

EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 2006
(CONSEQUENTIAL AMENDMENTS ETC) ORDER 2008

2008 No. DRAFT

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.

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

2. Description

2.1 This order makes consequential amendments to UK legislation to take account of the provisions of the Companies Act 2006 (“the 2006 Act”) that will come into force on 6 April 2008 and 1 October 2008. It also contains a small number of consequential amendments to take account of provisions of the 2006 Act which came into force in 2007 and a small number of savings.

2.2 The amendments are wide ranging including amendments to a wide range of Acts of the United Kingdom Parliament, to Acts of the Scottish Parliament and to Northern Ireland Orders, as well as to some statutory instruments.

2.3 The draft Order has been drafted by Parliamentary Counsel.

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

3.1 The transitional provisions in paragraphs 6 and 7 of Schedule 4 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194 (C.84)) deal with the disclosure in annual accounts of loans etc made by a company to its directors and persons connected to its directors. They have the effect of requiring a company to disclose loans etc made to anyone caught by the extended definition of who is “connected” with a director in sections 252 and 253 of the 2006 Act. This was an unintended consequence: the new disclosure requirement in section 413 of the 2006 Act – which will apply to disclosure in accounts for financial years beginning on or after 6 April 2008 – applies only to transactions with directors themselves. To minimise the unnecessary burden of this, paragraphs 76, 90 and 91 of Schedule 1 to the draft Order amend Schedules 6 and 9 of the Companies Act 1985 so as to remove the requirement to disclose transactions with connected persons in accounts for financial years ending on or after 6 April 2008.

4. Legislative Background

4.1 The Companies Act 2006 received Royal Assent in November 2007 and is being implemented in stages.

4.2 Some provisions of the 2006 Act come into force on 6 April 2008 and 1 October 2008. The main purpose of this Order is to make consequential amendments to legislation which contains references to earlier Companies Acts, and to the definitions and concepts found in those Acts.

4.3 Schedule 1 to this Order contains amendments coming into force on 6th April 2008, Part 1 of this Schedule contains amendments about the eligibility for appointment as an auditor and Part 2 contains other amendments; Schedule 3 to this Order contains amendments coming into force on 1st October 2008.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. The Order includes amendments to Acts of the Scottish Parliament and Northern Ireland Orders.

6. European Convention on Human Rights

6.1 Gareth Thomas, the Parliamentary Under Secretary of State for Trade and Consumer Affairs, has made the following statement regarding Human Rights:

“In my view the provisions of the Companies Act 2006 (Consequential Amendments etc) Order 2008 are compatible with the Convention rights.”

7. Policy background

7.1 The implementation of the 2006 Act requires consequential amendments to be made to other legislation which contains references to earlier Companies Acts, and to the definitions and concepts found in those Acts.

7.2 As stated above, this Order mainly covers those parts of the 2006 Act which will be brought into force in April 2008 and October 2008. A further Order will be required in respect of those provisions that are brought into force in 2009.

7.3 This Order sets out the consequential amendments that are required to that legislation with the aims of ensuring that the legislation which is amended continues to operate in an effective way and is easy for the reader to use.

7.4 This Order does not cover consequential amendments to the legislation for which Her Majesty's Revenue and Customs are responsible. HMRC have prepared a parallel Order to take account of these amendments.

7.5 The Secretary of State for Business, Enterprise and Regulatory Reform has primary responsibility for the Companies Act 2006 (Consequential Amendments etc) Order 2008.

8. Impact

8.1 An impact assessment has not been produced for this instrument because no impact on the private or voluntary sector is foreseen.

9. Contact

9.1 Maureen Beresford at the Department for Business, Enterprise and Regulatory Reform (Tel: 0207 215 3342 or e-mail: maureen.beresford@berr.gsi.gov.uk) can answer any queries regarding the Order.