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By any standard the Companies Act 2006 is a significant piece of legislation. It is over 700 pages long, contains some 1,300 sections and will take around three years to implement in full. Early in 2007 the government published an overview of the expected commencement timetable for the new Act, which was subsequently extended. It is now expected that all sections of the Act will be in force by October 2009.

The second of the key implementation dates, 6 April 2008, has passed recently. This landmark date saw the sections of the new Act that deal with accounts and reports and audit come into force. In this briefing we take a closer look at some of the practical changes you can expect to see in these areas.

Companies Act 2006

A closer look at accounts and reports

Looking back

The company law reform process began as far back as 1998, with an independent review. White Papers followed in 2002 and 2005 and a Bill was eventually published in November 2005. The Act itself finally received Royal Assent on 8 November 2006.

The overall objectives

The government's overall objectives in respect of the new legislation were to simplify and modernise company law so that it better meets today's business needs and provides flexibility for the future. While the reform process aimed to 'think small first', the resulting legislation has an impact on directors, auditors, shareholders and company secretaries of private, public and quoted companies.

The Act itself has been written in simplified language, with a particular focus on small companies.

Progress to date

At the time of going to print six commencement orders, which bring the individual sections of the new Act into force, had been issued along with a raft of supporting legislation. This has certainly been keeping us busy!

Accounts and reports and audits

Part 15 of the new Act deals with accounts and reports (sections 380 to 474) and Part 16 with audit (sections 475 to 539).

The majority of these sections came into effect on 6 April 2008. It is worth mentioning however that a number of these sections are effective for accounting periods beginning on or after 6 April 2008, therefore you may not see the full effects of some of these changes until April 2009 year ends and onwards. Other changes are now fully in force.

Shorter filing deadlines

The new Act reduces the period available to file accounts at Companies House:

Filing deadline	Old	New
	months from the end of the accounting period	
Private limited company (Ltd)	10	9
Public limited company (Plc)	7	6

Comment

The potential impact of this change has been somewhat lessened, as initial proposals intended to decrease the filing deadline for private limited companies to seven months. It is worth remembering that there are automatic penalties if your company's accounts are filed late as these are also set to increase (see overleaf).

New size limits - is your company small or medium-sized?

January 2004 saw the definition criteria for small and medium-sized companies and the audit exemption limit rise significantly, meaning that many more companies could benefit from the exemptions available. Subsequent changes meant that many small financial services companies that were previously prevented from doing so could also benefit from these exemptions.

The limits have been increased again and they apply to accounting periods that begin on or after 6 April 2008 as follows:

Individual company limits	Old small company limits	New small company limits
Turnover not more than	£5.6m	£6.5m
Balance sheet total not more than	£2.8m	£3.26m
Number of employees not more than	50	50
	Old medium-sized company limits	**New medium-sized company limits**
Turnover not more than	£22.8m	£25.9m
Balance sheet total not more than	£11.4m	£12.9m
Number of employees not more than	250	250

Qualification depends upon the company meeting at least two of the three relevant criteria.

Continued overleaf >>>

These limits are important as they determine whether a company can benefit from:

- the preparation of simpler accounts

Comment

A small company can take advantage of exemptions from certain disclosures in its accounts and can make use of simpler accounting standards to prepare its accounts. Some companies do however continue to be prohibited from taking these advantages, including certain financial services companies.

- filing abbreviated accounts on the public record at Companies House

Comment

There had been early indications that the government intended to abolish the option for small and medium-sized companies to file abbreviated accounts at Companies House. However these were not realised.

Unfortunately this option is of less value to medium-sized companies generally and they will now also have to disclose turnover in their abbreviated accounts.

- audit exemption.

Comment

There are differing views on the value of the audit process to owner managed companies. The decision for you and your business is clearly a personal one. If your company now falls under the higher audit threshold this will provide us with the opportunity to provide you with a more flexible service.

Higher group limits - but do you now need to prepare group accounts?

The limits that apply to groups of companies have also been increased:

Group limits	**Old small group limits**	**New small group limits**
Net turnover not more than	£5.6m	£6.5m
Gross turnover not more than	£6.72m	£7.8m
Net balance sheet total not more than	£2.8m	£3.26m
Gross balance sheet total not more than	£3.36m	£3.9m
Number of employees not more than	50	50
	Old medium-sized group limits	**New medium-sized group limits**
Net turnover not more than	£22.8m	£25.9m
Gross turnover not more than	£27.36m	£31.1m
Net balance sheet total not more than	£11.4m	£12.9m
Gross balance sheet total not more than	£13.68m	£15.5m
Number of employees not more than	250	250

Qualification again depends upon the group meeting at least two of the three relevant criteria, although the group may qualify on the basis of either the net or gross figures.

Comment

Importantly for medium-sized groups, the exemption from the preparation of group accounts has been abolished under the new Act, so those affected should pay particular attention to these new, higher limits.

We should begin to plan early if you think that group accounts will be needed.

Higher late filing penalties

The penalties associated with late filing of annual accounts at Companies House have also been increased:

Length of delay, measured from the date the accounts are due:	**Private company**		**Public company**	
	Current	New	Current	New
Up to 1 month	£100	£150	£500	£750
1 to 3 months	£100	£375	£500	£1,500
3 to 6 months	£250	£750	£1,000	£3,000
6 to 12 months	£500	£1,500	£2,000	£7,500
More than 12 months	£1,000	£1,500	£5,000	£7,500

The higher penalties will be introduced from 1 February 2009 and if you file accounts late under the new Act in two successive years the penalties will be doubled. The higher penalties not only apply to April 2009 year ends and onwards, filed under the provisions of the Companies Act 2006, but also to accounts filed late after 1 February 2009 prepared under the Companies Act 1985.

Other changes

Improving audit quality

Changes in this area include:

- the introduction of a new criminal offence for an auditor to knowingly or recklessly include anything that is materially misleading, false or deceptive in an audit report
- the ability for companies to be able to agree a limit on their auditors' liability arising from an audit for a specified year, subject to shareholders approving the main terms of the agreement. The amount of the limit must be 'fair and reasonable' in order to be effective
- audit reports for accounting periods beginning on or after 6 April 2008 will be signed by the 'senior statutory auditor' in their own name, for and on behalf of the firm.

Auditors will also be required to include in their report if the directors have prepared accounts in accordance with the small companies regime and in the auditors' opinion, they were not entitled to do so. There are also now provisions in place for the audit report to disclose the required particulars of any disclosures regarding directors' benefits that have not been made in the accounts.

A private company may choose whether to appoint a company secretary or not

The legal requirement for a private company to appoint a company secretary has now been abolished, although public companies will continue to be required to appoint a company secretary.

A private company does however have the option to choose to appoint a company secretary if it wishes, as many of the functions that the company secretary traditionally carried out remain. The details of any company secretary appointed will continue to be required to be registered at Companies House.

Comment

If you no longer wish to have a company secretary you should first review your company's Articles of Association to ensure that the wording does not expressly require you to have a company secretary. If it does, this will need to be changed.

Where you do decide that the role is no longer needed, Form 288b should be sent to Companies House to terminate the appointment.

What's next?

The next significant implementation date is 1 October 2008, where changes which include the repeal of the restrictions under the Companies Act 1985 on financial assistance for the acquisition of shares in private companies, including the 'whitewash' procedure, will be implemented.

Please contact us at an early stage if you would like to discuss any of these changes in more detail.