

**EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006 (COMMENCEMENT NO. 8, TRANSITIONAL
PROVISIONS AND SAVINGS) ORDER 2008**

2008 No. 2860 (C.126)

1. 1.1 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 Companies Act 2006 has been commenced progressively in tranches since Royal Assent in November 2006. The present order will effectively complete commencement of the Act with effect from October 2009. The provisions it will bring into force from that date include ones dealing with:

- formation of companies
- companies' constitutions and capacity
- company names and business names
- re-registration of companies as a means of altering status
- protection from disclosure of residential addresses of company directors
- shares and share capital
- company charges
- dissolution and restoration to the register
- unregistered companies and overseas companies
- the registrar of companies

2.2 The present order also brings into force the remaining repeals in the Act. This will complete the repeal of all the company law elements of the Companies Act 1985 and the Companies Act 1989, and of their Northern Ireland equivalents. It also makes various transitional provisions and savings; and it repeals the transitional adaptations made in earlier orders so as to enable the remaining parts of the old company law to work with the parts of the new Act that were then being commenced.

2.3 The draft Order has been drafted by Parliamentary Counsel.

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

3.1 None

4. Legislative Background

4.1 The Companies Act 2006 was given Royal Assent on 8 November 2006. It started its passage through Parliament in November 2005, as the Company Law Reform Bill, after the "Company Law Reform" White Paper was published in March 2005. Its

name was then changed to the Companies Bill as a result of an amendment made during Commons committee proceedings. The Companies Act 2006 has substantially rewritten company law to make it easier to understand and more flexible, especially for small businesses. The Act partly restates some of the previous Companies Acts 1985 and 1989; partly rewrites some of the previous Companies Acts 1985 and 1989 to make the provisions simpler and easier to understand; and partly introduces new provisions.

Other Issues

4.2 The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 brings into force the remaining provisions of the Companies Act 2006. The only exceptions are sections 327(2)(c) and 330(6)(c), section 1175 as it applies to Northern Ireland, and Part 2 of Schedule 9.

4.3 The order brings into force the repeal of the remaining company law provisions of the Companies Act 1985, the Companies Act 1989 and the Companies (Audit, Investigations and Community Enterprise) Act 2004. Five categories of provisions will remain in those Acts:

- a) some Scots Law provisions, which are now devolved to the Scottish Parliament, and which are being replaced by the Scottish Parliament
- b) provisions about the Financial Reporting Council which are about the operation of that body and its subsidiaries, not about how companies generally conduct themselves, and
- c) provisions about investigations, which can go beyond companies to cover other types of organisation
- d) provisions about assisting overseas regulatory authorities, about financial markets, about the Financial Reporting Review Panel, and about insolvency, all of which relate more to financial services law than to company law
- e) provisions about community interest companies, which form a complete code which is additional to company law.

4.3 The Order also includes transitional provisions and savings in article 5 and Schedule 2.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 By completing the commencement of the Companies Act 2006, the instrument will put company law onto a UK-wide footing. The Act replaces both the previous Great Britain companies legislation – principally the Companies Act 1985 –, and the previous Northern Ireland companies legislation – principally the Companies (Northern Ireland) Order 1986.

6. European Convention on Human Rights

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

7. Policy background

7.1 As explained above, this draft Order brings into effect certain provisions of the Companies Act 2006, with appropriate transitional provisions and savings.

7.2 From the point when it comes into effect on 1 October 2009, any new application to form a company will result in a company formed under the Companies Act 2006, and all of that Act will apply to new companies. Any applications made before 1 October 2009 that have not been processed before 1 October will be registered under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.

7.3 BERR published a draft of the present order on its website for comment along with a short consultation document. In general, the order follows the approach set out there, except that in the light of responses to the consultation, the Government decided:

a) On restoration to the register of companies that have been dissolved, the extension to the time period after which this is possible from two years to six years will be applied to all companies dissolved on or after 1 October 2007. (This does not apply to restoration in connection with proceedings involving personal injury, where there is no time limit in company law.)

b) On certain powers that companies will now have to change capital, existing companies will enjoy these powers in the same way as new ones from 1 October 2009.

These aspects are explained in the summary of responses to consultation published by BERR on 24 October, available on its website at <http://www.berr.gov.uk/files/file48679.pdf>.

8. Impact

8.1 The Regulatory Impact Assessment relating to the Companies Act 2006 (<http://www.berr.gov.uk/files/file29937.pdf>), provisions of which are commenced by this Order, is available on the BERR website.

9. Contact

9.1 Richard Grafen at the Department for Business, Enterprise and Regulatory Reform (telephone: 0207 215 5323 or e-mail: richard.grafen@berr.gsi.gov.uk) can answer any queries regarding the instrument.