

EXPLANATORY MEMORANDUM TO
THE COMPANY, LIMITED LIABILITY PARTNERSHIP AND BUSINESS NAMES
(SENSITIVE WORDS AND EXPRESSIONS) REGULATIONS 2009

2009 No. 2615

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 To require prior approval for the registration of a name by a company or a limited liability partnership (“LLP”), or the use of a name by any person carrying on business in the UK, if the name includes a sensitive word or expression.

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

3.1 Regulations made under sections 55 and 1194 of the Companies Act 2006 (“the 2006 Act”) are subject to approval after being made.

4. Legislative Context

4.1 The legislative context for the registered names of companies and LLPs is different to that for the names under which any person, whether or not incorporated, carries on business in the UK. There is no register of business names.

4.2 As regards companies’ registered names: at present section 26(2)(b) of the Companies Act 1985 (“the 1985 Act”) (and the corresponding Northern Ireland provision) requires the prior approval of the Secretary of State for a company to be registered under a name that includes any word or expression specified in regulations made under section 29. Section 29 provides the power both to specify words and expressions and, in relation to any such word or expression, to specify a Government department or other body as the body whose views must be sought by the applicant. The request to the body must request the body to indicate whether (and if so why) it has any objections to the proposed name. Sections 55 and 56 of the 2006 Act replace these provisions. These provisions of the 2006 Act are also applied to LLPs by regulation 8 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

4.3 As regards business names: at present section 2(1)(b) of the Business Names Act 1985 (“BNA”) (and the corresponding Northern Ireland provision) makes it an offence for a partnership, individual, company or LLP to carry on business under a name that includes a word or expression specified in regulations made under sections 3 and 6. The offence does not apply if the name is the registered name of a company or an LLP, or an individual’s surname with or without the addition of forename and/or initials, or such names of the partners. These sections also provide power to specify a Government department or other body for any prescribed word or expression as the body to whom an applicant for a name requiring prior approval must request it to indicate whether (and if so why) it has any objections to the proposed name. Sections

1194 and 1195 of the 2006 Act replace these provisions. However they do not apply in the case of continuing use of a name that was in lawful use immediately prior to the provision coming into force. Nor does it apply for 12 months after the transfer of a business if the name was in lawful use immediately prior to that transfer.

4.4 The Company and Business Names Regulations 1981 (S.I.1981/1685), which were made under sections 31 and 32 of the Companies Act 1981, currently have effect as if made under section 29 of the 1985 Act and sections 3 and 6 of the BNA. They have been amended several times. The Northern Ireland equivalents are the Company and Business Names Regulations (Northern Ireland) 1984 (S.R. 1984 No. 49), Article 39 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6), and Articles 5 and 8 of the Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7)).

4.5 There is separate provision to require prior approval for company, LLP and business names that suggest a connection to certain public bodies; the 2006 Act provides power to specify further bodies. It is intended to use this power to make the Company, Limited Liability Partnership and Business Names (Public Authorities) Regulations 2009.

4.6 There are also other controls over registered names. These include power to direct a company or LLP to change its registered name:

- up to 5 years after the registration, if misleading information was given for the purpose of registration with a particular name or if undertakings or assurances given for that purpose have not been fulfilled (section 28(3) of the 1985 Act; section 75 of the 2006 Act; Regulation 13 of S.I. 2009/1804);
- at any time, if the name gives so misleading an indication of the company's activities as to be likely to cause harm to the public (section 32 of the 1985 Act; section 76 of the 2006 Act; Regulation 13 of S.I. 2009/1804).

In addition, section 1198 of the 2006 Act makes it an offence for any person to carry on business in the UK under a name that gives so misleading an indication of the business's activities as to be likely to cause harm to the public.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Lord Davies of Abersoch, Minister of State, Department for Business, Innovation and Skills, has made the following statement regarding Human Rights:

“In my view the provisions of the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009 are compatible with the Convention rights.”

7. Policy background

- *What is being done and why*

7.1 There are 105 words and expressions currently prescribed so that prior approval is required for their inclusion in the registered name of either a company or an LLP or in any person's business name. In the case of 32 of these words and expressions, a body is specified whose views must be sought by an applicant to include it in a name; the Scottish Ministers are specified as the alternative body for 14 of these words and expressions. Applications for approval of names that include the prescribed words and expressions are considered by Companies House on behalf of the Secretary of State. There is separate guidance on the Companies House website - www.companieshouse.gov.uk/about/guidance - for companies' registered names and for business names. In the case of words for which a body is not specified, the guidance includes advice on the factors that Companies House will take into account in reaching the decision on whether to grant approval. For example, the applicant is required to provide evidence of pre-eminence in the relevant sector if the company or business name is to include "Great Britain". In the case of the word "trust" the guidance distinguishes between different sorts of trusts, eg charitable, financial or investment, staff or pension. Companies House may seek the advice of a Government department or other body in deciding whether the Secretary of State will approve the proposed name.

7.2 These Regulations specify 155 words and expressions for which prior approval is required for their inclusion in the registered name of a company or an LLP or in any person's business name; a further 6 words are prescribed so that prior approval is required only for their inclusion in the registered name of a company or an LLP. In addition, it applies to the plural, possessive and feminine forms of prescribed words. As some Welsh and Scots Gaelic words take different forms in different contexts, it also applies to grammatical mutations of 32 words marked with an asterisk (eg *brenhiniaeth* mutates to *frenhiniaeth*). The attached table compares the old and new lists of prescribed words. The newly prescribed words are:

- replacements for words no longer prescribed (eg "chamber of" instead of 10 separate expressions that include that phrase; "Northern Ireland" instead of "Ireland");
- words that convey an authority or status where there is concern that their misuse is likely to induce members of the public to pass money or personal information (eg "accredited", "parliament", "regulator");
- words where there is particular concern about their misuse (eg "bank", "insurance");
- Welsh and Scots Gaelic versions of words where these are considered to create a similar risk to the public as the word in the English; and
- Welsh and Scots Gaelic national words, ie "Cymru", "Cymraeg", "Cymreig" and "Alba", "Albanach", "na h-Alba", which are prescribed only for their use in the registered names of companies and LLPs; they are not prescribed for use in business names.

7.3 In the case of words and expressions relating to subjects for which there is a relevant national body, the Regulations specify a body whose views must be sought by an applicant wishing to include the word or expression in a name. There is a

specified body for 78 of the prescribed words and expressions; in the case of 15 words and expressions, different bodies are specified according to the location of the registered office in the case of companies' and LLPs' registered names and according to the location of the principal place of business in the case of business names. In the case of the 77 words for which there is not a specified body, the intention is to build on the existing arrangements: Companies House will update their published guidance.

7.4 In determining which words or expression should be prescribed, the main criterion was whether there was a risk to the public from the misuse. Words have not been prescribed where the new offence (see paragraph 4.6 above) is considered to be a more appropriate control: therefore "college" is not prescribed. Other considerations were the likely effectiveness of the prescription, noting that the Regulation could not be applied retrospectively, and the difficulties in creating an offence that would only apply in a minority of instances if the word is already in widespread use without creating a risk of harm to the public in the majority of cases.

7.5 The decision to prescribe the Welsh and Scots Gaelic national words where used in the registered names of companies and LLPs but not where used in business names was because, while there is no evidence of harm to the public from their unregulated use, it was considered desirable that a company should only have the national word of the jurisdiction where its registered office is located. The jurisdiction of a registered office cannot be changed. This criterion will apply also to these words in English. The decision on the treatment of national words was taken in consultation with the devolved administrations.

7.6 30 words and expressions that are currently prescribed are not included in the instrument. In the case of 19 words and expressions, a newly prescribed word achieves the same effect (eg the prescription of "Britain" makes the prescription of "Great Britain" otiose). Prescription was also unnecessary in the case of a further six words and expressions. "Apothecary", "chemist", "chemistry", "contact lens", "Ireland", "Irish" and "Royale" are not prescribed as there is no longer a perceived risk to the public from their misuse.

8. Consultation outcome

8.1 In February 2007, the Department published a consultative document "Implementation of Companies Act 2006". One of the questions was:

"Are there any deletions or additions that you consider should be made to the list of sensitive words and expressions?"

Also it was suggested that *Sheffield* be dropped from the list. The responses are described in the attached Impact Assessment.

8.2 The Department consulted the devolved administrations, other Government departments and the bodies that applicants are required to consult.

8.3 Draft regulations were not published. This is because there is a well-established market in "off-the-shelf" companies with valuable names. It was feared that the publication of draft regulations might induce the unscrupulous to register a company or start carrying on business in a name on which the draft regulations showed it was intended to place restrictions. There is no power to direct a company

or LLP to change its registered name in these circumstances. Furthermore the offence does not apply to a business if it is continuing to trade under a name it was using lawfully before the provision came into force. The special Parliamentary procedure for these Regulations (see paragraph 3.1) is to avoid this risk.

9. Guidance

9.1 Companies House publish separate guidance on company names, LLP formation and names, and business names on their website, www.companieshouse.gov.uk. This will be updated in line with this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is twofold. First they will be protected from scams. Second, if they wish to adopt a name that includes a prescribed word, they must seek prior approval.

10.2 The impact on the public sector is primarily on Companies House, who administer the regime. They must revise both their operating procedures and their published guidance for applicants. In addition, those bodies which must be consulted by applicants will be affected. They will be asked to indicate whether (and if so why) they have any objections to a proposed name that suggests a connection to them. This is the same as at present but 16 bodies are specified for the first time:

10.3 An Impact Assessment is attached to this memorandum. It also relates to the Company, Limited Liability Partnership and Business Names (Public Authorities) Regulations 2009.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to treat all businesses the same and to publish guidance on the Companies House website.

12. Monitoring & review

12.1 This instrument will be reviewed, from 2011, as part of the Companies Act 2006 evaluation.

13. Contact

13.1 Anne Scrope at the Department for Business, Innovation and Skills, Tel: 0207 215 2194 or email: anne.scrope@bis.gsi.gov.uk, can answer any queries regarding the instrument.

**COMPARISON OF OLD & NEW LISTS OF
PRESCRIBED WORDS & EXPRESSIONS**

75 words and expressions prescribed in previous and new Regulations			
Abortion	European	International	Registered
Association	Federation	King	Reinsurance
Assurance	Friendly Society	Midwife	Reinsurer
Assurer	Foundation	Midwifery	Royal
Authority	Fund	National	Royalty
Benevolent	Giro	NHS	Scotland
Board	Government	Nurse	Scottish
British	Group	Nursing	Sheffield
Charitable	Health centre	Patent	Society
Charity	Health service	Patentee	Special school
Charter	Health visitor	Police	Stock exchange
Chartered	His Majesty	Polytechnic	Trade union
Co-operative	Holding	Post office	Trust
Council	HPSS	Pregnancy termination	United Kingdom
Dental	HSC	Prince	University
Dentistry	Institute	Queen	Wales
Duke	Institution	Reassurance	Welsh
England	Insurance	Reassurer	Windsor
English	Insurer	Register	

42 words and expressions in English to be newly prescribed			
Accredit	Chamber of	Medical centre	Registry
Accreditation	Child maintenance	Mutual	Regulation
Accredited	Child support	Northern Ireland	Regulator
Accrediting	Commission	Northern Irish	Rule committee
Adjudicator	Data protection	Ombudsman	Social service
Audit office	Disciplinary	Oversight	Standards
Auditor General	Discipline	Parliament	Tribunal
Bank	Human rights	Parliamentary	Underwrite
Banking	Inspectorate	parliamentarian	Underwriting
Banknote	Judicial appointment	Registrar	Watchdog
Britain	Licensing	Registration	

22 words and expressions in Welsh to be newly prescribed +3 for company & LLP registered names only (* word mutates)			
*Banc	Ei Fawrhydi	Senedd	registered names only
*Brenhinol	*Gwasanaeth iechyd	Siambr	
*Brenin	*Gwladol	Swyddfa archwilio	*Cymru
*Brenhiniaeth	*Llywodraeth	*Teyrnas Gyfunol	*Cymraeg
*Cenedlaethol	*Ombwdsmon	*Teyrnas Unedig	*Cymreig
*Comisiwn	*Prifysgol	*Tywysog	
*Cyngor	*Prydain		
*Dug	*Prydeinig		

15 words and expressions in Scots Gaelic to be newly prescribed +3 for company & LLP registered names only (* word mutates)			
*Breatannach	*Mòrachd	*Rìgh	registered names only
*Breatainn	Oifis sgrùdaidh	Rìoghachd Aonaichte	
*Brenhinol	*Oilthigh	Rìoghail	Alba
*Coimisean	*Parlamaid	Rìoghalachd	Albannach
*Comhairle	*Prionnsa		na h-Alba
*Diùc	*Riaghaltas		

30 words and expressions no longer to be prescribed		
replaced by others	otiose	not replaced
Great Britain	District nurse	Apothecary
Ireland	Her Majesty	Chemist
Irish	Industrial & Provident Society	Chemistry
10 phrases starting “chamber of”	Princess	Contact lens
8 phrases starting “siambr		Royale

Summary: Intervention & Options

Department /Agency: Business, Innovation and Skills	Title: Impact Assessment of Company, LLP and Business Names Regulations - public authorities and sensitive words & expressions	
Stage: final	Version: 3	Date: 23 September 2009
Related Publications:		

Available to view or download at:

<http://www.berr.gov.uk/whatwedo/businesslaw/co-act-2006/index.html>

Contact for enquiries: Anne Scrope
anne.scrope@bis.gsi.gov

Telephone: 0207 215 2194

What is the problem under consideration? Why is government intervention necessary?
The public may suffer damage if seriously misled by the name of a company, LLP or business as to its function, status, authority, or pre-eminence.

What are the policy objectives and the intended effects?

The objective is to protect the public from harm from being misled by the registered name of a company or LLP or the trading name of a business into thinking that the company, LLP or business has a function, authority, status or pre-eminence which, in fact, it does not. The intention is that the Secretary of State's prior approval be required if a name:

- either suggests a connection to those public bodies where such a suggestion might be the basis of a scam;
- or if it includes a word or expression that suggests special status, authority or pre-eminence.

What policy options have been considered? Please justify any preferred option.

Careful consideration has been given to which public bodies, words and expressions should be listed in the Regulations. The list of words and expressions is an update of the list in the Company and Business Names Regulations 1981 (as amended).

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? From 2011, as part of the Companies Act 2006 evaluation

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Davies of Abersoch

Date: 25th September 2009

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The cost is a one-off cost at the time when a name is being adopted by either a company, LLP or business. The main cost is that of the delay in adopting a name that requires approval under either of these Regulations,		
	One-off (Transition) Yrs			
	£ 0			
	Average Annual Cost (excluding one-off)			
	£ 0	Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The benefit is a reduction in the risk of members of the public being tricked by the name of a company, LLP or business into providing personal information or money.		
	One-off Yrs			
	£			
	Average Annual Benefit			
	£	Total Benefit (PV)	£	
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate)
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	late 2009			
Which organisation(s) will enforce the policy?	CH & LAs			
What is the total annual cost of enforcement for these	£			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation <small>(excluding one-off)</small>	Micro 0	Small 0	Medium 0	Large 0

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase	£ 0	Decrease	£ 0	Net	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

BACKGROUND

1. These Regulations place controls over both the name under which a company or LLP can be registered and the name used by any person, whether or not incorporated, to carry on business in the UK. These are in addition to rules that prevent unwarranted use of indicators of legal status, eg “plc” and restrictions over names under other legislation such as the Architects Act 1997, the Medicines Act 1968, and the Copyright, Designs and Patents Act 1988. There are also controls over the names under which companies or LLP may register which are primarily to ensure that every name on the Registrar’s Index of Company Names is different; there is no register for business names.

2. There is no obligation on a company or LLP to carry on business under its registered name; it can use a different name or names. Such other names are termed “business names”. This phrase also applies to the names used by other traders where the name is not the surname of a sole trader (with or without the addition of forenames and/or initials) or, in the case of a partnership, the names of the partners.

The regime up to and including 30 September 2009

3. Prior approval is required if either the registered name of a company or an LLP or any person’s business name:

- suggests a connection with HM Government or a local authority (this includes a name that suggests a connection with any Government department or Agency or with a trading standards department); or
- includes a word or expression specified in the Company and Business Names Regulations 1981.

In the case of some of the specified words and expressions, applicants are required first to write to a specified Government department or other body asking for it to indicate whether (and if so why) it has any objections to the proposed name. The application to adopt the name must include a statement that the request has been made and include a copy of any reply. A non-compliant company name is not registered. The Secretary of State may require a company to change its name up to 5 years after its adoption, if a company gave misleading information in order to register that name or has not fulfilled undertakings or assurances given for that purpose. It is a criminal offence to carry on business under a name that requires approval if the approval has not been obtained.

4. The list of words and expressions include those which imply:

- national or international pre-eminence (eg *British, Scotland, Wales*)
- business pre-eminence or representative or authoritative status (eg *authority, government, institute*);
- specific objects or functions (eg *chartered, insurance, university*)

5. The Secretary of State has delegated the power to give approval to the Registrar of Companies. Companies House publish guidance, which is available online at www.companieshouse.gov.uk. In the case of names including words for which the applicant is not required to have sought the views of a specified Government department or other body, the guidance gives advice on the criteria that will be applied. For example, the advice for *British* and *national* is that:

“You will need to show that the company is pre-eminent in its field by providing supporting evidence from an independent source such as a Government department, trade association or other representative body.

The level of pre-eminence in a name that includes ‘British’ depends on the impact created by the other words in the name. Usually pre-eminence is reduced if the overall name does not describe a product but you would still have to show that your company is substantial in its field of activity even if this was not described the company name.”

The advice is similar for the use of *Great Britain* or *United Kingdom* at the start of a name or if preceded by “of” or “of the” respectively. In the case of the other national words (ie *England, English, Scotland, Scottish, Wales, Welsh, Ireland* and *Irish*), the advice depends on whether or not the word will be the last word in the name. If it is to be the last word, then it would normally be acceptable provided the applicant can demonstrate that the company has its main place of business in the country concerned. Otherwise, the requirements are similar to those for ‘*British*’. For *institute* and *institution*, the advice is:

“we normally only approve these words for those organisations which are carrying out research at the highest level or to professional bodies of the highest standing. You will need to show us that there is a need for the proposed institute and that it has appropriate regulations or examination standards. You will need evidence of support from other representative and independent bodies.”

In the case of *association, federation* and *society*, the advice is:

“if you wish to use one of these words, your company would normally be limited by guarantee. Each member should have one vote and the constitution should contain a non-profit distribution clause. This provides that any profits should be used to further the objects of the company and not be paid to the members as dividends.”

In some instances, Companies House will itself seek the advice of other Government departments.

The regime from 1 October 2009

6. The provisions of the Companies Act 2006 (“the 2006 Act”) relating to both company and business names come into force on 1 October 2009 (these provisions are applied to LLPs by the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009). They retain the previous requirement for prior approval for both company and business names that:

- suggest a connection with HM Government or a local authority, or
- include specified words and expressions.

Prior approval will also be required for names that suggest a connection with a devolved administration or with any person or body having functions of a public nature that is specified in Regulations.

7. The 2006 Act also provides power to specify the Government department or body whose views must be sought by an applicant for any name that requires prior approval.

8. This impact assessment relates to regulations that specify:

- the words and expressions for which, from 1 October 2009, prior approval will be required if included in the name of a company, LLP or business;

- those public authorities for which, from the date the Regulations come into force, prior approval will be required if the name of a company, LLP or business suggests a connection to one of those public authorities;
- the bodies whose views an applicant must seek before seeking approval for certain names.

9. The 2006 Act also creates a new offence: carrying on business in the UK under a name that gives so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public.

10. Neither the new offence nor the offence of using, without prior approval, a business name that requires prior approval will apply if the business is continuing to use a name that was being lawfully used immediately before it comes into force. As for companies' registered names, any requirement for prior approval applies to names adopted on or after the requirement comes into force.

Policy

11. Many factors influence the choice of company, LLP and business names. Some names are chosen so as to give an indication of the company or LLP or business's activities or to convey status or authority or pre-eminence – a name may be misleading in these ways. The policy is to minimise the regulatory restrictions on the choice of name. As for use of the power to require prior approval for names that either

- include prescribed words or
- suggest a connection to a public authority,

the policy is to use the power to protect the public from harm. The policy is to prescribe words that might be used to mislead as to the company or LLP or business's status, authority or pre-eminence and where as a result the public might suffer detriment; the power will also be used to prescribe national words so that they are not used inappropriately. The new offence (see paragraph 9 above) means that it is unnecessary to prescribe words that give a misleading impression of the business's activities.

12. As noted above (see paragraph 9), whether the offence applies to a person carrying on business under a name that requires prior approval depends on whether the name was adopted before or after the requirement comes into force. This will result in different treatment for similar businesses depending on whether their names were in use on 30 September 2009, with a criminal offence being committed if it was not. Therefore for words in widespread use in business names, the policy is only to add a word to the list of specified words if there is no other way of addressing the harm to the public from its misuse.

13. The words that will be prescribed include those that suggest international pre-eminence. Noting that the situation within the UK of a company or LLP's registered office is fixed at the time of its incorporation but that there is no restriction on the location of businesses, the policy is only to require prior approval for the inclusion of the newly-prescribed national words in Scots Gaelic and Welsh in the registered names of companies and LLPs.

Options

Public authorities

14. The options were:

- not to prescribe any public authorities, ie to maintain the status quo under the 1985 Act;
- to specify all bodies having functions of a public nature; and
- to specify only certain bodies with public functions.

In February 2007, in the consultative document "Implementation of Companies Act 2006", we sought views over the option of using the power to specify public authorities only to protect the public. This approach was agreed by all who commented.

15. In considering the likelihood of harm arising from a purported link to a particular body, we have taken advice on recent problems with scams. The Company, Limited Liability Partnership and Business Names (Public Authorities) Regulations 2009 lists only those bodies where it is considered that there is a risk that members of the public may be tricked into providing money or personal information by a name that suggests a connection to the body.

Words and Expressions

16. The options were:

- (i) not to prescribe any words or expressions;
- (ii) to prescribe those words or expressions previously prescribed (in the Company and Business Names Regulations 1981 (as amended)), ie the status quo; or
- (iii) to make changes to the current list of prescribed words and expressions.

The February 2007 consultative document also sought views over there should be any deletions or additions to the current list of words and expressions. In particular, it was suggested that the word *Sheffield* be deleted. There were 9 responses: no one opposed the option of updating the current list. This is the option adopted.

17. As for specific additions to and deletions from the current list, respondents suggested:

- *UK* and *GB* be treated same as *United Kingdom* and *Great Britain*;
- *Bank* and *college* be prescribed;
- Welsh equivalents be prescribed; and
- there be changes to remove some apparent inconsistencies.

18. In effect, *UK* and *GB* are already treated the same as *United Kingdom* and *Great Britain* as approval is readily given to both these expressions except when they appear at the start of a name or if preceded by “of” or “of the” respectively (which not normal practice for their abbreviations). It was therefore decided not to add *UK* and *GB* to the list.

19. Following discussion with financial regulators, it was agreed that there is a risk to the public from businesses using names that wrongly suggest they are banks. It was therefore decided to prescribe *banc*, *bank*, *banking* and *banknote*.

20. Since the 2007 consultation, there have been further representations for the addition of *college* to the list of prescribed words. In their July 2009 report - <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/595/595.pdf> - the Home Affairs Select Committee recommended that

“the Government uses the Companies Act 2006 to restrict use of the term “college” in future to properly accredited institutions and instigates an inspection regime to enforce this.”

The Government are extremely concerned about prospective students being tricked into paying bogus colleges large sums of money for instruction that these so-called colleges do not provide. The new offence (see paragraph 9), which comes into force on 1 October 2009, will address the problem of such scams. This approach avoids the problems described in paragraph 10 that would result from prescribing a word that is already in widespread use. The decision not to prescribe *college* was announced in July by Ian Lucas, Minister for Business, Regulatory Reform and Employment Relations in answer to a Parliamentary Question from Bob Russell MP (a member of the Home Affairs Select Committee), when he said:

“The new offence under the Companies Act 2006 of carrying on business under a name that gives so misleading an indication of the nature of the business’s activities as to likely to cause harm to the public will come into force on 1 October 2009. As this will address the problem of bogus colleges, I do not intend to add “college” to the list of words for which the Secretary of State’s prior approval is required for their inclusion in either a company’s registered name or any person’s business name.”

21. Following discussions with the devolved administrations, it has been decided to prescribe both Welsh and Gaelic equivalents where these are considered to create a similar risk to the public as word in the English.

22. Some apparent inconsistencies remain as these result from the need to complement restrictions over names under other legislation such as the Medicines Act 1968. The Companies House guidance on company, LLP and business names include information on these other controls.

23. As for *Sheffield*, the Company of Cutlers argued that it should continue to be prescribed while two respondents considered that it should not. An assurance that *Sheffield* would continue to be prescribed was given to the Delegated Legislation Committee by Stephen Timms in November 2007.

24. The other differences between the Company, LLP and Business Names (Sensitive Words and Expressions) Regulations 2009 and the previous Regulations are described below.

- *Northern Ireland* and *Northern Irish* are prescribed instead of *Ireland* and *Irish*;
- *Alba*, *Albannach* and *na-h-Alba* are prescribed so that prior approval is required for their inclusion in a company or LLP's registered name only. It is intended that approval be granted only to companies and LLPs whose registered offices are in Scotland. Prior approval will not be required for the use of these words in business names as there is no restriction on the location of the activities of a business. By contrast, a company or LLP's registered office can only be in Scotland if this was chosen on its incorporation; there is no provision for a company or LLP after incorporation to change the situation of its registered office from, for example, England and Wales to Scotland, or vice versa.
- *Cymru*, *Cymraeg* and *Cymreig* are similarly prescribed so that prior approval is required for their inclusion in a company's registered name only. The position is more complicated for English and Welsh national words than it is for Scottish national words. This is because England and Wales is a single jurisdiction but companies incorporating in England and Wales may choose to be "Welsh companies". The registered office of a Welsh company must be in Wales. While the registered office of any company incorporating in England and Wales may be in England or Wales – and may be moved between these countries. Careful consideration will be given to any application for a company's registered name to include a Welsh national word, whether in Welsh or English.
- the deletion of words where harm from misleading use seems very unlikely (eg *apothecary*) or where other legislation provides sufficient protection from misuse (eg *contact lens*) or where the prescription of a shorter expression makes the prescription of a longer expression otiose (eg the prescription of *chamber of* makes it unnecessary also to prescribe *chamber of commerce*).
- The addition of various words that convey authority where there is considered to be a risk of these being used in scams intended to trick members of the public into making payments or revealing valuable personal information (eg *regulator*).

Body whose views must be sought by applicant

25. The policy on the use of the power to specify a Government department or other body whose views must be sought by the applicant is pragmatic. No department or other body is specified for names that suggest a connection to a HM Government or a devolved administration or a local authority as whose views are relevant will depend on which part of Government or a devolved administration or which local authority there is a suggested connection. For the Company, LLP and Business Names (Public Authorities) Regulations 2009, we have taken the advice of the bodies and/or the relevant Government department (if any). As for the Company, LLP and Business Names (Sensitive Words and Expressions) Regulations

2009, bodies are specified only if they are appropriate for all names that include the word or expression.

Enforcement

26. Companies and LLPs adopt names on incorporation. They may also change their name at any time: a change of name has effect from the date on which the Registrar of Companies issues a new certificate of incorporation. In either event, the name must be registered by Companies House. Therefore the Secretary of State has delegated to the Registrar of Companies the power to approve a name that requires approval if required because of the connection suggested by the name or because it includes a prescribed word or expression.

27. There is no requirement to register business names. Enforcement of the requirements for prior approval is handled by both Companies House and local trading standards departments. Both respond to complaints from the public.

Costs and Benefits

28. In the 12 months to August 2009, 398,309 names were registered of which just over 50,000 were changes to the names of existing companies. As regards business names, there is no requirement to register a name. During this period, the Secretary of State approved fewer than 2,000 names – almost all were companies' registered names. No record is kept of the number of rejected names. In practice, names are not formally rejected, rather an applicant changes a proposed name on the advice of Companies House. In the same period, one company was directed to change its name because either misleading information had been given for its registration with that name or because undertakings or assurances given for that purpose had not been fulfilled (see paragraph 3).

29. The effect of prior approval being required for certain names is complex. Companies House publish guidance on the criteria and procedures. Seeking prior approval delays the adoption of a name in all instances.

30. As regards companies' and LLPs' registered names, the delay will be a matter of days in the most straightforward cases but it may be much longer particularly if the applicant must first seek the view of a specified body. The costs will vary similarly. As the applicant always has the option of not adopting a name that requires prior approval, it is assumed that the benefit of the approval outweighs the costs in every case where it is sought. There will be a net cost however for any person who had not realised that approval would be required for the proposed name. Companies House work to minimise this cost by publishing guidance and also by speedily alerting the applicant if a proposed name requires approval. There will also be instances where a different name has been chosen in preference to seeking approval for one that includes a prescribed word or expression.

31. As regards business names, there is no requirement to register a name. It is likely that there are persons trading under names that require approval but which have not been approved. The prosecution of offences, whether by Trading Standards Officers or by Companies House, is triggered by complaints. In most cases, there is no prosecution if the business changes its name when cautioned. In the 12 months to August 2009, Companies House received 15 complaints regarding the use of a sensitive word in a business name; there were no prosecutions.

32. Prescription of a word or expression also has a positive value to those who are permitted to include it in their names. Generally, approval will be sought only if the value is perceived to be greater than the cost. The main benefit of the requirement for prior approval is the reduction in likelihood of the public being misled by a name as to the authority or status of the company or business concerned: that is the purpose of the Regulations.

Mandatory Specific Impact Tests

33. We have considered the three mandatory impact tests (gender, race, disability) and the recommended options are unlikely to have any discriminatory effects.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes	Yes/No
Disability Equality	Yes	Yes/No
Gender Equality	Yes	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

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