

EXPLANATORY MEMORANDUM TO
THE COMPANIES (POLITICAL EXPENDITURE EXEMPTION) ORDER 2007

2007 No. 2081

1. 1.1 This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Companies (Political Expenditure Exemption) Order 2007 exempts certain types of political expenditure by companies from the requirement for shareholder authorisation, if it is incurred by companies whose ordinary course of business includes the preparation, publication or dissemination of news material to the public, or any part of the public.

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

- 3.1 The Companies (Political Expenditure Exemption) Order does not revoke the Companies (EU Political Expenditure) Exemption Order 2001 (SI 2001/445), which it replaces.

- 3.2 The 2001 Order was made under section 347B(8) of the Companies Act 1985. Section 347B(8) is intended to be repealed by commencement of section 1295 of and Schedule 16 to the Companies Act 2006, so far as they relate to section 347B(8), with effect from 1st October 2007, the date on which the Companies (Political Expenditure Exemption) Order 2007 enters into force. The 2001 Order will cease to have effect by virtue of the repeal of section 347B(8).

- 3.3 The 2001 Order cannot continue to have effect by virtue of section 17(2) of the Interpretation Act 1978, because it could not have been made under section 377 of the Companies Act 2006, the provision which re-enacts section 347B(8) of the Companies Act 1985. That is because the 2001 Order provides an exemption from requirements of the Companies Act 1985 (among others) for 'intermediate' holding companies (that is, holding companies in the middle of a chain where one company owns another which owns another) to seek shareholder authorisation. There is no such requirement in the Companies Act 2006, and therefore no exemption from such a requirement could be made under section 377 of the Companies Act 2006.

4. **Legislative Background**

- 4.1 This Order is to be made under Part 14 of the Companies Act 2006, which regulates the control of political donations and expenditure made by companies. Section 366 of the Act provides that a company must not incur political expenditure (as defined in the Act) unless that expenditure is authorised by a resolution of the

company's shareholders. This Order exempts certain companies from this requirement as explained in 2.1 above.

4.2 This Order replaces the Companies (EU Political Expenditure) Exemption Order 2001 (SI 2001/445), which was made under the Companies Act 1985. This Order is drafted in simpler language to correspond with the simpler format and drafting of the Companies Act 2006 (which replaces the 1985 Act). The 2001 Order will be repealed at the same time that this Order comes into force (1 October 2007).

4.3 The exemption provided by this Order is extended to include political expenditure relating to support for an independent election candidate, reflecting the extension of the definition of political expenditure in the 2006 Act. However, the provisions of the Order relating to support for an independent election candidate come into force only on 1st October 2008, which is the date on which the provisions of the 2006 Act relating to support for an independent election candidate come into force.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. The exemption in the Order extends to Northern Ireland, unlike that in the 2001 Order, because the provisions in Part 14 of the 2006 Act will also apply to Northern Ireland unlike the 1985 Act.

6. European Convention on Human Rights

6.1 Margaret Hodge MBE MP, Minister of State for Industry and the Regions, made the following statement regarding Human Rights:

“In my view the provisions of the Companies (Political Expenditure Exemption) Order are compatible with the Convention rights.”

7. Policy background

Policy

7.1 The Companies Act 2006 has simplified and modernised company law. It has substantially rewritten company law to make it easier to understand and more flexible, especially for small businesses.

7.2 This Exemption Order supports the objective of the Act, which was to pursue the principles of Better Regulation and a Think Small First approach. It would be impractical to expect companies whose ordinary course of business includes the preparation, publication or dissemination of news material, to pass a resolution each time they wished to carry out an activity under the definition of ‘political expenditure’. For example, allocating resources to the publishing of news editorials which support the position of a particular political party would fall under the definition of political expenditure. Therefore, this Order maintains a framework of company law that is proportionate and not imposing unnecessary burdens on business.

7.3 The definition of political expenditure is given in section 365 of the Companies Act 2006. It covers any expenditure incurred on any publicity material or

activities that may be intended to affect public support for a political party or candidate, or to influence voters on any referendum.

7.4 This Order is not of particular public interest, nor is it contentious or politically important, because there is no significant change to the existing law.

Consultation

7.5 A draft of this Order has been subject to consultation from 28 February to 1 May 2007 as part of the 'Implementation of Companies Act 2006 Consultative Document February 2007' (URN 07/666) and there has been very little response. The Department for Business, Enterprise and Regulatory Reform sought comments from the Newspaper Society in particular, given their level of interest in this policy area in the past, and their comments have been taken into consideration in the drafting of this instrument.

Guidance

7.6 A draft of the Order has been available to view on the BERR website from 26 March 2007. This has been accompanied by frequently asked questions specifically on the Order to explain its purpose.

8. Impact

8.1 A regulatory impact assessment has not been prepared for this instrument. It repeats an existing Order without significant change in content, and therefore has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector should be negligible, as the instrument applies to companies.

9. Contact

9.1 Emma Smith at the Department for Business, Enterprise and Regulatory Reform (telephone number: 0207 215 2663 or e-mail: Emma.Smith@berr.gsi.gov.uk) can answer any queries regarding this instrument.