

EXPLANATORY MEMORANDUM TO
THE COMMUNITY INTEREST COMPANY (AMENDMENT) REGULATIONS 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These Regulations amend the Community Interest Company Regulations 2005 (SI 2005 No 1788). They correct an error which occurred in the implementation of the Companies Act 2006 (“the 2006 Act”).

- 2.2 The Regulations fully reinstate the requirement for the directors of a community interest company (“CIC”) to deliver a copy of the community interest company report to the registrar with a CIC’s annual accounts and reports. By mistake, the requirement was only partially reinstated after the original requirement, contained in section 34(2) of Companies (Audit, Investigations and Community Enterprise Act 2004 (“the 2004 Act”), was replaced by an obligation to make provision requiring the directors of a community interest company to deliver a copy of the community interest company report to the Registrar of Companies. The substitution was made by a consequential amendment to the 2006 Act contained in the Companies Act 2006 (Consequential Amendments etc) Order 2008 (SI 2008/948).

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

- 3.1 To minimise burdens on CICs, it has been decided that the directors of a CIC should be required to deliver the annual community interest company report to the Registrar of Companies together with the CIC’s accounts and reports for each financial year. This approach ensures that directors are subject to one annual filing deadline for the CIC’s accounts and reports including the community interest company report and that one set of sanctions applies for late filing.

- 3.2 The Regulations insert a new regulation 29A into the Community Interest Company Regulations 2005 under the powers in sections 34(2) and (3)(c) of the 2004 Act. Whereas, regulation 29A(1) provides on the face of the legislation that the directors of a CIC are required to deliver a copy of the report to the Registrar of Companies, regulation 29A(2) applies to the report the provisions in the 2006 Act for the period allowed for filing the accounts and reports and the sanctions for late filing of accounts and reports. It does so by applying the relevant provisions of sections 441 to 447 and sections

451 to 453 of the 2006 Act as they apply to the directors' report with appropriate modifications. The modifications are necessary to ensure that the directors of a CIC are required to file the community interest company report even where filing of the directors' report is optional.

4. Legislative Context

4.1 Part 2 of the 2004 Act and the Community Interest Company Regulations 2005 introduced the community interest company (CIC) which came into existence in July 2005. The 2004 Act requires the directors of every CIC to prepare a community interest company report for each financial year.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

In my view the provisions of the Community Interest Company (Amendment) Regulations 2012 are compatible with the Convention rights.

7. Policy background

7.1 The CIC provides a bespoke legal form for social enterprises that want to use the company form but with the assurance that the company's assets will be used for the benefit of the community. The model was introduced to give greater choice and flexibility to businesses with social objectives, which reinvest their surpluses in the business or the community. The 2004 Act established the Office of the Regulator of Community Interest Companies to oversee CICs, to ensure public confidence in the model. Over 6500 CICs have been registered by the Regulator since 2005.

7.2 In addition to the community interest test, which a CIC must satisfy to be approved by the Regulator, and the "asset lock", which restricts the distribution of a CIC's assets except as permitted by regulations, the annual community interest company report is a key feature of a CIC. Its purpose is to show that the CIC is, in each financial year, satisfying the community interest test and engaging appropriately with stakeholders.

7.3 The delivery of the community interest company report to the Registrar of Companies is necessary because it ensures the report is placed on the public record and available for scrutiny by the CIC's stakeholders. In addition, the Registrar is under a duty to send all reports which are filed with him to the Regulator, so that the Regulator may monitor the CIC's adherence to the rules relating to CICs.

7.4 The regulations do not impose any additional burden on CICs. In practice the directors of all CICs are still submitting a copy of the CIC report with CICs' annual accounts and reports.

8. Consultation outcome

8.1 No formal consultation was undertaken in relation to these amending regulations because the proposed measure is not introducing a new policy or making changes that will burden CICs or make a difference to their current expectations.

9. Guidance

9.1 Guidance relating to the requirement to file the community interest company report with the Registrar of Companies is available on the website of the CIC Regulator: <http://www.bis.gov.uk/cicregulator>.

10. Impact

10.1 The impact on business is not anticipated to be significant. In practice, the directors of all CICs are already submitting a copy of the community interest company report to the Registrar of Companies with CICs' annual accounts and reports. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is as follows: the Office of the Regulator of Community Interest Companies will review its guidance in light of these amendment regulations and Companies House will make the necessary changes to its procedures.

10.3 An impact assessment has not been prepared for this instrument as it is not anticipated that it will lead to significant costs or burdens.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirement on firms employing up to 20 people, a light touch regulatory framework is being maintained. The Regulations will not impose net costs on such businesses.

11.3 The majority of CICs are small companies.

12. Monitoring & review

12.1 The Office of the Regulator will monitor the impact of the amendments and will advise the Department if they are not working as intended. The Office is aiming to review the wider question of the need for an annual community interest company report by September 2015.

13. Contact

Sara Burgess at the Office of the Regulator of Community Interest Companies Tel: 029 20346228 or email: sara.burgess@bis.gsi.gov.uk can answer any queries regarding the instrument.