

*Draft Order laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and sections 1290, 1292(4) and 1294(6) of the Companies Act 2006, for approval by resolution of each House of Parliament.*

*This draft Order amends [S.I. 2008/2860 \(C. 126\)](#) and is being issued free of charge to all known recipients of that Statutory Instrument.*

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## DRAFT STATUTORY INSTRUMENTS

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**2009 No. 0000**

**COMPANIES**

### The Companies Act 2006 (Part 35) (Consequential Amendments, Transitional Provisions and Savings) Order 2009

*Made* - - - - *\*\*\**  
*Coming into force* - - *1st October 2009*

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

The Secretary of State makes the following Order in exercise of the powers conferred by that section and by sections 1292, 1294 and 1296 of the Companies Act 2006<sup>(3)</sup>.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and sections 1290, 1292(4) and 1294(6) of the Companies Act 2006, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

#### **Citation and commencement**

1. This Order may be cited as the Companies Act 2006 (Part 35) (Consequential Amendments, Transitional Provisions and Savings) Order 2009 and comes into force on 1st October 2009.

#### **Amendments of the Companies Act 2006**

2. Part 35 of the Companies Act 2006 (the registrar of companies) is amended as follows.
3. Before section 1060 insert—

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(1) [S.I. 2007/193](#).

(2) [1972 c. 68](#); section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3(3) of, and the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)).

(3) [2006 c. 46](#); sections 1292, 1294 and 1296 were applied to unregistered companies by regulation 3 of, and the Schedule to, [S.I. 2007/318](#) and section 1292 was applied to limited liability partnerships by regulation 57 of [S.I. 2008/1911](#) and by regulation 81 of [S.I. 2009/\[XXXX\]](#).

*“Scheme of this Part*

**Scheme of this Part**

**1059A.**—(1) The scheme of this Part is as follows.

(2) The following provisions apply generally (to the registrar, to any functions of the registrar, or to documents delivered to or issued by the registrar under any enactment, as the case may be)—

sections 1060(1) and (2) and 1061(4) to 1063(5) (the registrar),  
sections 1068 to 1071 (delivery of documents to the registrar),  
sections 1072 to 1076 (requirements for proper delivery),  
sections 1080(1), (4) and (5) and 1092 (keeping and production of records),  
section 1083 (preservation of original documents),  
sections 1108 to 1110 (language requirements: transliteration),  
sections 1111 and 1114 to 1119 (supplementary provisions).

(3) The following provisions apply in relation to companies (to companies or for the purposes of the Companies Acts, as the case may be)—

section 1060(3) and (4) (references to the registrar in the Companies Acts),  
sections 1064(6) and 1065(7) (certificates of incorporation),  
section 1066(8) (companies’ registered numbers),  
sections 1077 to 1079(9) (public notice of receipt of certain documents),  
sections 1080(2) and (3), 1081(10), 1082(11) and 1084(12) (the register),  
sections 1085 to 1091(13) (inspection of the register),  
sections 1093 to 1098(14) (correction or removal of material on the register),  
section 1106(15) (voluntary filing of translations),  
sections 1112(16) and 1113(17) (supplementary provisions).

(4) The following provisions apply as indicated in the provisions concerned—

section 1067 (registered numbers of UK establishments of overseas companies),  
sections 1099 to 1101 (the registrar’s index of company names),

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(4) By virtue of article 6 of *S.I. 2009/317*, the references in section 1061 to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 (*S.I. 1989/2405 (N.I. 19)*) are to be read as including a reference to Parts 2 and 3 of the *Banking Act 2009 (c. 1)*.

(5) Section 1063 was applied for the purposes of *S.I. 2007/2974* by regulation 4 of those Regulations.

(6) Section 1064 was applied to limited liability partnerships by regulation 61 of *S.I. 2009/[XXXX]*.

(7) Section 1065 was applied to limited liability partnerships by regulation 61 of *S.I. 2009/[XXXX]*.

(8) Section 1066 was applied to limited liability partnerships by regulation 62 of *S.I. 2009/[XXXX]*.

(9) Sections 1077 to 1079 were applied to limited liability partnerships by regulation 63 of *S.I. 2009/[XXXX]*.

(10) Section 1081 was applied for the purposes of *S.I. 2007/2974* by regulation 4 of those Regulations, and was applied to limited liability partnerships by regulation 64 of *S.I. 2009/[XXXX]*.

(11) Section 1082 was applied to limited liability partnerships by regulation 64 of *S.I. 2009/[XXXX]*.

(12) Section 1084 was applied to limited liability partnerships by regulation 65 of *S.I. 2009/[XXXX]*.

(13) Sections 1085 to 1091 were applied to limited liability partnerships by regulation 66 of *S.I. 2009/[XXXX]*.

(14) Sections 1093 to 1098 were applied to limited liability partnerships by regulation 67 of *S.I. 2009/[XXXX]*.

(15) Section 1106 was applied for the purposes of *S.I. 2007/2974* by regulation 4 of those Regulations, and was applied to limited liability partnerships by regulation 68 of *S.I. 2009/[XXXX]*.

(16) Section 1112 was applied for the purposes of *S.I. 2007/2974* by regulation 4 of those Regulations, and was applied to limited liability partnerships by regulation 69 of *S.I. 2009/[XXXX]*.

(17) Section 1113 was applied for the purposes of *S.I. 2007/2974* by regulation 4 of those Regulations, and was applied to limited liability partnerships by regulation 69 of *S.I. 2009/[XXXX]*.

sections 1102 to 1105 and 1107(18) (language requirements: translation).

(5) Unless the context otherwise requires, the provisions of this Part apply to an overseas company as they apply to a company as defined in section 1.”.

4. In section 1061 (the registrar’s functions)—
  - (a) in subsection (1), for paragraph (a) substitute—
    - “(a) to perform the functions conferred on the registrar by or under the Companies Acts or any other enactment, and”;
  - (b) omit subsection (2).
5. In section 1067 (registered numbers of branches of overseas company)—
  - (a) in the heading for “branches” substitute “UK establishments”;
  - (b) in subsection (1)—
    - (i) for “branch” substitute “UK establishment”;
    - (ii) for “the branch’s registered number” substitute “the UK establishment’s registered number”;
  - (c) in subsection (2) for “Branches’ registered numbers” substitute “The registered numbers of UK establishments of overseas companies”;
  - (d) in subsection (4) for “a branch’s registered number” substitute “the registered number of a UK establishment”;
  - (e) in subsection (5) for “the branch’s registered number” substitute “the UK establishment’s registered number”;
  - (f) after that subsection add—
    - “(6) In this Part “establishment”, in relation to an overseas company, means—
      - (a) a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC)(19), or
      - (b) a place of business that is not such a branch,and “UK establishment” means an establishment in the United Kingdom.”.
6. In section 1068(3) (registrar’s requirements as to authentication), for paragraph (c) substitute—
  - “(c) require the document to contain or be accompanied by the name or registered number (or both) of the company (or other body) to which it relates.”.
7. In section 1070(1) (agreement for delivery of documents by electronic means), after “a company” and “the company” insert “(or other body)”.
8. In section 1075 (informal correction of document)—
  - (a) in subsection (2)(b) for “the company” substitute “the company (or other body) to which the document relates”;
  - (b) in subsection (3)(b)(ii) after “the company” insert “(or other body)”;
  - (c) in subsection (4) for “The company’s consent” substitute “The consent of the company (or other body)”;

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(18) Sections 1102 to 1105 and 1107 were applied for the purposes of S.I. 2007/2974 by regulation 4 of those Regulations, and sections 1103 to 1107 were applied to limited liability partnerships by regulation 68 of S.I. 2009/[XXXX]. By virtue of article 6 of S.I. 2009/317, the references in section 1102 to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 are to be read as including a reference to Parts 2 and 3 of the Banking Act 2009.

(19) OJ L 395, 30.12.1989, p. 36.

- (d) in subsection (5) after “the company”, in each place where it occurs, insert “(or other body)”.
- 9.** In section 1076 (replacement of document not meeting requirements for proper delivery), in subsection (2)(b) after “company” insert “(or other body)”.
- 10.**—(1) Section 1080 (records to be kept by registrar) is amended as follows.
- (2) In subsection (1) (duty to keep records), for paragraphs (b) and (c) substitute—
- “, and
- (b) certificates issued by the registrar under any enactment.”.
- (3) In subsection (5) (records to be kept so that associated information may be retrieved)—
- (a) after “a company” insert “or other registered body”,
- (b) for “that company” substitute “that body”, and
- (c) for “the company” substitute “the body”.
- 11.** In section 1083(1) and (2) (preservation of original documents) for “recorded in the register” substitute “recorded”.
- 12.**—(1) Section 1087(1) (material not available for public inspection) is amended as follows.
- (2) After paragraph (b) insert—
- “(ba) representations received by the registrar in response to a notice under—
- (i) section 245(2)(**20**) (notice of proposal to put director’s usual residential address on the public record), or
- (ii) any corresponding provision of regulations under section 1046 (overseas companies);”.
- (3) For paragraph (h) (details of company charges) substitute—
- “(h) the contents of—
- (i) any instrument creating or evidencing a charge, or
- (ii) any certified or verified copy of an instrument creating or evidencing a charge, delivered to the registrar under Part 25(**21**) (company charges) or regulations under section 1052 (overseas companies);”.
- 13.** In section 1109(1) (voluntary transliteration of name or address into Roman characters), for “the company” substitute “the company (or other body) to which the document relates”.
- 14.** In section 1115(1) (electronic communications: consent to use of electronic means), after “company”, in both places where it occurs, insert “(or other body)”.
- 15.** In section 1116 (alternative to publication in the Gazette), in subsection (3)(b)(ii) for “the company” substitute “the company (or other body) to which the notice relates”.
- 16.** Omit section 1120 (application of Part to overseas companies).
- 17.** In Schedule 8 to the Companies Act 2006 (index of defined expressions)—
- (a) omit the entries relating to—
- (i) the registered number of a branch of an overseas company, and
- (ii) the registered number of a company; and

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(20) Section 245(2) was applied to limited liability partnerships by regulation 19 of S.I. 2009/[XXXXX].

(21) Sections 860 to 892 in Part 25 of the Companies Act 2006 were applied to limited liability partnerships by regulations 32 to 44 of S.I. 2009/[XXXXX].

(b) at the appropriate places insert—

“establishment of an overseas company (in Part 35)	section 1067(6)”
“registered number, of a company (or an overseas company)	section 1066 (and section 1059A(5))”
“registered number, of a UK establishment of an overseas company	section 1067”
“UK establishment of an overseas company (in Part 35)	section 1067(6)”.

**Transitional provisions and savings**

**18.** In Schedule 2 to the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008(22), for paragraphs 97 to 109 substitute the paragraphs set out in the Schedule to this Order.

Date

*Name*  
Economic and Business Minister,  
Department for Business, Enterprise and  
Regulatory Reform

## SCHEDULE

Article 18

PARAGRAPHS 97 TO 109 OF SCHEDULE 2 TO THE COMPANIES  
ACT 2006 (COMMENCEMENT NO. 8, TRANSITIONAL PROVISIONS  
AND SAVINGS) ORDER 2008 AS SUBSTITUTED BY THIS ORDER

**Delivery of documents to the registrar (ss. 1068 to 1076)**

**97.**—(1) Sections 1068 and 1069 of the Companies Act 2006 (registrar’s requirements as to form, authentication and manner of delivery and power to require delivery by electronic means) apply to documents delivered to the registrar on or after 1st October 2009 other than those delivered in pursuance of an obligation arising before that date.

(2) Where the obligation to deliver a document to the registrar arose before 1st October 2009, the provisions that would have applied if the document had been delivered before that date continue to apply.

**98.** Section 1070 of the Companies Act 2006 (agreement for delivery by electronic means) applies to all documents delivered to the registrar on or after 1st October 2009.

**99.**—(1) Section 1071 of the Companies Act 2006 (document not delivered until received) applies in relation to the delivery of documents to the registrar on or after 1st October 2009 other than those delivered in pursuance of an obligation arising before that date.

(2) Where the obligation to deliver a document to the registrar arose before 1st October 2009, the provisions that would have applied if the document had been delivered before that date continue to apply.

**100.**—(1) Sections 1072 to 1074 of the Companies Act 2006 (requirements for proper delivery) apply to documents delivered to the registrar on or after 1st October 2009 other than those delivered in pursuance of an obligation arising before that date.

(2) Where the obligation to deliver a document to the registrar arose before 1st October 2009, the provisions that would have applied if the document had been delivered before that date (and the registrar’s former practice with respect to the requirements for proper delivery and documents containing unnecessary material) continue to apply.

**101.**—(1) Section 1075 of the Companies Act 2006 (informal correction of document) applies to documents delivered to the registrar on or after 1st October 2009 other than those delivered in pursuance of an obligation arising before that date.

(2) Where the obligation to deliver a document to the registrar arose before 1st October 2009, the provisions that would have applied if the document had been delivered before that date (and the registrar’s former practice with respect to documents requiring correction) continue to apply.

**102.** Section 1076 of the Companies Act 2006 (replacement of document not meeting requirements for proper delivery) applies to documents to which sections 1072 to 1074 of that Act apply (see paragraph 100 above).

**Documents subject to Directive disclosure requirements (s. 1078)**

**103.**—(1) This paragraph has effect in relation to section 1078 of the Companies Act 2006 (documents subject to the Directive disclosure requirements) and the adaptations of that section made by paragraph 5 of Schedule 1 to the Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006(23).

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(23) S.I. 2006/3428 (C. 132), amended by S.I. 2007/3495. There are other amending instruments but none is relevant.

(2) The adaptations continue to have effect in relation to documents delivered to the registrar on or after 1st October 2009 in pursuance of provisions of the 1985 Act or 1986 Order.

(3) Documents subject to the Directive disclosure requirements by virtue of any such adaptation remain subject to the Directive disclosure requirements notwithstanding that the adaptation has ceased to have effect.

#### **Effect of failure to give public notice (s. 1079)**

**104.** In section 1079 of the Companies Act 2006 (effect of failure to give public notice) the references to an amendment of the company's articles include an amendment before 1st October 2009 of the company's memorandum.

#### **Annotation of the register (s. 1081)**

**105.**—(1) Section 1081 of the Companies Act 2006 (annotation of the register) applies in relation to—

- (a) documents delivered to the registrar on or after 1st October 2009 other than those delivered in pursuance of an obligation arising before that date, and
- (b) certificates issued by the registrar on or after 1st October 2009 other than those issued in response to a document delivered to the registrar before that date or in pursuance of an obligation arising before that date,

and in relation to the content of, and material derived from, such documents and certificates.

(2) The provisions applicable before 1st October 2009 (and the registrar's former practice with respect to annotation of the register) continue to apply in relation to—

- (a) documents delivered to the registrar before that date, or in pursuance of an obligation arising before that date, and
- (b) certificates issued by the registrar before that date or in response to a document delivered to the registrar before that date or in pursuance of an obligation arising before that date,

and in relation to the content of, and material derived from, such documents and certificates.

#### **Registrar's notice to resolve inconsistency on the register (s. 1093)**

**106.**—(1) Section 1093 of the Companies Act 2006 (registrar's notice to resolve inconsistency on the register) applies where—

- (a) a document is delivered to the registrar on or after 1st October 2009 otherwise than in pursuance of an obligation arising before that date, and
- (b) it appears to the registrar that the information contained in the document is inconsistent with other information on the register.

(2) The provisions applicable before 1st October 2009 (and the registrar's former practice with respect to inconsistencies on the register) continue to apply in relation to documents delivered to the registrar before that date or in pursuance of an obligation arising before that date.

#### **Removal of material from the register (ss. 1094 to 1098)**

**107.**—(1) This paragraph applies to—

- (a) sections 1094 to 1097 of the Companies Act 2006 (removal of material from the register), and
- (b) section 1098 of that Act (public notice of removal of certain material from the register).

(2) Those provisions apply in relation to—

- (a) documents delivered to the registrar on or after 1st October 2009 other than those delivered in pursuance of an obligation arising before that date, and
- (b) certificates issued by the registrar on or after 1st October 2009, other than those issued in response to a document delivered to the registrar before that date or in pursuance of an obligation arising before that date,

and in relation to the content of, and material derived from, such documents and certificates.

(3) The provisions applicable before 1st October 2009 (and the registrar’s former practice with respect to removal of material from the register) continue to apply in relation to—

- (a) documents delivered to the registrar before that date, or in pursuance of an obligation arising before that date, and
- (b) certificates issued by the registrar before that date or in response to a document delivered to the registrar before that date or in pursuance of an obligation arising before that date,

and in relation to the content of, and material derived from, such documents or certificates.

#### **Language requirements: transliteration (ss. 1108 to 1110)**

**108.** Sections 1108 to 1110 of the Companies Act 2006 (transliteration of names and addresses) apply in relation to all documents delivered to the registrar on or after 1st October 2009.

#### **General false statement offence (s. 1112)**

**109.** Section 1112 of the Companies Act 2006 (general false statement offence) applies to all documents delivered, and statements made, on or after 1st October 2009.

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends Part 35 of the Companies Act 2006 (“the 2006 Act”) and the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 (S.I. 2008/2860 (C. 126)) (“the Eighth Commencement Order”). Part 35 of the 2006 Act deals with the functions of the registrar of companies and material delivered to and registered by the registrar.

Articles 4, 6 to 11 and 13 to 16 make consequential amendments to Part 35 of the 2006 Act, the effect of which is to extend certain provisions of Part 35 to documents or, as the case may be, functions of the registrar relating to bodies other than companies or overseas companies. Article 3 adds to Part 35 a new section indicating how the provisions of Part 35, as amended by the Order, apply.

Article 5 makes consequential amendments to section 1067 in Part 35 of the 2006 Act. These relate to overseas companies and are made in consequence of provision made by the Overseas Companies Regulations 2009 (S.I. 2009/[XXXX]). References to “branches” of overseas companies in section 1067 are replaced by references to the “UK establishments” of overseas companies. Article 17 makes incidental amendments to Schedule 8 to the 2006 Act.

Article 12 amends section 1087 to expand the list in that section of material which the registrar must not make available for public inspection. These amendments are made in consequence of provision made elsewhere in the 2006 Act.



Article 18 and the Schedule replace a number of the transitional provisions and savings relating to Part 35 of the 2006 Act which are contained in Schedule 2 to the Eighth Commencement Order. The effect of paragraphs 98, 103, 104 and 108 is unchanged. Paragraphs 97, 99, 100, 101, 102, 105, 106 and 107 are modified so that they take account of the fact that the provisions of Part 35 to which they relate (including sections 1075 and 1076 as amended by this Order) either are not limited to documents relating to companies or are so limited but are not limited to documents delivered (or, where relevant, issued) under the 2006 Act, the Companies Act 1985 (“the 1985 Act”) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (“the 1986 Order”). The effect of these paragraphs is also changed as they relate to documents delivered under the 2006 Act, the 1985 Act and the 1986 Order.

Paragraph 109 is changed so that the offence in section 1112 of the 2006 Act applies to any document delivered or statement made, for any purpose of the Companies Acts (as defined in section 2 of the 2006 Act), on or after 1st October 2009.

An impact assessment has not been produced for this Order because no impact on the private or voluntary sector is foreseen.