

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 33: Uk Companies Not Formed under Companies Legislation

Chapter 1: Companies Not Formed under Companies Legislation but Authorised to Register

Section 1040: Companies authorised to register under this Act

1319. This section replaces section 680 of the 1985 Act. It applies to companies incorporated within the UK but not formed under the Companies Acts (or certain earlier companies legislation). It enables such companies to register under the Act. The types of company that can take advantage of this provision are listed in *subsection (1)*. They include companies formed before 2 November 1862; companies formed by private Act of Parliament and companies incorporated by royal charter.
1320. The company may apply to register as a company limited by shares, a company limited by guarantee or as an unlimited company. *Subsections (4) and (5)* impose restrictions on this choice. So, a company with limited liability may not register as an unlimited company, and only a company with share capital may register as a company limited by shares.
1321. A company may wish to apply to register under the Act in order to take advantage of legislation applying to companies registered under the Companies Acts. *Subsection (6)* makes clear that a company may register even if it is in order to take advantage of certain provisions of the Insolvency Act 1986 not available to unregistered companies. For example, under section 221(4) of the Insolvency Act 1986, unregistered companies may not be wound up under that Act voluntarily (except in accordance with the EC regulation on insolvency proceedings).

Section 1041: Definition of “joint stock company”

1322. This section restates section 683 of the 1985 Act. It defines the joint stock companies that may register under section 1040.

Section 1042: Power to make provision by regulations

1323. This section is a new provision. It confers power on the Secretary of State to make regulations in connection with the registration of a company following an application under section 1040 (application by UK company not formed under the Companies Acts to register under the Companies Acts). Regulations made under this section will replace the provisions made by sections 681 to 682, 684 to 690 and Schedule 21 of the 1985 Act. The regulations will cover the procedural requirements for registration, the conditions to be satisfied before registration and the documents to be supplied on an application for registration. The regulations will also set out the consequences of registration, including the status of the company following registration and the application of the

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Companies Acts to such companies following registration. The regulations are subject to the negative resolution procedure.