

EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006 (AMENDMENT OF PART 25) REGULATIONS 2013

2013 No. 600

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 The Regulations amend the Companies Act 2006 (“the 2006 Act”) to replace the scheme for the registration of charges created by companies incorporated under the 2006 Act. The provisions of Chapters 1 and 2 of Part 25 of the 2006 Act are repealed and replaced by a new Chapter A1 of Part 25 which sets out a single scheme which applies to companies irrespective of the place of registration of the company in the UK.

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

3.1 None

4. Legislative Context

4.1 Section 894 of the 2006 Act provides a power for the Secretary of State to make regulations which alter, add or repeal the provisions of Part 25 of that Act. The provisions of Chapter 1 of Part 25 only apply where the company which creates the charge has been registered in England, Wales or Northern Ireland. Chapter 2 of Part 25 applies where the company has been registered in Scotland. The content of both chapters is largely similar.

4.2 The Companies (Particulars of Company Charges) Regulations 2008 (S.I. 2008/2996) prescribe the information to be supplied to the registrar of companies when a charge is submitted for registration under the provisions of Chapters 1 or 2 of Part 25.

4.3 The provisions of Part 25 of the 2006 Act are applied to limited liability partnerships by the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804). Those regulations will be amended to reflect the amendments to the 2006 Act made by this instrument. Those regulations will be subject to the negative procedure.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. Company law is a transferred matter for Northern Ireland and a reserved matter for Scotland and Wales.

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 Companies Act 2006 (Amendment of Part 25) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The current scheme for the registration of company charges is set out in Part 25 of the Companies Act 2006. Its main purpose is to make public whether a company has used any of its assets to secure its borrowing. In March 2010, the Government consulted over proposals to revise the current scheme for the registration of company charges. The policy changes that result from the consultation and subsequent analysis give rise to new Chapter A1 of Part 25. The Department intends for the regulations to come into force on 6th April 2013. The provisions in Part 25 are designed to achieve the following policy changes:

- To enable the registrar of companies to make provision for lenders and companies to register charges against their assets electronically and to simplify the summary information provided
- To increase transparency by making the whole instrument available on the public register, but to allow certain redactions in relation to personal information to guard against fraud
- To establish a mechanism for UK-wide registration, which works with both the provisions of Scottish law on security interests and the law of England and Wales on charges
- To remove the criminal offence for failing to register a charge, which is not necessary to secure compliance as failure to register invalidates a lender's claim against the debt in insolvency, so the commercial interests of lenders ensure registration of charges
- To replace a piecemeal and complex list of types of registrable charges to a simple exemption based system.

7.2 A system for the registration of company charges (that is, secured company debts) is necessary in order for the financial system to operate with confidence. It is also vital that businesses are able to access credit in order to grow. The 2011 World Bank Report¹ considered the laws relating to collateral to be crucial and the statutory schemes for registration of company charges contribute to the UK being rated equal first (with Malaysia) in the section on *getting credit*. However, our

¹ The Report by the World Bank and the International Finance Corporation, *Doing Business 2012: Doing Business in a more transparent World*, published in October 2011

system is now over 100 years old. It is paper based, and practitioners agree that it needs to be updated and simplified. The current scheme is criticised because:

- The procedures for registration are burdensome and incompatible with electronic filing
- The list of registrable charges has not been kept in line with changes in law and commercial practice.

8. Consultation Outcome

8.1 In March 2010, the Government consulted over proposals to revise the current scheme for the registration of company charges. The deadline for comments was 18 June 2010. A summary of responses was published on the BIS website in October. The consultation proposals were based on the 2001 recommendations of the Company Law Review and the subsequent advice of the Law Commission. They involved possible changes to; which charges must be registered, how charges may be registered (including the introduction of electronic registration) and the consequences of registering and of not registering a registrable charge.

8.1 The consultation received 33 responses from law firms, accountancy firms, regulators, and registries from across the UK, which were supportive of reform the system for the registration of charges, in particular; enabling electronic filing system, moving to a UK-wide system, simplification of the summary information and moving to an exemption model. In Spring 2011, all those who responded to the 2010 consultation were asked for their views on certain outstanding issues that remained unresolved. In August 2011, the Department published the Government's proposals for the revised scheme together with a draft of Part 25 of the Companies Act 2006 amended in accordance with the proposals and revisions to the cost assumptions for the Impact Assessment, on which further views were sought. In August 2012 the draft of the regulations as they stood at that date were made available for final comment. Subsequently the Department made further changes in response to the comments received. Stakeholders are highly supportive of the changes.

8.2 The consultation document, government response and draft regulations are all available on the Department's website at <http://www.bis.gov.uk/Consultations/registration-of-charges?cat=closedwithresponse>

9. Guidance

9.1 Detailed guidance documents will be made available on the website of the Registrar of Companies.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be to reduce the burdens on those filing charges with the Registrar of Companies generating net savings of £21m per annum. The key cost differences for those that file charges for registration are:

- The ability to file electronically which reduces delivery costs
- Reducing the need for costly legal analysis of whether a charge needs to be filed
- Removal of duplicate requirements for companies' own registers
- Simplification of the brief particulars (summary information) required to be filed with the registrar.

10.2 The impact on the public sector is limited to the set up costs incurred by Companies House of c.£760,000. However, these costs will be recouped through efficiency savings over an estimated period of around 4 years.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business. However, in practical terms small businesses are generally unaffected by the detailed procedures for registering a charge as this is normally handled by the lender or the lender's agent i.e. bankers and lawyers as it is in the lender's commercial interest to ensure that the charge is registered or the lender will not be able to enforce the security in the event of insolvency. Companies House analysed the presenters of charges in the 12 months to May 2009. This study showed the top 227 presenters accounted for 35 per cent of filings; whilst the remainder were filed by 8,851 presenters.

11.2 The proposals to reform the way charges are registered will support lending to small businesses, in the same way as it will to larger businesses. Secured loans are generally on much better terms than unsecured and therefore are important for the small business sector.

12. Monitoring & review

12.1 The Department has no current plans to review these reforms as they represent a cost saving to business. However, we will continue to engage with stakeholders and to informally monitor the impact of these reforms.

13. Contact

- Policy lead is Rachel Armstrong at the Department for Business, Innovation and Skills Tel: 02072156644 or email: Rachel.Armstrong@bis.gsi.gov.uk can answer any queries regarding the instrument.