

EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006 (SUBSTITUTION OF SECTION 1201)
REGULATIONS 2009

2009 No. 3182

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 To ensure that a UK service address is not required of a person who does not have a place of business in the UK.

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

3.1 None

4. Legislative Context

4.1 Sections 1201 and 1202 of the Companies Act 2006 apply to

- individuals carrying on business in the United Kingdom under a name that is not their surname with/without forename and/or initials
- partnerships carrying on business in the United Kingdom under a name that is not the corporate names of partners who are bodies corporate and the surnames with/without forenames and/or initials of partners who are individuals.

Section 1201 requires these persons to provide certain information in their business documentation. Currently the information required includes for each individual trader and partner an address in the United Kingdom at which service of any document relating in any way to the business will be effective. This requirement applies whether or not the individual or partnership has a place of business in the United Kingdom.

4.2 The provisions of sections 1201 and 1204 of the Companies Act 2006 essentially replaced, from 1 October 2009, the provisions of section 4(1) of the Business Names Act 1985 and Article 6 of the Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7)). However, the provisions of section 4(1) of the Business Names Act 1985 and Article 6 of the Business Names (Northern Ireland) Order 1986 applied only to those who had a place of business in Great Britain or Northern Ireland.

4.3 Article 16(1)(a) of the EC Services Directive (2006/123/EC) requires Member States not to make exercise of a service activity subject to compliance with any requirement that does not respect the principle of non-discrimination either directly or indirectly.

4.4 These Regulations are being made under section 2(2) of the European Communities Act 1972 using the negative resolution procedure, as the substitution of section 1201 does not substantially affect the provisions of the Companies Act 2006.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 David Lammy, Minister of State for Higher Education and Intellectual Property, has made the following statement regarding Human Rights:

In my view the provisions of the Companies Act 2006 (Substitution of Section 1201) Regulations 2009 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 At present, certain unincorporated businesses must provide service addresses in the United Kingdom whether or not they have places of business in the United Kingdom. The requirement applies to any sole trader carrying on business under a name that is not his surname name (with or without forename and/or initials) and to partnerships where the business name is not the partners' names, whether surnames (with or without forename and/or initials) of partners who are individuals or the corporate names of corporate partners. Prior to 1 October 2009, this requirement applied only to those with places of business in the United Kingdom.

7.2 A change to the requirement for a service address in the UK is required to ensure that section 1201 of the Companies Act 2006 does not infringe the EC Services Directive by indirectly discriminating against persons established in other Member States who do not have a place of business in the UK. All UK domestic legislation must comply with the EC Services Directive as of 28 December 2009.

7.3 The Regulations substitute section 1201 of the Companies Act 2006 so that a service address in the United Kingdom is required only if the individual or partnership concerned has a place of business in the United Kingdom. Under section 1201 as substituted, if the individual or partnership concerned does not have a place of business in the United Kingdom, then there is no geographical restriction on the location of the address. Rather, in these circumstances, the address must be a place where the service of documents can be effected by physical delivery and where a record acknowledging the delivery can be obtained. The new requirement for those without a place of business in the United Kingdom is the same as the requirement for service addresses provided by the Companies Act 2006 (Annual Return and Service Addresses) Regulations 2008 (S.I. 2008/3000).

8. Consultation outcome

8.1 There has not been any consultation.

9. Guidance

9.1 The Department will write to the Local Authorities Coordinators of Regulatory Services (LACORS) drawing their attention to the forthcoming change to the requirement for a service address

10. Impact

10.1 The impact on business, charities or voluntary bodies is of two kinds. Those that do not have a place of business in the United Kingdom will not be required to have a service address in the United Kingdom. Those wishing to serve documents on a business that does not have a place of business in the United Kingdom will have to do so at an address elsewhere. We consider that, in terms of costs, the impact will be minimal.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is not required.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The requirement for service addresses provided by the Companies Act (Annual Return and Service Addresses) Regulations 2008 (S.I. 2008/3000) will be evaluated from 2011, as part of the Companies Act 2006 evaluation. Any lessons learnt from that review will be applied also to this Regulation.

13. Contact

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.