

EXPLANATORY MEMORANDUM TO
THE UNREGISTERED COMPANIES (AMENDMENT) REGULATIONS 2013
2013 No. 1972

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 These Regulations amend the Unregistered Companies Regulations 2009 (S.I. 2009/2436) which applied 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”). These amendments are made in consequence of changes to the 2006 Act made by the Enterprise and Regulatory Reform Act 2013 (c.24) and the Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 (S.I. 2013/xxxx) (“the 2013 Regulations”).

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

3.1 None.

4. Legislative Context

4.1 Section 1043 of the 2006 Act provides a power to apply by regulations, subject to any specified limitations, modifications or adaptations, specified provisions of the Companies Acts to all or some of unregistered companies. This power was exercised in the Unregistered Companies Regulations 2009 (S.I. 2009/2436) and several provisions in Part 15 of the 2006 Act (accounts and reports) were applied to unregistered companies with modifications (Schedule 1, paragraph 10).

4.2 Amendments were made to Part 15 of the 2006 Act by the Enterprise and Regulatory Reform Act 2013 (c.24) and the Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 (S.I. 2013/xxxx) (“the 2013 Regulations”). These Regulations are made to amend S.I. 2009/2436 as a consequence.

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 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 2006 Act. (By way of contrast, there are nearly 2.5 million active companies formed under the Companies Acts). However certain provisions of the 2006 Act regarding the preparation of accounts and reports have been applied to these companies, and this instrument amends that application in the light of the amendments made to the 2006 Act by recent legislation.

7.2 Although S.I. 2009/2436 required unregistered companies to prepare a directors' report in accordance with the provisions of sections 415 to 419, it did not require such companies to prepare a business review (section 417). The repeal of section 417 and the substitution in sections 414A to 414D of a requirement to prepare a strategic report were effected by the 2013 Regulations. Consistent with the decision not to apply section 417 these Regulations do not apply the new provisions on preparation of a strategic report to unregistered companies.

7.3 S.I. 2009/2436 applied the provisions of sections 426 to 429 (option for company to prepare and supply a summary financial statement to members instead of full accounts and reports). However those provisions have also been amended by the 2013 Regulations to substitute the provision to members of a copy of the strategic report instead of the preparation of summary financial statement. As the provisions regarding the strategic report are not being applied to unregistered companies, these Regulations consequentially disapply the provisions of sections 426 to 429.

7.4 S.I. 2009/2436 applied sections 420 to 422 (preparation of directors' remuneration report) and sections 439 to 440 (vote on directors' remuneration report) to unregistered companies. The provisions of Part 10 Chapter 4 (transactions with directors requiring approval) were not applied. The amendments to the 2006 Act, to the directors' remuneration report (section 421 and new section 422A), the introduction of a binding vote (new section 439A) and the restrictions on payments by companies (new Chapter 4A of Part 10) by the Enterprise and Regulatory Reform Act 2013 (c.24) are sufficiently extensive, involving as they do binding votes by shareholders that restrict payments by companies, that it is not possible to apply the revised regime to unregistered companies. Sections 420 to 422 and 439 to 440 of the 2006 Act are, therefore, disapplied.

8. Consultation outcome

8.1 In relation to the preparation of a directors remuneration report and vote on directors remuneration report, the changes in this instrument are consequential upon the changes made under the Enterprise and Regulatory Reform Act 2013, which were based on a full consultation, running from 14 March 2012 to 27 April 2012.

8.2 In relation to a directors' report and strategic report, the Government committed to improving the narrative section of the annual report and accounts in the Programme for Government 2010 and in the Growth Review of 2011. The consultation covering changes to the structure of the narrative sections of the annual report and ran from 19 September 2011 to 25 November 2011, receiving 116 responses.

8.3 Both consultations involved the full range of stakeholders and the specific changes in this instrument have not been subject to further review as they result from the legislative changes already consulted on.

9. Guidance

9.1 Companies House provides 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 section 1043 of the Act (see paragraph 4.1 above).

10.1 The changes to directors' remuneration, made under the Enterprise and Regulatory Reform Act 2013, and narrative reporting framework were subject to full impact assessments. The impact of this instrument was implicit in those assessments.

10.2 In the case of directors' remuneration, the changes made under the Enterprise and Regulatory Reform Act 2013 are intended to empower shareholders to hold quoted companies to account over directors' remuneration. Unregistered companies do not have the same legal structure as companies incorporated under the Companies Act and are not listed on the London Stock Exchange. The Government's assessment is therefore, that there will be no impact on any companies or individuals. This amendment simply tidies up the requirements.

10.3 Unregistered companies are required to produce an annual report and accounts. However, they are currently not required to produce a "business review" or "enhanced business review" as laid out in sections 417 of the Companies Act (2006), the purpose of which is to aid shareholders in assessing the conduct of the company's directors as laid out in section 172 of the Companies Act (2006). Therefore, the Government's assessment is that it is unnecessary to request that unregistered companies produce this information when the proposed change to the content and structure of narrative reports change on 1 October and this amendment continues the status quo.

10.4 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.

10.5 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 to unregistered companies of the provisions of the 2006 Act as and when those provisions are reviewed.

13. Contact

13.1 Mark Jackson at the Department for Business, Innovation and Skills, tel: 0207 215 0352 or email: mark.jackson@bis.gsi.gov.uk, can answer any queries regarding the instrument.