

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN ECONOMIC INTEREST GROUPING (AMENDMENT)
REGULATIONS 2009**

2009 No. 2399

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 the European Economic Interest Grouping Regulations 1989 (S.I. 1989/638) (“the 1989 Regulations”) to reflect the changes made in company law by the Companies Act 2006.

2.2 The Regulations have been drafted by Parliamentary Counsel.

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

3.1 None

4. Legislative Context

4.1 Council Regulation (EEC) No 2137/85 provides a regime for European Economic Interest Groupings (“EEIGs”). The EC Regulation is directly applicable under EC law but allows for national law to determine a number of issues; for example, prescribing the conditions under which documents referred to in Articles 7 and 10 shall be filed. In addition Articles 35 and 36 provide that EEIGs shall be subject to national laws on winding up, insolvency and cessation of payments.

4.2 The 1989 Regulations are the domestic legislation which supplements Council Regulation (EEC) No 2137/85 for Great Britain. Northern Ireland has its own supplementary domestic legislation, the European Economic Interest Grouping Regulations (Northern Ireland) 1989 (S.R. (NI) 1989 No 638). Both sets of regulations refer to provisions and concepts in other legislation such as the Companies Act 1985, the Insolvency Act 1986 and the Business Names Act 1985.

4.3 The Companies Act 2006 (“the 2006 Act”) has substantially rewritten company law. It replaces almost all of the provisions of the Companies Act 1985 (“the 1985 Act”) and the Business Names Act 1985 (and the equivalent Northern Ireland legislation) and it also introduces new provisions. For example Part 35 of the 2006 Act deals with various matters relating to the

registrar of companies and registration requirements for companies and other entities.

4.4 The 1989 Regulations were made under section 2(2) of the European Communities Act 1972, using the negative resolution procedure; the same power is being used to make the necessary amendments.

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

• *Terminology*

7.1 An EEIG is a form of association between companies or other legal bodies or individuals from different EU states which operate together across national frontiers. It carries out particular tasks for its member-owners and is separate from its owners' businesses. An EEIG's activities must relate to the economic activities of its members but must be ancillary to them. An EEIG cannot be formed with the object of making a profit, although it may do so as a consequence of its normal operations.

7.2 There are currently around 200 EEIGs registered in the UK.

• *What is being done and why*

Consequential Amendments

7.3 The 1989 Regulations refer to provisions in the Companies Act 1985 and other companies' legislation and the replacement of these provisions requires consequential amendments. The Regulations also need to be amended to reflect the fact that their extent is to be changed from Great Britain to the United Kingdom; section 1286 of the 2006 Act makes this change.

Changes to forms

7.4 The 1989 Regulations stipulate which forms should be completed for various returns to the Registrar. The amendments contain new forms which have been supplied by Companies House.

Adoption of regimes in the Companies Act 2006

7.5 A number of changes have been made due to new requirements within the 2006 Act.

7.6 Manager's Residential Address: The confidentiality regime relating to directors' residential addresses has never been applied to managers of EEIGs. The requirement in regulation 5(3)(a)(iii) of the 1989 Regulations to deliver to the registrar details of the manager's usual residential address is now changed to 'service address'. This will allow the manager to give either a residential or service address.

7.7 The registrar of companies: Part 35 of the 2006 Act contains provisions relating to the registrar of companies. It will be heavily amended in respect of its application to business entities other than companies by the Companies Act 2006 (Part 35) (Consequential Amendments, Transitional Provisions and Savings) Order 2009. Some of the provisions in Part 35 apply generally and will therefore apply automatically to EEIGs. Some provisions currently apply only to companies registered under the 2006 Act. A number of these provisions will now be applied to EEIGs, for example the registrar's ability to annotate the register and apply unique identifiers.

7.8 Company names: Many of the names provisions which are being re-enacted in the 2006 Act and which currently apply to EEIGs in the 1989 Regulations will continue to apply via consequential amendments of the type mentioned in 7.3 above. In addition, to ensure that where possible the 1989 Regulations are in line with the Company and Business Names (Miscellaneous) Provisions Regulations 2009 (S.I. 2009/1085), we have also applied sections 57 (permitted characters) and 67 and 68 (direction to change name) to EEIGs.

8. Consultation

8.1 The changes being made to the 1989 Regulations are as a consequence of the implementation of the 2006 Act. A full consultation on the implementation of the 2006 Act took place in 2007.

8.2 The draft company names regulations took account of the comments made on the 2007 consultation and in light of additional comments received further revised regulations were published in April 2008. The Company and Business Names (Miscellaneous Provisions) Regulations 2009 were made on 24 April 2009.

9. Guidance

9.1 Companies House publishes guidance for EEIGs on their website <http://www.companieshouse.gov.uk/>. The guidance will be revised in line with this Instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is restricted to those entities that register as European Economic Interest Groupings.

10.2 An Impact Assessment has not been completed for the impact of the changes on EEIGs. The majority of the changes are purely consequential, for example changing a reference to the Companies Act 1985 to the Companies Act 2006. The changes to forms will not impact on business. The amendments which adopt the regimes of the 2006 Act, for example registration requirements and company names, were included within the Regulatory Impact Assessment on the 2006 Act.

11. Regulating small business

11.1 The legislation applies to small businesses that are European Economic Interest Groupings.

11.2 This order is not adding any additional burdens to small business.

12. Monitoring & review

12.1 These Regulations amend the 1989 Regulations to reflect the changes made in company law by the 2006 Act. The 1989 Regulations, as amended, will be kept under review, and we will continue to consider whether the Regulations need to be amended or updated e.g. to reflect further changes to UK or EU company law.

13. Contact

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