

EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006 (COMMENCEMENT NO. 6, SAVING AND
COMMENCEMENT NOS. 3 AND 5 (AMENDMENT)) ORDER 2008

2008 No. 674 (C.26)

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.

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

2. Description

2.1 The Companies Act 2006 is being commenced progressively in tranches between Royal Assent in November 2006 and October 2009. There have been five previous commencement orders, including the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (SI 2007/2194), made on 25 July 2007, the main purpose of which was to commence provisions of the Act with effect from 1 October 2007; and the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (SI 2007/3495), which commences provisions with effect from 6 April 2008 and 1 October 2008.

2.2 The present order commences provisions in the Act relating to the audit of small charitable companies, and corrects various unintended consequences of the third and fifth Commencement Orders.

2.3 In relation to smaller charitable companies in Great Britain, the order commences section 1175 of the Act and Part 1 of Schedule 9. This has the effect of removing from the Companies Act 1985 the special rules on the audit of small charities with effect from 1 April 2008. For financial years beginning on or after that date, small charitable companies will be subject to the financial scrutiny requirements in the Charities Act 1993 as amended by the Charities Act 2006 and the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 (SI 2008/527) in England and Wales, and the Charities Accounts (Scotland) Regulations 2006 (SSI 2006/218) in Scotland. (See article 3(1).)

2.4 For Northern Ireland, the current order saves the existing special rules on the audit of small charities in the Companies (Northern Ireland) Order 1986, including the reporting accountant regime. (See article 4 and Schedule 2.)

2.5 In relation to earlier commencement orders, the current order corrects a number of very minor and typographical errors, and makes seven more significant minor changes:

2.5.1 The Third Commencement Order contained transitional adaptations so that references to section 1157 of the Companies Act 2006 would be read as references to section 727 of the Companies Act 1985 until section 1157 was

commenced. Section 1157 will be commenced on 1 October 2008 by the Fifth Commencement Order, but that order undid the earlier transitional adaptation with effect from 6 April 2008. The current order ensures that the adaptation will be changed in October rather than April. (See Schedule 3, paragraphs 1 and 5.)

2.5.2 The Third Commencement Order commenced provisions reducing the percentage of members' votes required for a company to hold a general meeting at short notice from 95% to 90%, unless their articles otherwise provide. The current order ensures that a company that had elected under the Companies Act 1985 to reduce their percentage threshold can continue to enjoy the benefit of that, notwithstanding that their articles may specify a 95% threshold. (Schedule 3, paragraph 2(2))

2.2.3 The Third Commencement Order commenced Part 32 of the Companies Act 2006, which amends the law on company investigations, with effect from 1 October 2007. That order included a transitional provision to ensure that the changes made by Part 32 would not affect a company inspection already under way at that date. The current order amends the transitional provision so that it applies only to those changes that affect the appointment of inspectors. (Schedule 3, paragraph 2(3))

2.5.4 The Third Commencement Order commenced the provisions of the Companies Act 2006 that changed the timing of the Annual General Meeting of a public company with a transitional provision enabling public companies to have seven months rather than six months after the end of a financial year to hold their AGMs. This was to keep the deadline in line with the deadline for a public company to file its accounts under the Companies Act 1985. The Fifth Commencement Order removed this adaptation as it brought in Part 15 of the 2006 Act and a shorter deadline of six months for submitting annual accounts. However, the way in which it did this meant that the AGM deadline would be reduced immediately from 6 April 2008, whereas the change to the accounts deadline affects accounts only for financial years starting on or after 6 April. The current order ensures that the change in AGM timing will coincide with a company moving to drawing up its accounts under the 2006 Act. (Schedule 3, paragraph 4)

2.5.5 The Fifth Commencement Order commenced the provisions of the Companies Act 2006 that reduced from 20 to 10 years the length of time for which a company has to keep on its register of members details of a member who has left. It included a transitional provision that was intended to ensure that old records on the register at commencement date would be kept for another 10 years or until 20 years after a member had left, whichever was earlier. As a result of an error, however, it would have allowed all details of old members to be discarded on commencement date. The current order corrects this by replacing the 6 April 2008 as the final date on which old details may be discarded with the intended date of 6 April 2018 (in Schedule 3, paragraph 6(2)).

2.5.6 The current order provides transitional provisions for the 2006 Act's new provisions on the expenses of winding up. These transitional provisions replace those in the Fifth Commencement Order, and provide more detail in particular in relation to a voluntary winding up. (Schedule 3, paragraph 6(5))

2.5.7 The Third Commencement Order erroneously included commencement of the repeal of section 734(1) of the Companies Act 1985. The Fifth Commencement Order sought to correct this, but was itself inaccurate in referring to section 734 of the Companies Act “2006”. The current order corrects the reference in the latter order. (Schedule 3, paragraph 7)

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

3.1 This order will correct the mistake in the Fifth Commencement Order raised with the Department by the Joint Committee, as explained in the Department’s memorandum to the Committee of 28 January 2008 (published by the Committee as Appendix 6 to their Ninth Report of Session 2007-2008 (HL paper 53, HC 38-ix), available at <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtstatin/53/5316.htm>). (See paragraph 2.5.7 above.)

3.2 As this order is making corrections to the Third and Fifth Commencement Orders, copies of this order will be provided free of charge to those who purchased either earlier order.

4. Legislative Background

4.2 This order commences the repeal of the provisions in the Companies Act 1985 on the audit of small charitable companies in relation to Great Britain, and saves the corresponding provisions in the Companies (Northern Ireland) Order 1986 in relation to Northern Ireland.

4.1 It also makes various corrections to previous orders made under the Companies Act 2006, namely the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (SI 2007/2194), and the (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (SI 2007/3495).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. As explained above, the changes in relation to small charitable companies will be different in Great Britain and in Northern Ireland.

6. European Convention on Human Rights

6.1 Gareth Thomas, the Parliamentary Under Secretary of State for Trade and Consumer Affairs, has made the following statement regarding Human Rights:

“In my view the provisions of the Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 are compatible with the Convention rights.”

7. Policy background

7.1 As explained above, this order completes the process of transferring the special rules on the audit of small companies that are charities from company law to charity law, except in Northern Ireland. It also corrects errors in the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (SI 2007/2194), and the (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (SI 2007/3495).

8. Impact

8.1 The Regulatory Impact Assessment relating to the Companies Act 2006 (<http://www.berr.gov.uk/bbf/co-act-2006/clar-review/page22794.html>), provisions of which are commenced or applied by this order, is available on the website of the Department for Business, Enterprise and Regulatory Reform.

9. Contact

9.1 Richard Grafen at the Department for Business, Enterprise and Regulatory Reform (Tel: 020 7215 5323 or e-mail: richard.grafen@berr.gsi.gov.uk) can answer any queries regarding the instrument.