

**EXPLANATORY MEMORANDUM TO  
THE DRAFT COMPANIES ACT 2006 (COMMENCEMENT NO. 3,  
CONSEQUENTIAL AMENDMENTS, TRANSITIONAL PROVISIONS AND  
SAVINGS) ORDER 2007**

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 House of Lords Select Committee on the Merits of Statutory Instruments.

**2. Description**

2.1 The draft Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007:-

(a) will bring into force provisions of the Companies Act 2006 with effect from 1 October 2007 about the following:-

- resolutions and agreements affecting a company's constitution;
- inspection of register of members;
- exercise of members' rights;
- company directors (in part);
- derivative claims and proceedings by members;
- resolutions and meetings (except that sections 327(2)(c) and 330(6)(c) are not being commenced);
- control of political donations and expenditure (for Great Britain only; the provisions come into force in Northern Ireland on 1 November 2007), except for the provisions about independent election candidates (1 October 2008);
- the business review in the directors' report;
- appointment of auditors of private companies;
- fraudulent trading;
- protection of members against unfair prejudice;
- company investigations;
- offences under the Parts of the Act about the control of political donations and expenditure and about accounts and reports;

(b) will bring into force one technical provision of the Act for a very limited purpose on 15 December 2007;

(c) will bring some of the repeals in the Act into force, especially where provisions in the old law are being replaced by the provisions of the Act being brought into force on 1 October 2007;

(d) will make transitional provisions, savings and consequential amendments and repeals.

2.2 The draft Order has been drafted by Parliamentary Counsel.

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

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. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 brings only some of the provisions of the Companies Act 2006 into force. Some of the provisions brought into force refer to provisions, expressions and concepts provided for in parts of the Act not yet brought into force. This has resulted in the need for the transitional adaptations contained in Schedule 1 to the Order and the provision about definitions in article 7. Most of the adaptations take the approach of applying provisions, expressions and concepts provided for in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986 to the provisions brought into force.

4.3 The Order also includes transitional provisions in article 9 and Schedule 3.

### **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

### **6. European Convention on Human Rights**

6.1 Stephen Timms MP, Minister of State at the Department for Business, Enterprise and Regulatory Reform, has made the following statement regarding Human Rights:

“In my view the provisions of The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 are compatible with the Convention rights.”

### **7. Policy background**

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

7.2 Among the transitional provisions are ones in respect of derivative claims and proceedings in Part 11 of the 2006 Act. These are claims and proceedings brought by shareholders of a company against the company's directors, but on behalf of the company. Under these transitional provisions, the new derivative procedures must be used for all claims started on or after 1 October 2007; but the courts must ensure that, to the extent that any claim is based on acts or omissions by a director before 1 October 2007, the claim is only allowed to proceed as a derivative claim if it could have been brought as a derivative claim under the old, common law.

## **8. Impact**

8.1 The Regulatory Impact Assessment relating to the Companies Act 2006 (<http://www.berr.gov.uk/bbf/co-act-2006/clr-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 Mike Penry at the Department for Business, Enterprise and Regulatory Reform (telephone number: 0207 215 0345 or e-mail: [Mike.Penry@berr.gsi.gov.uk](mailto:Mike.Penry@berr.gsi.gov.uk)) can answer any queries regarding this instrument.