

EXPLANATORY MEMORANDUM TO
THE COMPANY, LIMITED LIABILITY PARTNERSHIP AND BUSINESS (NAMES
AND TRADING DISCLOSURES) REGULATIONS 2014

2014 No. [XXXX]

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

This instrument consolidates a number of Statutory Instruments relating to company, limited liability partnership (“LLP”) and business names and to trading disclosures into one new Statutory Instrument, and revokes the current regulations relating to names and trading disclosures. In addition the instrument extends the list of characters that can be used in a company name to include a variety of accents, diacritical marks and ligatures. It also makes amendments to the trading disclosure requirements so that companies that operate in a place with more than five companies no longer have to continually display the register listing all the companies. A small number of technical amendments have also been made. The changes to the regulations for company names are in line with Government’s Red Tape Challenge programme which aims to reduce and simplify regulations.

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

None

4. Legislative context

The Companies Act 2006 (c. 46) (the “2006 Act”) include provisions with respect to the use of names for companies (in Part 5 of the 2006 Act), LLPs (in Part 5 of the 2006 Act as applied by Part 3 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009) and business names (in Part 41 of the 2006 Act). These established the characters and words that may, or indeed must, be used in the name of companies, LLPs or businesses, or powers for the Secretary of State to make additional or supplementary provisions relating to the use of names. In addition, section 82 of the 2006 Act provided power for the Secretary of State to make provision requiring when and how a company name etc. must be disclosed (“trading disclosures”). Under those powers, the Secretary of State has made the following regulations:

- (a) The Company and Business Names (Miscellaneous provisions) Regulations 2009 (S.I.2009/1085);
- (b) The Company, Limited Liability Partnership and Business Names (Miscellaneous Provisions) (Amendment) Regulations 2009 (S.I. 2009/2404);
- (c) The Company, Limited Liability Partnership and Business Names (Public Authorities) Regulations 2009 (S.I. 2009/2982);
- (d) The Companies (Trading Disclosures) Regulations 2008 (S.I. 2008/495); and
- (e) The Companies (Trading Disclosures) (Amendments) Regulations 2009 (S.I. 2009/2615).

These regulations are being revoked, and replaced by this instrument.

5. Territorial Extent and Application

5.1 This instrument extends and 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 Companies Act 2006 and associated legislation on companies and LLPs should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

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

“In my view the provisions of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2014 are compatible with the Convention rights.”

7. Policy background

What is being done and why?

7.1 The Government’s aim is to reduce burdens on business and to ensure that red tape is removed to help companies get on with doing business and grow. In line with Red Tape Challenge principles this instrument consolidates, as far as possible, the rules relating to names together into as few statutory instruments as possible. There was support for this approach both during the Red Tape Challenge discussions on company and commercial law and as a result of formal consultation. This instrument reproduces the majority of the requirements which are contained in the current regulations relating to names and trading disclosures into this instrument. Another instrument, the “Company, Limited Liability Partnership, Business Names (Sensitive Words and Expressions) Regulations 2014”, is to be made concurrently with this instrument because it was not possible to include those regulations into this instrument because it is subject to a different Parliamentary procedure (“approval after being made”).

7.2 The most significant change from the current requirements is to extend the list of characters that can be used in a company name (see the Annex to this memorandum). Current regulations require a company name to consist of letters from the Roman alphabet and a small number of additional characters. This approach does not allow for the use of accents, diacritical marks and ligatures. Some companies, therefore, are not always able to use exactly the name that they wish on their registered name. It should be noted though that it is possible to use any character in a business name under which a person may carry on business (which may differ from the person’s name or company’s registered name). This approach could delay the time to register a name if the owner of the company wishes to use a character that is not

allowed. In addition the use of a registered name and business name which differ by just one accent or character can cause confusion to the public.

7.3 We have consulted with other European company registries to determine what characters they allow in a company name. The picture is wide ranging with some only accepting minimal characters and others registering any character so long as they are technically able to process it. Companies House have informed us that they are technically able to incorporate a wider use of characters in a company name due to changes in technology.

7.4 As a result of amending the permitted characters that can be used in a company name, the rules relating to when a name may be considered the “same as” another has been changed. A proposed company name cannot be registered if it is considered the “same as” another name already registered. . For example, the character “Ř” will be considered the same as “R”, and “Ě” the same as “E”. As a result, the name “ŘREAL COFFEE CAFÉ LTD” would be considered the same name as the “REAL COFFEE CAFE LTD”.

7.5 The instrument also makes a change to the trading disclosure requirements. It is quite common for a number of companies to operate from one location or for formation agent to act as a company secretary for many companies. In such circumstances the current regulations require the details of all companies at the location to be displayed. This instrument changes the requirement to allow the information to be held and made available for inspection on request. Companies will no longer have to ensure that the company name is ‘displayed’ at all times, whilst ensuring that the information can be made available to anyone who wishes to see it.

7.6 The remainder of the changes are of a more technical nature. In relation to the rules relating to when a name may be considered the “same as” another, the rules have been changed to correct minor loopholes which were not intended at the time the current regulations were made. For example, the current regulations did not treat “PLUM TECHNOLOGY LTD” to be the same as “PLUM TECHNOLOGY COMPANY LTD”, despite them being materially similar. This instrument ensures that these names will be treated the same. Similarly a change has been made to ensure that “STONE COMPANY LTD” is now treated the same as “STONE AND COMPANY LIMITED”.

7.7 Furthermore, as a direct result of the consultation, we have reduced the list of words and expressions which are to be ignored when considering whether a name is the ‘same as’ another. The names removed are “EXPORT”, “GROUP”, “HOLDINGS”, “IMPORTS”, “INTERNATIONAL” and “SERVICES” along with all Gaelic and Welsh equivalents. Consequently, “CATERING EXPORTS LTD” will now be considered different from “CATERING IMPORTS LTD”, whereas under the current regulations they were treated as the same.

7.8 The aim of all the changes being made to the regulations are to simplify the process and reduce the times that a company might have a proposed name rejected by the register. Each time a rejection is made this will cost the company time and money to re-apply or justify the name it is proposing.

Consolidation

7.9 The aim of the Red Tape Challenge is to reduce burdens on business and remove unnecessary legislation from the Statute Book. The consultation on all names regulations considered whether it would be appropriate to reduce the number of Statutory Instruments and or improve the names regulations. This instrument consolidates Statutory Instruments in line with Red Tape Challenge proposals.

8. Consultation outcome

8.1 As part of the Red Tape Challenge the Department undertook a formal consultation which sought views on whether it would be appropriate amend the rules on names. Responses to the Red Tape Challenge discussions had already highlighted that the many regulations on company names could be usefully reduced into one or two instruments. The proposed changes are dealing with issues highlighted as part of the consultation or directly following the consultation

9. Guidance

Guidance will be available on the Companies House website.

10. Impact

A verification Impact Assessment has been completed and approved by the Regulatory Policy Committee (RPC), who agreed that the changes will result in overall savings to business.

11. Regulating small business

This instrument will apply to those companies, limited liability partnerships and businesses who intend to either change their name or register a new name.

12. Monitoring & review

We would expect to review these Regulations within five years.

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 these Regulations.

ANNEX

<i>Characters, signs and symbols</i>				
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