

**EXPLANATORY MEMORANDUM TO
THE COMPANY NAMES ADJUDICATOR RULES 2008**

2008 No. 1738

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

2. **Description**

2.1 The Company Names Adjudicator Rules 2008 provide rules for proceedings before a company names adjudicator to consider an objection to a company's registered name because it is either the same as one in which the applicant has goodwill or is so like such a name as to be likely to mislead by suggesting a connection between the company and the applicant. In particular, these Rules provide for:

- how an application is to be made;
- the service of documents and the consequences of failure to serve them;
- the form and manner in which evidence is to be given;
- circumstances in which hearings are and are not required;
- when proceedings are held in public;
- time limits and extensions to time limits;
- the fees to be charged;
- security for and the awarding of costs (and expenses).

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

3.1 None.

4. **Legislative Background**

4.1 During Standing Committee D's consideration of the Company Law Reform Bill, the Minister was asked some detailed questions about company names adjudicators (Fifth sitting, 22 June 2006, Hansard cols.144 & 145). She provided the following answers in a subsequent letter:

How many company names adjudicators will be created? "The number of company names adjudicators appointed will depend upon the volume of applications. The Patent Office [known as the UK Intellectual Property Office (UKIPO) since 2 April 2007] already operates a tribunal which determines objections to the registration of new trade marks on the basis of earlier conflicting trade names with a reputation, which is an analogous role to the one being created. Eight Hearing Officers undertake this work and it is expected that a proportion of these will initially be appointed as Company Names Adjudicators."

What will be their annual cost? "The annual cost will depend upon the volume of applications."

How will that cost be met? Will the adjudicator service be met out of fees and costs charged to relevant companies or from another source? “The cost will be met from application fees, but it is proposed that the tribunal will have the power to order the losing party to pay some or all of the costs of the other party.”

What functions will be assigned to the chief adjudicator? “The Chief Adjudicator will have responsibility for the administration of the tribunal and administrative responsibility for the other adjudication officers.”

To whom will the chief adjudicator and the company names adjudicators be accountable? “Legal Review of the officers’ decisions will be through appeal to the courts. The Chief Adjudicator will be responsible to the Secretary of State for the effective administration of the tribunal.”

Will appointments be full-time or part-time? “Appointments will initially be part time because the Company Name Adjudicators will continue to have other tribunal roles.”

How many other staff will be employed? “The number of other staff employed on this work will also depend upon the volume of the work. The Patent Office's Trade Mark Hearing Officers are currently supported by a team of 25 administrative staff.”

Whose offices will the adjudicators work from? Will the chief adjudicator have a separate office? “It is proposed that the tribunal will initially be located at the Patent Office, which is based in Newport, S.Wales, but which also holds hearings at its London Office and can hold hearings with parties elsewhere via video conference facilities.”

Where will hearings be held-in court rooms or other buildings? “The Patent Office has dedicated hearing rooms.”

What requirements are there for adjudicators to report on their work to Parliament or any other body? “Separately, in our consideration of clause 72 [section 72 of the Companies Act 2006], I promised to consider whether there should be a requirement for the adjudicators’ decisions to be published. We intend to bring forward an amendment at Report on this. I consider that this requirement will be sufficient report on the adjudicators’ work.”

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 There are no property rights in a company’s registered name as such. However a registered name may include a trade mark or word in which either the company or another person has property rights. As explained by the Minister during Standing Committee D’s consideration of a proposed amendment, the purpose of sections 69-74 of the Companies Act 2006 is:

“... to address the problem of opportunistic registration, referred to by Opposition Members, by which I mean the sharp practice of registering a company in a name that the opportunist realises is about to be used by someone else.”

“I understand that when Glaxo and Wellcome plcs held merger negotiations someone registered a company in the name of Glaxo Wellcome Ltd and then sought to bargain with those plcs for the release of the name. Clearly, that was an abuse of the registration process. It would have been equally so had the registration been because the opportunist believed that a company big outside the UK was about to establish itself here.” (Fifth sitting, 22 June 2006, Hansard cols.138)

7.2 UKIPO operates the Registrar of Trade Marks tribunal which was set up under the Trade Marks Act 1994 and which deals with similar conflicts. It is intended to appoint members of this tribunal as the first adjudicators.

7.3 In February 2007, the Department for Trade and Industry published a consultation document, Implementation of Companies Act 2006. In this, views were sought on the Government’s intention to base the rules for the company names adjudicator on the Registered Designs Rules 2006. All respondents agreed with this proposal. Subsequently, draft Rules were placed on the Department’s website. Only the Law Society and the Trade Marks, Patents and Designs Federation (TMPDF) commented on this draft; their comments were not substantive. The draft Rules, revised to take account of their comments and to include a fees schedule, were placed on the Department’s website in April. TMPDF again commented, making comparisons with the procedures for trade mark disputes. However these were not wholly apposite. Therefore the Rules were not subsequently revised.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal. The intention is that the fees cover the adjudicators’ costs; they will be kept under review to ensure this intention is fulfilled.

9. Contact

Anne Scrope at the Department for Business, Enterprise and Regulatory Reform, tel: 0207 215 2194 or e-mail: anne.scrope@berr.gsi.gov.uk, can answer any queries regarding the instrument.