) valuation and actuarial services;
- (g) services relating to litigation;
- (h) services relating to recruitment and remuneration;
- (i) services relating to corporate finance transactions entered into or proposed to be entered into on behalf of the managing agent or any of its associates, or the Society of Lloyd’s or any of its associates;
- (j) all other services.

(2) References in subparagraph (1) to an associate of the managing agent are to—

- (a) any subsidiary of the managing agent, other than a subsidiary in respect of which severe long-term restrictions substantially hinder the exercise of rights of the managing agent over the assets or management of that subsidiary; or
- (b) any associated pension scheme.

(3) An “associated pension scheme”, in relation to a managing agent, means a scheme for the provision of benefits for or in respect of directors or employees (or former directors or employees) of the managing agent or any subsidiary of the managing agent where—

- (a) the benefits consist of or include any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death; and
- (b) either—
 - (i) a majority of the trustees are appointed by, or by a person acting on behalf of the managing agent or a subsidiary of the managing agent; or
 - (ii) the managing agent, or a subsidiary of the managing agent, exercises a dominant influence over the appointment of the auditor (if any) of the scheme.

(4) References in subparagraph (1) to an associate of the Society of Lloyd’s are to—

- (a) any subsidiary of the Society of Lloyd’s, other than a subsidiary in respect of which severe long-term restrictions substantially hinder the exercise of rights of the society over the assets or management of that subsidiary; or
- (b) any associated pension scheme.

(5) An “associated pension scheme”, in relation to the Society of Lloyd’s, means a scheme for the provision of benefits for or in respect of members of the Council or employees (or former members of the Council or employees) of the Society or any subsidiary of the Society where—

- (a) the benefits consist of or include any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death; and
- (b) either—
 - (i) a majority of the trustees are appointed by, or by a person acting on behalf of the Society or a subsidiary of the Society; or
 - (ii) the Society, or a subsidiary of the Society, exercises a dominant influence over the appointment of the auditor (if any) of the scheme.

(6) In this paragraph “subsidiary” means a subsidiary undertaking that is a body corporate.

Disclosure of auditor’s remuneration etc: meaning of “associate of auditor”

4.—(1) This paragraph defines what is meant in paragraph 2 by an “associate” of the auditor.

(2) The following are associates of the auditor—

- (a) any person controlled by the auditor or by any associate of the auditor (whether alone or through two or more persons acting together to secure or exercise control), but only if that control does not arise solely by virtue of the auditor or any associate of the auditor acting—
 - (i) as an insolvency practitioner in relation to any person;
 - (ii) in the capacity of a receiver, or a receiver or manager, of the property of the Society of Lloyd’s, a syndicate, a managing agent or other body corporate; or
 - (iii) as a judicial factor on the estate of any person;
- (b) any person who, or group of persons acting together which, has control of the auditor;
- (c) any person using a trading name which is the same as or similar to a trading name used by the auditor, but only if the auditor uses that trading name with the intention of creating the impression of a connection between the auditor and that other person; or
- (d) any person who is party to an arrangement with the auditor, with or without any other person, under which costs, profits, quality control, business strategy or significant professional resources are shared.

(3) Where the auditor is a partnership, the following shall also be regarded as associates of the auditor—

- (a) any other partnership which has a partner in common with the auditor;
- (b) any partner in the auditor;
- (c) any body corporate which is in the same group as a body corporate which is a partner in the auditor;
- (d) any body corporate which is in the same group as a body corporate which is a partner in a partnership which has a partner in common with the auditor; or
- (e) any body corporate of which a partner in the auditor is a director.

(4) Where an auditor is a body corporate (other than one which is also a partnership as defined in sub-paragraph (6)(d)), each of the following shall also be regarded as an associate of the auditor—

- (a) any other body corporate which has a director in common with the auditor;
- (b) any director of the auditor;
- (c) any body corporate which is in the same group as a body corporate which is a director of the auditor;

- (d) any body corporate which is in the same group as a body corporate which has a director in common with the auditor;
- (e) any partnership in which a director of the auditor is a partner;
- (f) any body corporate which is in the same group as the auditor;
- (g) any partnership in which any such body corporate which is in the same group as the auditor is a partner.

(5) A distant associate of an auditor is a person who is an associate of that auditor by reason only that that person is an associate within one or more of—

- (a) paragraph 4(2)(a) where the person in question is controlled by a distant associate of the auditor but not by the auditor or by an associate who is not a distant associate;
- (b) paragraph 4(3)(a), (d) or (e);
- (c) paragraph 4(4)(a), (d) or (e).

(6) For the purposes of this paragraph—

- (a) “acting as an insolvency practitioner” shall be construed in accordance with section 388 of the Insolvency Act 1986^(a) or Article 3 of the Insolvency (Northern Ireland) Order 1989^(b);
- (b) “director” includes any person occupying the position of director, by whatever name called;
- (c) “partner” includes a member of a limited liability partnership;
- (d) “partnership” includes a limited liability partnership and a partnership constituted under the law of a country or a territory outside the United Kingdom;
- (e) a reference to “a receiver, or a receiver or manager, of the property of the Society of Lloyd’s, a syndicate, managing agent or other body corporate” includes a receiver, or (as the case may be) a receiver or manager, of part only of that property;
- (f) a person able, directly or indirectly to control or materially to influence the operating and financial policy of another person shall be treated as having control of that other person; and
- (g) a body corporate is in the same group as another body corporate if one is a subsidiary of the other.

(7) In this paragraph “subsidiary” means a subsidiary undertaking that is a body corporate.

Disclosure of auditor’s remuneration etc: duty of auditor to supply information

5.—(1) The auditor of a syndicate must supply the managing agent of the syndicate with such information as is necessary to enable the disclosure required by paragraph 2(1)(b) to be made.

(2) The auditor of the aggregate accounts must supply the Council of Lloyd’s with such information as is necessary to enable the disclosure required by paragraph 2(1)(b) to be made.

(a) 1986 c.45; section 388 has been amended by section 4(2)(a) to (c) of the Insolvency Act 2000 (c.39), by section 11(1) of the Bankruptcy (Scotland) Act 1993 (c.6) and by S.I. 1994/2421, 2002/1240 and 2002/2708.

(b) S.I. 1989/2405 (N.I. 19); Article 3 has been amended by Article 6(1)(a) to (c) of the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6); and by S.R. 1995/225, 2002/334 and 2003/550.

PROVISIONS APPLYING TO AGGREGATE ACCOUNTS

PART 1

GENERAL PROVISIONS AND ANNUAL REPORT

Disclosure required in notes to accounts: off-balance sheet arrangements

- 1.—(1) If in any financial year—
- (a) a syndicate has noted in its annual accounts that it is or has been party to an arrangement that is not reflected in its balance sheet; and
 - (b) at the balance sheet date the risks or benefits arising from that arrangement are material,
- the information required by this section must be given in notes to the aggregate accounts.
- (2) The information required is—
- (a) the nature and business purpose of the arrangement; and
 - (b) the financial impact of the arrangement on the syndicate.
- (3) The information need only be given to the extent necessary for enabling the financial position of the Lloyd's market to be assessed.

Annual report: general requirements

- 2.—(1) The annual report required by regulation 19 on the insurance business carried on by the members of Lloyd's must state—
- (a) the names of the persons who at any time during the financial year were members of the Council of Lloyd's; and
 - (b) the principal activities of the Lloyd's market in the course of the year and any significant change to those activities in the year.
- (2) The annual report shall contain—
- (a) particulars of any important events affecting the Lloyd's market which have occurred since the end of the financial year;
 - (b) an indication of likely future developments in the business of the Lloyd's market; and
 - (c) an indication of the activities (if any) of the members of Lloyd's in the field of research and development.

Annual report: business review

- 3.—(1) The annual report must contain a business review.
- (2) The business review must contain—
- (a) a fair review of the business of the Lloyd's market; and
 - (b) a description of the principal risks and uncertainties facing the Lloyd's market.
- (3) The review required is a balanced and comprehensive analysis of—
- (a) the development and performance of the insurance business carried on by the members of Lloyd's during the financial year; and
 - (b) the position of the insurance business of the members of Lloyd's at the end of that year, consistent with the size and complexity of the Lloyd's market.

(4) The review must include to the extent necessary for an understanding of the development, performance or position of the insurance business of the members of Lloyd's—

- (a) analysis using financial key performance indicators; and
- (b) where appropriate analysis using other key performance indicators, including information relating to environmental matters and employee matters.

“Key performance indicators” means factors by reference to which the development, performance or position of the insurance business of the members of Lloyd's can be measured effectively.

(5) The review must where appropriate include references to and additional explanations of amounts included in the aggregate accounts.

(6) Nothing in this paragraph requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the Council of Lloyd's, be seriously prejudicial to the interests of the members of Lloyd's.

Statement as to disclosure of information to auditors

4.—(1) The annual report must contain a statement to the effect that, in the case of each of the persons who are members of the Council of Lloyd's at the time the report is approved—

- (a) so far as the Council member is aware there is no relevant audit information of which the auditor of the aggregate accounts is unaware, and
- (b) the Council member has taken all the steps that he ought to have taken as a member of the Council to become aware of any relevant audit information and to establish that the auditor of the aggregate accounts is aware of that information.

(2) In sub-paragraph (1) “relevant audit information” means information needed by the auditor of the aggregate accounts in connection with preparing the auditor's report.

(3) For the purposes of sub-paragraph (1) the Council member is regarded as having taken all the steps that ought to have taken as a member of the Council in order to do the things mentioned in sub-paragraph (1)(b) if he has—

- (a) made such enquiries of fellow Council members and of the auditors of the aggregate accounts for that purpose, and
- (b) taken such other steps (if any) for that purpose,

as were required by his duty as a member of the Council of Lloyd's to exercise due care, skill and diligence.

(4) Where the annual report containing the statement required by this paragraph is approved but the statement is false, every member of the Council who—

- (a) knew that the statement was false, or was reckless as to whether it was false, and
- (b) failed to take reasonable steps to prevent the report from being approved

commits an offence.

(5) A person guilty of an offence under subparagraph (4) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
- (b) on summary conviction—
 - (i) In England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum, or both;
 - (ii) In Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or both.

PART 2

AUDITORS

Appointment of auditors for aggregate accounts

5.—(1) The members of the Society of Lloyd's must appoint the auditor for the aggregate accounts each financial year.

For each financial year for which the auditor is to be appointed, the appointment must be made before the end of the period of 28 days beginning with the end of the time allowed under regulation 17(3)(a) of these Regulations for preparing the accounts required by regulation 17. This is the "period for appointing auditors".

(2) Where no appointment has been made under paragraph (1) by the end of the period for appointing auditors, and the auditor in office is not deemed to be re-appointed under paragraph 6(2)—

- (a) the Council of Lloyd's must within one week from the end of that period give notice to the Authority of that fact; and
- (b) the Authority must appoint an auditor for the aggregate accounts for the financial year as soon as possible.

(3) If the Council of Lloyd's fail to give the notice required by this paragraph, an offence is committed by—

- (a) the Society of Lloyd's, and
- (b) every member of the Council who was in default.

(4) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Term of office of auditors of the aggregate accounts

6.—(1) An auditor or auditors of the aggregate accounts hold office in accordance with the terms of their appointment, subject to the requirements that—

- (a) they do not take office until any previous auditor or auditors cease to hold office; and
- (b) they cease to hold office at the end of the next period for appointing auditors unless re-appointed.

(2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless—

- (a) Lloyd's byelaws require actual reappointment; or
- (b) the deemed reappointment is prevented by the members of the Society of Lloyd's under paragraph 7; or
- (c) the members have resolved that the auditor should not be re-appointed.

Prevention by members of deemed re-appointment of auditor

7.—(1) An auditor of the aggregate accounts is not deemed to be re-appointed under paragraph 6 if the Council has received notices under this paragraph from members of the Society representing at least the requisite percentage of the total voting rights of all members of the Society who would be entitled to vote on a resolution that the auditor should not be re-appointed.

(2) The "requisite percentage" is 5%, or such lower percentage as is specified for this purpose in Lloyd's byelaws.

(3) A notice under this paragraph—

- (a) may be in hard copy or electronic form;

- (b) must be authenticated by the person or persons giving it; and
- (c) must be received by the managing agent before the end of the financial year immediately preceding the time when the deemed re-appointment would have effect.

Removal of auditors on improper grounds

8.—(1) Where an auditor of the aggregate accounts is removed from office, an application may be made to the High Court under this paragraph.

(2) The persons who may make such an application are—

- (a) any member of the Society;
- (b) the Authority.

(3) Where the court is satisfied that the removal was—

- (a) on grounds of divergence of opinion on accounting treatments or audit procedures; or
- (b) on any other improper grounds

it may make such order as it thinks fit for giving relief in respect of the removal.

(4) The court may, in particular—

- (a) declare that any decision to remove an auditor, or to appoint a new auditor in place of the auditor, is void;
- (b) require the members of the Society to re-appoint the auditor; or
- (c) give directions as to the conduct of the Council of Lloyd's affairs in the future.

Duty of auditor to notify appropriate audit authority

9.—(1) Where the auditor of the aggregate accounts ceases to hold office before the end of his term of office, the auditor must notify the appropriate audit authority.

(2) The notice must—

- (a) inform the appropriate audit authority that the auditor has ceased to hold office, and
- (b) be accompanied by a statement of the reasons for his ceasing to hold office.

(3) The auditor must give notice under this paragraph—

- (a) if the auditor resigns, at the same time as the auditor informs the Council of Lloyd's of his resignation (whether by notice or otherwise);
- (b) in any other case, not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.

(4) A person ceasing to hold office as auditor who fails to comply with this paragraph commits an offence.

(5) If that person is a firm an offence is committed by—

- (a) the firm, and
- (b) every officer of the firm who is in default.

(6) A person guilty of an offence under this paragraph is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) In proceedings for an offence under this paragraph it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

Duty of Council of Lloyd's to notify the appropriate audit authority

10.—(1) Where an auditor of the aggregate accounts ceases to hold office before the end of his term of office, the Council of Lloyd's must notify the appropriate audit authority.

- (2) The notice must—
- (a) inform the appropriate audit authority that the auditor has ceased to hold office; and
 - (b) be accompanied by a statement of the reasons for the auditor’s ceasing to hold office.
- (3) The Council of Lloyd’s must give notice under this paragraph—
- (a) if the auditor resigns, not later than the end of the period of fourteen days beginning with the date on which the auditor first informs the Council of his resignation (whether by notice or otherwise); and
 - (b) in any other case, not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.
- (4) If the Council of Lloyd’s fails to comply with this paragraph, an offence is committed by—
- (a) the Society of Lloyd’s, and
 - (b) every member of the Council who was in default.
- (5) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) In proceedings for an offence under this paragraph it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219) (“the 2004 Regulations”).

These Regulations update the implementation of Council Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (“the Insurance Accounts Directive”) as amended by Directive 2003/51/EC of the European Parliament and of the Council of 18.6.2003 in relation to Lloyd’s. They also implement, in part, Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (O.J. L157, 9.6.2006, p.87) (“the Audit Directive”), and Directive 2006/46/EC of the European Parliament and the Council of 14.6.2006 amending the Fourth, Seventh, Bank Accounts and Insurance Accounts Directives (OJ L 224 of 16.8.2006, p.1).

Regulation 3 applies section 504 of the Companies Act 2006 to the accounts produced under these regulations.

Regulation 4 re-enacts the requirements of the 2004 Regulations that managing agents of syndicates must prepare annual accounts for each syndicate for which they are responsible on 31st December for the preceding financial year. Regulation 4 also requires managing agents to ensure the preparation of a directors' report and an auditor’s report.

Part 1 of Schedule 1 specifies the form and content of the syndicate annual accounts, applying to syndicates the provisions of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) (“the 2008 Regulations”), which has replaced schedule 9A to the Companies Act 1985, and certain provisions of the Companies Act 2006 on the information which must be included in the accounts, and implementing Article 1(6) of Directive 2006/46/EC.

Part 2 of Schedule 1 sets out the requirements which must be satisfied by the managing agent’s annual report, applying sections 416 to 418 of the Companies Act 2006, and Schedule 7 to the 2008 Regulations, to syndicates, and making provision for the approval and signature of the managing agent’s report.

Part 3 of Schedule 1 makes provision in relation to the auditors of the syndicate accounts. Paragraphs 13 - 15 implement Article 37 of the Audit Directive, which requires the auditor to be appointed by

the general meeting of shareholders or members of the audited entity, and make further provision in relation to the deemed re-appointment of the auditor of a syndicate.

Paragraph 16 of Schedule 1 implements Article 38.1 of the Audit Directive, which requires Member States to ensure that auditors may be dismissed only where there are proper grounds. It creates a new right to apply to the High Court, which may be exercised by a member of the syndicate, or the Society of Lloyd's or by the Financial Services Authority.

Paragraphs 17 and 18 of Schedule 1 implement Article 38.2 of the Audit Directive, which requires Member States to ensure that the audited entity and the auditor inform the authorities responsible for public oversight of the resignation or dismissal of the auditor.

Schedule 2 sets out the information on auditor's remuneration which must be included in the accounts, following the provision made in the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 (S.I. 2008/489), and implementing Article 49 of the Audit Directive in relation to the syndicate annual accounts, and the aggregate accounts prepared by Lloyd's.

Regulation 5 re-enacts the requirements of the 2004 Regulations for the preparation of a separate set of accounts, to be separately audited, and prepared on an underwriting year basis in respect of any underwriting year which is being closed by way of reinsurance to close.

Regulation 6 makes provision for the approval and signing of the syndicate annual accounts. Regulation 7 re-enacts the requirements for managing agents of a syndicate to send copies of the accounts prepared under regulations 4 and 5 to the members of the syndicate, the Council of Lloyd's and the Financial Services Authority. Regulation 8 re-enacts the requirement for the Council of Lloyd's to make copies of syndicate accounts that it receives available to the public on reasonable notice.

Regulations 9 and 10 make provision in relation to the auditor's report, imposing equivalent functions on auditors to those imposed by the Companies Act 2006.

Regulations 11 - 13 implement Article 28.1 of the Audit Directive on the signature of the auditor's report on the syndicate annual accounts and the underwriting year accounts. Regulation 14 makes provision in relation to the publication of the statutory accounts, applying the equivalent provisions of the Companies Act 2006 to managing agents in relation to the statutory accounts.

Regulation 15 applies section 469 of the Companies Act 2006 to the syndicate annual accounts, implementing Article 50a of Directive 78/660. Regulation 16 makes it an offence for managing agents to fail to comply with the requirements set out in Part 2 of the Regulations.

Regulation 17 re-enacts the requirements of the 2004 Regulations for the Council of Lloyd's to prepare aggregate accounts in respect of each financial year, to be an aggregation of all the annual syndicate accounts prepared under regulation 4 for that year. The accounts must comply with the provisions of Schedule 3 to the 2008 Regulations apart from the provisions specified in paragraph (5). Regulation 18 makes provision for the approval and signature of the aggregate accounts.

Regulation 19 re-enacts the requirement in the 2004 Regulations for the Council of Lloyd's to prepare an annual report. Further provision as to the information which must be contained in the annual report is made in part 1 of Schedule 3, and Regulation 20 makes provision for the approval and signature of the annual report.

Regulation 21 re-enacts the requirements in the 2004 Regulations for the Council of Lloyd's to obtain an auditor's report on the aggregate accounts. Regulations 22 to 24 implement Article 28.1 of the Audit Directive on the signature of the auditor's report on the aggregate accounts, and Regulation 25 re-enacts the requirements in the 2004 Regulations on the auditor's duties in relation to the aggregate accounts.

Part 2 of Schedule 3 makes further provision in relation to the auditor of the aggregate accounts, implementing Articles 37 and 38 of the Audit Directive in relation to those accounts in similar terms to paragraphs 13 - 18 of Schedule 1 to these Regulations. Under paragraph 5 of Schedule 3, the appointment of the auditor of the aggregate accounts must be made by the members of the Society of Lloyd's. Under paragraph 8 of Schedule 3, a right of application to the High Court where an auditor is removed from office is given to any member of the Society of Lloyd's, and to the Financial Services Authority.

Regulation 26 re-enacts the requirements in the 2004 Regulations on the publication of the aggregate accounts and the annual report of the Council of Lloyd's, and their delivery to the Financial Services Authority.

Regulation 27 makes it an offence for members of the Council of Lloyd's to fail to comply with the requirements set out in Part 3 of the Regulations.

Regulation 28 re-enacts the provision made by the 2004 Regulations for the statutory functions imposed on the Financial Services Authority in relation to overseeing the preparation and delivery of accounts by Lloyd's syndicates and the Council of Lloyd's.

Regulation 29 revokes the 2004 Regulations.

An Impact Assessment has been prepared in relation to these Regulations as has a transposition note showing how the main provisions of Directives 2006/43/EC and 2006/46/EC, as they apply to Lloyd's, are being transposed into UK law. A copy of both documents can be obtained from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2 HQ. Both documents have also available on the Treasury website (www.hm-treasury.gov.uk) and copies have been placed in the library of both Houses of Parliament

ISBN 978-1-84532-459-9



9 781845 324599 >