

EXPLANATORY MEMORANDUM TO
THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY
(AMENDMENT) REGULATIONS 2009

2009 No. 2400

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.

2. Purpose of the instrument

2.1 This instrument consequentially amends the European Public Limited-Liability Company Regulations 2004¹ (“the 2004 Regulations”) to reflect the changes made in company law by the Companies Act 2006 (“the 2006 Act”).

2.2 The Regulations have been drafted by Parliamentary Counsel.

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

3.1 None

4. Legislative context

4.1 The 2004 Regulations make provision in relation to Council Regulation 2157/2001 on the Statute for a European Company (“the EU Regulation”) in respect of those articles of the EU Regulation that permit or oblige Member States to enact measures in their national law. The 2004 Regulations also implement Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees (“the EU Directive”).

4.2 The EU Regulation is directly applicable and establishes the basic structure of the European limited-liability company or ‘Societas Europaea’ (“SE”) and methods of forming an SE. On many matters, it applies to SEs the national legislation applicable to public companies in the Member State where the SE is registered, for example in relation to capital maintenance and to winding up, liquidation and insolvency. In the case of matters not regulated by the EU Regulation, an SE will be governed by national law applicable to public limited-liability companies.

4.3 In light of the changes made to company law by the 2006 Act, the 2004 Regulations require amendment. The 2004 Regulations were made under section 2(2) of the European Communities Act 1972, using the negative

¹ S.I. 2004/2326.

resolution procedure; the same power is being used to make the necessary amendments.

4.4 Section 1285 of the 2006 Act extends the 2004 Regulations to Northern Ireland, and repeals the equivalent Northern Ireland regulations². This instrument therefore applies to the whole of the UK.

4.5 Part 3 of the 2004 Regulations and Part 3 of the Northern Ireland equivalent regulations contain provisions regarding employee involvement arrangements for European limited-liability companies. The employee involvement provisions for Great Britain and Northern Ireland differ in that they refer to different legislation and institutions.

4.6 In order to preserve the separate regimes for Great Britain and Northern Ireland, the provisions regarding employee involvement arrangements for European limited-liability companies are covered in two new statutory instruments: the European Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009³ and the European Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009⁴. These two statutory instruments will come into force on the same date as the instrument amending the 2004 Regulations. This instrument therefore revokes Part 3 of the 2004 Regulations.

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

7.1 The SE is an alternative company form to the national public company forms available in Member States. Its use is voluntary. An SE may be created on registration in any Member State. There are several ways of forming an SE: by merger, as a holding company, as a subsidiary, or by transformation from public limited company to an SE.

7.2 The Companies Act 2006 has substantially rewritten company law. The provisions of the 2006 Act not yet in force will commence on 1 October 2009. This instrument therefore amends the 2004 Regulations to replace references to the Companies Act 1985 with equivalent provisions in the 2006

² The European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (S.R. (NI) 2004 No 417) and the European Public Limited-Liability Company (Fees) Regulations (Northern Ireland) 2004 (S.R. (NI) 2004 No 418).

³ S.I. 2009/2401.

⁴ S.I. 2009/2402.

Act. The 2004 Regulations are also amended to refer to new forms for various Companies House filing requirements for SEs.

7.3 The 2004 Regulations are amended to apply UK-wide, which necessitates retaining certain Northern Ireland specific provisions, for example references to Northern Ireland insolvency legislation.

7.4 The 2004 Regulations provided for the registration with the registrar of companies of details, including addresses, of members of the supervisory organ of a two-tier SE, and applied the Companies Act 1985 confidentiality order regime to the members'⁵ residential addresses. This instrument amends the 2004 Regulations to require the filing in respect of such persons of the same details as are required for directors and secretaries of a public company, and also accord such members the same protection of residential address details as are available to directors of UK companies under the 2006 Act. In the case of members of the management and administrative organs of an SE, the filing of details and the protection of residential addresses is by virtue of Article 9(1)(c)(ii) of the EU Regulation which provides that the laws which apply to a UK public limited company shall apply to a SE. However, because UK public limited company law does not have the concept of a two tier board system, the 2004 Regulations are amended to expressly provide for the directors' addresses regime to apply to the members of the supervisory board.

7.5 Part 35 of the 2006 Act contains provisions relating to the register of companies. It will be amended in respect of its application to business entities other than companies by the Companies Act 2006 (Part 35) (Consequential Amendments, Transitional Provisions and Savings) Order 2009. Most of the provisions of Part 35 already apply to documents filed in accordance with UK public company law applicable to SEs by virtue of Article 9 of the EC Regulation. This instrument amends the 2004 Regulations so that references to "the register" in the 2006 Act include references to documents filed under the EU Regulation and the 2004 Regulations. It also specifically applies other provisions of Part 35 to material filed under the EU Regulation and the 2004 Regulations.

7.6 Regulation 60 of the 2004 Regulations was included in those regulations because of a misconception as to the effect of Article 19 of the EU Regulation. It is revoked by these Regulations.

8. Consultation outcome

8.1 The vast majority of the changes being made to the 2004 Regulations are as a consequence of the changes made to company law by the 2006 Act. A full consultation on the implementation of the 2006 Act took place in 2007.

⁵ In the EC Regulation, the terminology SE 'member' is analogous to a UK company 'director'.

9. Guidance

9.1 Companies House publishes guidance for SEs on their website <http://www.companieshouse.gov.uk/>. The guidance will be revised in line with this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as the Instrument is restricted to entities that register as SEs and the majority of amendments reflect the changes made in company law by the 2006 Act.

10.2 The regulations have no impact on the public sector.

10.3 An Impact Assessment of the effect that the 2004 Regulations would have on the costs of business was prepared and placed in the library of both Houses of Parliament, as were Transposition notes. These documents can be obtained from the Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET, and can be downloaded from http://www.opsi.gov.uk/si/em_20042326_en.pdf. An Impact Assessment has not been completed for the impact of the changes on SEs. The majority of the changes are purely consequential for example changing a reference to the Companies Act 1985 to the Companies Act 2006. The changes to forms will have no significant impact on business. The amendments which adopt the regimes of the Companies Act 2006, for example registration requirements and protection of directors' residential addresses, were included within the Regulatory Impact Assessment on the 2006 Act.

11. Regulating small business

11.1 The legislation applies to small businesses that are SEs.

11.2 This instrument is not adding any additional burdens to small business.

12. Monitoring & review

12.1 These Regulations amend the 2004 Regulations to reflect the changes made in company law by the 2006 Act. The 2004 Regulations, as amended, will be kept under review, and we will continue to consider whether the Regulations need to be amended or updated e.g. to reflect further changes to UK or EU company law.

13. Contact

13.1 Kate Gillies at the Department for Business, Innovation and Skills (tel: 020 7215 0253 or email: kate.gillies@berr.gsi.gov.uk) can answer any queries regarding the instrument.

