

EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006 (INTERCONNECTION OF REGISTERS) ORDER 2014
2014 No. 1557

1. 1.1 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 amends Part 35 of the Companies Act 2006 to implement certain articles of EU Directive 2012/17/EU of the European Parliament and the Council of 13th June 2012, insofar as they amend Directive 2009/101/EC. A Transposition Note explaining how the Directive has been transposed is annexed to this Explanatory Memorandum.

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

3.1 None

4. Legislative context

The Company Law Directive (2009/101/EC)

4.1 Directive 2009/101/EC requires companies to disclose certain specified information (including the particulars of persons who take part in the administration of a company, a company's accounting information and its registered address). Under Article 3 of the Directive, Member States are required to ensure that the disclosed information is kept on a central register and made publically available for inspection. The information disclosed by the company must be capable of being filed in electronic form, and in any case must be kept and entered into the register electronically. In addition, Member States are required to ensure that company disclosures are effected by giving notice in the national gazette.

4.2 Directive 2009/101/EC replaced and repealed the first Company Law Directive (68/151/EEC). This instrument amends section 1078 of the Companies Act 2006 (c. 46) (the "2006 Act") to update the reference to Directive/2009/101/EC

Part 35 of the Companies Act 2006

4.3 Directive 2009/101/EC is implemented by the 2006 Act. Under the 2006 Act, companies send their particulars and information (including those required to be disclosed under the Directive) to the registrar of companies. The functions and duties of the registrar of companies are set out in Part 35 of the 2006 Act. The registrar is responsible for keeping and maintaining all the particulars and information sent to the registrar (section 1080). The records are collectively known as "the register". The

register is made available for public inspection (section 1085) and any person is entitled to a copy of material on the register (section 1086). In practice, the register is held at Companies House. The registrar also must cause notice to be published in the Gazettes (i.e. London, Edinburgh and Belfast Gazettes) upon receipt of any document that is required to be disclosed under the Directive (section 1077).

The Interconnection of Registers Directive (2012/17/EU)

4.4 Directive 2012/17/EU amended Directives 89/666/EEC (concerning disclosure requirements by company branches) and Directives 2005/56/EC (on cross border mergers) and 2009/101/EC (the Company Law Directive). The aim of the amendments is to facilitate and establish a system for the interconnection of central, commercial and company registers.

Article 3a of Directive 2009/101/EC

4.5 In particular, Directive 2012/17/EU inserted Article 3a into Directive 2009/101/EC. Article 3a requires that Member States must ensure that up-to-date information is made available explaining the provisions of national law according to which third parties can rely on the particulars and each type of document disclosed by companies. Member States must provide the information required for publication on the European e-Justice portal in accordance with the portal's rules and technical requirements. The European e-Justice portal is the European electronic access point for information, which will include information from European company registers. This aspect is implemented by the instrument, which inserts a new section 1079A into the 2006 Act requiring the registrar of companies to provide the information for publication on the e-Justice portal.

Other amendments (i): Article 2a of Directive 2009/101/EC

4.6 Directive 2012/17/EU also amends Directive 2009/101/EC requiring Member States to ensure that that changes in documents and particulars required to be disclosed by companies are entered in the register, and that notice is published in the national gazette of the receipt of the documents, normally within 21 days from receipt of the complete documentation. This time limit is interpreted as requiring Member States to make reasonable efforts to meet the deadline. The time limit of 21 days is suspended in cases of force majeure.

4.7 In the UK, this time limit will require the registrar to enter information on the register under section 1080 of the 2006 Act, and publish notice in the Gazette under section 1079, normally within 21 days. However, the registrar is already under well-established duties¹ to act "as soon as reasonably practicable" in relation to the performance of the registrar's functions, which is sufficient to meet the obligation to register documents and publish notice in the Gazette "normally within 21 days". Consequently, no further transposition is required in this respect.

¹ *Re Globespan Airways Ltd* [2013] 1WLR

Other amendments (ii): Data Protection articles

4.8 The amendments made by Directive 2012/17/EU also require that any processing of personal data carried out in the context of Directives 89/666/EEC, 2005/56/EC and 2009/101/EC are subject to Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the “Data Protection Directive”). This will provide that the system of interconnection of registers is performed in accordance with the principles of data protection. The Data Protection Directive has already been transposed into law by the Data Protection Act 1998 and applies to the registrar of companies who carries out the processing of personal data in the context of Directives 89/666/EEC, 2005/56/EC and 2009/101/EC. No further transposition is required.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The UK Government is responsible for company law in England and Wales and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the 2006 Act and associated legislation on companies and partnerships should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Companies Act 2006 (Interconnection of Registers) Order 2014 are compatible with the Convention rights.

7. Policy background

What is being done and why?

7.1 Companies are increasingly expanding beyond national borders and the use of technology and the internet makes it easier for contracts to be entered into across borders. In many cases mergers and divisions also involve companies from different Member States. To support this cross border activity demand is increasing for information on companies either for commercial purposes or to facilitate access to justice. The amendments made by this instrument will be the first step to facilitating technological changes required to interconnect European business registries.

7.2 Cross border communications will be improved by enabling access to a common set of information as Member States will make available the information required to be disclosed by companies under Article 2 of Directive 2009/101/EC through a single European platform which will connect all registers.

7.3 In particular these amendments will ensure that third parties ascertain when they can rely on information held by the registrar of companies (Companies House). At present Companies House includes a statement on its communications explaining that information held is supplied by the company. The changes to the legislation will ensure that a similar statement is attached to information which is supplied through the e-Justice portal.

7.4 Although the Commission is yet to agree with Member States the exact technologies that will be used to connect the registries, it has been agreed that access to the information held will be through the e-Justice portal. The ability to access information on European company and business registers through the use of the e-Justice portal will not prevent access to information directly from registers: instead it will be the e-Justice portal that links into the systems supporting interconnection.

7.5 This Directive does not place an obligation on Member States to harmonise their national systems of central, commercial and companies' registers, or change any internal systems.

Consolidation

7.6 Not applicable

8. Consultation outcome

8.1 The European Commission adopted a Green Paper accompanied by a progress report on the interconnection of business registries in November 2009. The Green Paper formed the basis of a public consultation open from November 2009 to January 2010. The Department of Business Innovation and Skills made this consultation available to UK stakeholders via both the BIS website and Companies House Website. The responses to the EU consultation were supportive of interconnection of registries. The Directive facilitates changes to the way the registrar connects with other registers and does not impact on business or add any costs to business.

9. Guidance

There is not impact on business therefore guidance is not required.

10. Impact

10.1 An impact assessment has not been prepared because the instrument does not place any additional legislative burdens on business, charities or voluntary organisations.

11. Regulating small business

11.1 This instrument facilitates the interconnection of company and business registers and will not impact on small business.

12. Monitoring & review

12.1 Directive 2012/17/EU will be reviewed no later than five years after the final transposition of the Directive. The Commission will publish a report on the Directive including technical aspects of the Directive and if necessary make proposals for amending the Directive.

13. Contact

Maureen Beresford at the Department for Business, Innovation and Skills (tel: 020 7215 3342 or email: maureen.beresford@bis.gsi.gov.uk) can answer questions about this instrument.