

EXPLANATORY MEMORANDUM TO
THE UNREGISTERED COMPANIES REGULATIONS 2009

2009 No. 2436

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 apply specified provisions of the Companies Act 1985 (“the 1985 Act”) and Companies Act 2006 (“the 2006 Act”) to certain companies that are not incorporated under any of the Companies Acts (“unregistered companies”).

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

- 3.1 Unregistered companies, that is incorporated companies not formed or registered under the Companies Acts or under any other public general Act of Parliament (for example, companies formed under private Acts of Parliament, royal charter and letters patent), are subject to certain provisions of the companies legislation.

- 3.2 Under the 1985 Act the relevant provisions are contained in section 718 and Schedule 22. Schedule 22 lists the provisions of the 1985 Act that are applied. Section 718(3) provides that where a provision is noted as applying “subject to section 718(3)” it applies only so far as is specified by regulations. Those Regulations are the Companies (Unregistered Companies) Regulations 1985 (S.I. 1985/680). It is therefore necessary to read Schedule 22 and the Regulations to discover what provisions apply and to what extent. For Northern Ireland; the equivalent provisions are in Article 667 and Schedule 21 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6)) (“the 1986 Order”) and in the Companies (Unregistered Companies) Regulations (Northern Ireland) 1986 (S.R. (NI) 1986 No 305).

- 3.3 Section 1043 of the 2006 Act replaces section 718(3) and Schedule 22 of the 1985 Act (and the equivalent provisions under the 1986 Order) with a single power to make regulations so that the requirements applying to unregistered companies may be set out in one place. The power is in the following terms:

- “(2) The Secretary of State may make provision by regulations applying specified provisions of the Companies Acts to all, or any specified description of, the bodies to which this section applies.

- (3) The regulations may provide that the specified provisions of the Companies Acts apply subject to any specified limitations and to such adaptations and modifications (if any) as may be specified.

(5) In this section “specified” means specified in the regulations.”.

3.4 This power is not a power to make regulations about a subject; it is a power to apply the provisions of the Companies Acts to companies not formed or registered under the Companies Acts. Parliament has expressly approved the extension to unregistered companies of the provisions of the Act, and has not placed any restriction on the extension of the enabling powers contained in those provisions.

4. Legislative Context

4.1 Section 718 of the 1985 Act applies to certain unregistered companies those provisions of that Act listed in its Schedule 22. Modifications to the application of those provisions are made in the Companies (Unregistered Companies) Regulations 1985 which were made under the power in section 718. The companies concerned are those incorporated in and having a principal place of business in the United Kingdom other than those-

- (a) that are incorporated by, or registered under, a public general Act of Parliament (this excludes all companies incorporated under any of the Companies Acts); or
- (b) whose objects are not the acquisition of gain by the body or its members; or
- (c) that are exempt by direction of the Secretary of State; or
- (d) that are open-ended investment companies.

Similar provision for Northern Ireland is made in Article 667 and Schedule 21 of the 1986 Order, and the Companies (Unregistered Companies) Regulations (Northern Ireland) 1986.

4.2 Section 1043 of the 2006 Act replaces section 718 of the 1985 Act (and Article 667 of the 1986 Order). It provides a power for regulations to apply, subject to any specified limitations, modifications or adaptations, specified provisions of the Companies Acts to all or some of unregistered companies.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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

- *What is being done and why*

7.1 The instrument retains the position under the 1985 Act as regards the application of the provisions of the Companies Acts to unregistered companies.

7.2 The exact number of unregistered companies is not known. It is believed that most have been formed by Royal Charter: over 900 such companies have been formed since the 13th Century but many are now defunct. About 400 are still actively within

the purview of the Privy Council. Of these, many were not formed for the purpose of carrying on a business that has for its object the acquisition of gain by the body or its individual members. Fewer than 50 unregistered companies have, in recent years, filed documents with Companies House as required by the 1985 Act. (By way of contrast, there are nearly 2.5 million active companies formed under the Companies Acts.)

8. Consultation outcome

8.1 Draft Regulations were published on the Department's website in July 2007. An email was sent to all those, some 900, who asked to be kept informed. No substantive comments were received.

8.2 The draft Regulations have been revised to bring them more closely in line with current law. They have also been substantially redrafted.

9. Guidance

9.1 Companies House will provide advice as and when required.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those that meet the definition in paragraph 4.1 above. There will be no change to the present position.

10.2 The impact on the public sector is minimal; Companies House allocate a reference number to any unregistered company that files a document and puts the filed documents on the register.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is the same regardless of the numbers employed.

12. Monitoring & review

12.1 It is intended to review the application of company law to unregistered companies in 2010.

13. Contact

13.1 Anne Scrope at the Department for Business, Innovation and Skills, Tel: 0207 215 2194 or email: anne.scrope@bis.gsi.gov.uk, can answer any queries regarding the instrument.