EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (AMENDMENT OF SCHEDULE 2) ORDER 2009

2009 No.202

1. This explanatory memorandum has been prepared by The Department for Business Enterprise and Regulatory Reform (BERR) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These regulations amend the provisions of Schedule 2 to the Companies Act 2006 (specified persons, descriptions of disclosures etc. for the purposes of section 948) to include in the list of persons to whom disclosure may made references to relevant Isle of Man bodies and persons exercising functions under Manx law.

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

3.1 None

4. Legislative Context

4.1 The Regulations relate to Part 28 of, and Schedule 2 to, the Companies Act 2006.

5. Territorial Extent and Application

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The instrument is subject to the negative resolution procedure but amends primary legislation.

6.2 Ian Pearson has made the following statement regarding human rights:

In my view the provisions of the Companies Act 2006 (Amendment of Schedule 2) Order 2009 are compatible with the Convention rights.

7 Policy background

7.1 Part 28, Chapter 1, of the Companies Act 2006 puts the Takeover Panel and the Takeover Code on a statutory footing, and implements the Takeover Directive (Directive 2004/25/EC). The Directive does not extend to the Channel Islands or Isle of Man, but it has been decided by all 3 island authorities that the Panel and the Code should have legal standing in each jurisdiction.

7.2 Section 965 of the Act provides that Her Majesty may, by Order in Council, direct that Chapter 1 of Part 28 extend to the Isle of Man or any of the Channel Islands. The Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 (S.I. 2008/3122) extends Part 28 of the Act to the Isle of Man.

7.3 Section 948 of the Act provides that information relating to the private affairs of individuals or relating to a particular business is not to be disclosed without consent, other than in accordance with the exemptions in s.948(3). That subsection refers to a list of specified persons or persons of specified description set out in Schedule 2 to the Act.

7.4 The exemptions in Schedule 2 apply in respect of disclosure within the UK and as presently drafted only cover persons within the jurisdiction. Given the extension to the Isle of Man in S.I. 2008/3122 and the amendment to the list of exempt persons in Schedule 2 for the purposes of the application of the law in the Isle of Man as a result of that extension, it is now necessary to ensure a corresponding amendment to Schedule 2 as it applies within the UK.

7.5 The instrument amends Schedule 2 to the 2006 Act by inserting in it the Isle of Man authorities listed in the Order extending Chapter 1 of Part 28 to the island.

8. Consultation outcome

The Takeover Panel has led on, and the department has contributed to, consultation on these Regulations with the Isle of Man authorities.

9. Guidance

9.1 Guidance on these Regulations is available from Phillip Nicholls whose contact details can be found at paragraph 13.

10. Impact

These Regulations have no impact on the costs of business, charities or voluntary bodies.

11. Regulating small business

These Regulations do not apply to small business.

12. Monitoring & review

12.1 These regulations extend the provisions of Schedule 2 to the Companies Act 2006 (specified persons, descriptions of disclosures etc. for the purposes of section 948) to include references to relevant Isle of Man bodies and persons exercising functions under Manx law allowing, where relevant matters arise, disclosure to such persons by the Takeover Panel.

12.2 Where from time to time the Isle of Man may elect to amend its own schedule of specified persons etc. it will be a matter for the Takeover Panel to monitor & review such amendments, and to notify the department of any similar amendments required to Schedule 2 to the Companies Act 2006.

13. Contact

Phillip Nicholls at the Department for Business, Enterprise and Regulatory Reform 0207 215 3091 or e-mail: Phil.Nicholls@berr.gsi.gov.uk can answer any queries regarding the instrument.