

EXPLANATORY MEMORANDUM TO
THE COMPANIES (STRIKING OFF) (ELECTRONIC COMMUNICATIONS)
ORDER 2014

2014 No. 1602

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 order amends parts of the Companies Act 2006 (the “Act”) and Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (the “2009 Regulations”) which state that communications relating to the striking off of a company or limited liability partnership (“LLP”) must be sent by post. These amendments are to sections 1000 and 1002 of the Companies Act 2006 and to regulation 50 of the 2009 Regulations.

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

None

4. Legislative context

4.1 The order amends section 1000 of the Act. This section currently stipulates that the registrar must send a notice of strike off to a company believed not to be trading, and the communications prior to such a notice, as letters by post. The order amends section 1000 to permit the registrar to send these through alternative modes of communication, such as by email.

4.2 Section 1002 of the Act is also amended to remove the stipulation that such communications must be sent by postal letter. These communications will instead be covered by company communication provisions in the Act that permit the sending of communications to a company in electronic form. Where these communications are to be sent to directors of a company, the amendments stipulate that they must only be sent to an address provided by the company. In the case of a liquidator, the changes permit the communications to be sent to any address the liquidator provides the registrar, or, as at present, the liquidator’s last known place of business. The meaning of “address” under the order has a meaning broad enough to cover e-mail, fax and other electronic methods of communication.

4.3 The order also amends regulation 50 of the 2009 Regulations to apply analogous changes to LLPs. The meaning of “address” in the Act, and interpretation of the phrase “electronic means” does not apply to LLPs. The amendments to the Regulations therefore mirror the definitions in the Act.

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

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 (Striking Off) (Electronic Communications) Order 2014 are compatible with the Convention rights.

7. Policy background

What is being done and why?

7.1 The policy intention for making this order is to enable the registrar to send letters and notices in respect of companies and LLPs through a variety of electronic means, for example by email or short message service (SMS) messaging. The amendments in this order will give the registrar greater flexibility when communicating with companies and LLPs. It also allows the registrar to provide a faster, more streamlined service by utilising changes in technology.

7.2 The registrar will not mandate that electronic communications should be used to notify and inform every company and LLP. Companies and LLPs will have to stipulate that electronic communication is their preferred way of receiving information from the registrar. If a company or LLP opts in and chooses to receive communications electronically, the duty will be on that company to ensure that their email details are kept up to date.

7.3 In addition, these amendments give the registrar the potential to communicate with liquidators, subscribers, LLP members and company directors through a variety of means. The changes will give the registrar greater flexibility when communicating with these groups.

Consolidation

7.4 Not applicable

8. Consultation outcome

The Department for Business, Innovation and Skills has consulted with stakeholders in its Company Filing Requirements consultation. This consultation followed work carried out as part of the Government's company and commercial law red tape challenge theme.

9. Guidance

Guidance will be available on the Companies House website.

10. Impact

No impact assessment has been prepared because the instrument does not place any additional legislative burdens on business, charities or voluntary organisations.

11. Regulating small business

This instrument will apply to all companies, including small ones, however it does not mandate that all should receive electronic communications.

12. Monitoring & review

We would expect to review this instrument within five years.

13. Contact

Essie Mac Eyeson at the Department for Business, Innovation and Skills (tel: 020 7215 3673 or email: essie.maceyeson@bis.gsi.gov.uk) can answer questions about this instrument.