

EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006 (AMENDMENT OF SCHEDULE 2)
(NO.2) ORDER 2009

2009 No. 1208

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

2. Purpose of the instrument

2.1 This Order amends Schedule 2 to the Companies Act 2006 (c. 46) (specified persons, descriptions of disclosures etc. for the purposes of section 948) which sets out the list of specified persons and descriptions in respect of whom and which disclosure of information is permitted in the case of a takeover. These amendments are being made to include within the Schedule disclosure to specified persons and specified descriptions of disclosure relating to the Isle of Man, Jersey and Guernsey.

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

3.1 None

4. Legislative Context

4.1 The Order relates to Part 28 of, and Schedule 2 to, the Companies Act 2006. It is made under sections 948 and 1292 of the Companies Act 2006. It revokes the Companies Act 2006 (Amendment of Schedule 2) Order 2009 (S.I. 2009/202). The provisions of that Order are re-enacted in this Order. That Order was made as a result of the extension of the provisions of Part 28 and Schedule 2 to the Isle of Man by the Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 (S.I. 2008/3122).

4.2 From 1 July 2009 the Takeover Panel will have functions under the laws of Jersey and Guernsey in the same manner as those set out in Part 28. This Order amends Schedule 2 to permit the disclosure of information in accordance with section 948 of the Companies Act 2006 to specified persons and for specified descriptions of disclosure in those jurisdictions to ensure a fully reciprocal application in the United Kingdom and those jurisdictions of the gateways for disclosure of material supplied to the Takeover Panel in connection with the exercise of its functions.

5. Territorial Extent and Application

The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The instrument is subject to the negative resolution procedure but amends primary legislation.

6.2 Ian Pearson has made the following statement regarding human rights:

In my view the provisions of the Companies Act 2006 (Amendment of Schedule 2) (No. 2) Order 2009 are compatible with the Convention rights.

7 Policy background

7.1 Part 28, Chapter 1, of the Companies Act 2006 gives the Takeover Panel designated authority to carry out various regulatory functions in relation to takeovers in implementation of the Takeover Directive (Directive 2004/25/EC). In exercising its functions, the Panel can require documents and information in accordance with section 947 of the Companies Act 2006. Section 948 of the Act provides that information may only be disclosed with consent, unless in accordance with the exemptions in section 948(3). Schedule 2 of the Companies Act 2006 sets out list of specified persons and descriptions in respect of whom and which disclosure of information under that section is permitted.

7.2 Section 965 of the Act provides that Her Majesty may, by Order in Council, direct that Chapter 1 of Part 28 extend to the Isle of Man or any of the Channel Islands. It has been decided by the Isle of Man, Jersey and Guernsey authorities that the Panel and the Code should have legal standing in each jurisdiction.

7.3 This power was exercised in respect of the Isle of Man in the Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 (S.I. 2008/3122), and the necessary amendment to Schedule 2 to give effect to that extension was made in Companies Act 2006 (Amendment of Schedule 2) Order 2009 (S.I. 2009/202).

7.4 This Order makes further amendments to Schedule 2 of the Companies Act 2006 to include provisions in respect of disclosure of information under the laws of Isle of Man, Jersey and Guernsey as a consequence of the introduction in Jersey and Guernsey of legislation of equivalent effect to that contained in Part 28 of the Companies Act 2006. It revokes and re-enacts the provisions of S.I. 2009/202.

7.5 This Order is necessary to ensure a fully reciprocal system of gateways in the United Kingdom, Isle of Man, Jersey and Guernsey for the disclosure of information supplied to the Takeover Panel in the exercise of its functions.

8. Consultation outcome

The authorities of Isle of Man, Jersey and Guernsey and the Takeover Panel have been consulted on the drafting of this Order.

9. Guidance

Guidance on this Order is available from Julie Ford whose contact details can be found at paragraph 13.

10. Impact

This Order has no impact on the costs of business, charities or voluntary bodies.

11. Regulating small business

This Order does not apply to small business.

12. Monitoring & review

12.1 This Order amends the provisions of Schedule 2 to the Companies Act 2006 (specified persons, descriptions of disclosures etc. for the purposes of section 948) to include references to relevant Isle of Man, Jersey and Guernsey bodies and persons.

12.2 Where from time to time the Isle of Man, Jersey and Guernsey may elect to amend the schedules of specified persons etc. in the respective laws relating to those jurisdictions, it will be a matter for the Takeover Panel to monitor & review such amendments, and to notify the department of any similar amendments required to Schedule 2 to the Companies Act 2006.

13. Contact

Julie Ford at the Department for Business, Enterprise and Regulatory Reform 0207 215 2162 or e-mail: Julie.Ford@berr.gsi.gov.uk can answer any queries regarding the instrument.