EXPLANATORY MEMORANDUM TO

THE COMPANIES (FEES FOR INSPECTION AND COPYING OF COMPANY RECORDS) (NO.2) REGULATIONS 2007

2007 No. 3535

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.

2. Description

2.1 These Regulations prescribe the fees applicable under the Companies Act 2006 (c. 46) ("the Act") to inspect the register of debenture holders of a company, or to receive a copy of that register or a copy of a company's debenture trust deed.

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

3.1 None

4. Legislative Background

4.1 The Regulations specify the fees referred to in sections 744(1)(b), 744(2) and 749(1) of the Act. These sections will come into force on 6 April 2008. The Regulations replace the fees relating to debentures set out in Schedule 2 to each of the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991 (SI 1991/1998) and the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations (Northern Ireland) 1993 (SR (NI) 1993 No. 66), subject to transitional savings.

4.2 The fees are the same as those specified for other types of company record in the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 (SI 2007/2612).

4.3 While there is no requirement on a company to keep a register of debenture holders, if it does keep such a register then the company must allow any person to inspect that register. The Act provides that such inspection must be allowed free of charge to any registered holder of debentures in the company or any holder of shares in the company. The Regulations specify the fee that may be charged by the company to allow inspection by any other person. Any person may require a copy of the register on payment of the fee prescribed in these Regulations.

4.4 The Act also provides that any holder of a company's debentures is entitled to be provided with a copy of the trust deed on payment of the prescribed fee.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy is that the fees relating to registers of debentures and trust deeds securing debentures should be the same as those relating to other company registers and records for which there is a right of inspection and/or to be provided with copies. On 1 October 2007 the fees for other registers and records were increased. The increase in the fee for inspection was raised in line with general inflation since 1991 when the previous fees were set. However, changes in technology made a simple adjustment for inflation inappropriate for copies. The fees are intended to be set at a level intended to ensure that companies are able to recover their reasonable costs. There are no payments to Government or any public authority. All fees are transfers wholly within the private sector.

7.2 In late May 2007, a draft of the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 (SI 2007/2612) together with a draft Impact Assessment was placed on BERR's (then DTI's) website page for documents relating to the Act. In addition, an email alert was sent to the approximately 700 persons who asked to be kept informed of developments relating to the implementation of the Act. In the light of the responses received, revised draft Regulations and a revised draft Impact Assessment were placed on the website and there was further consultation in August 2007 with key stakeholders and those who had commented on the earlier draft. This consultation related to the fees for inspection and copying of all company records including those relating to debentures.

8. Impact

8.1 The Impact Assessment for the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 (SI 2007/2612) is attached to this memorandum. This prescribes for other company records the same level of fees as the Companies (Fees for Inspection and Copying of Company Records) (No.2) Regulations 2007 prescribe for inspecting the register of debenture holders of a company, or receiving a copy of that register or a copy of a company's debenture trust deed.

8.2 There is no impact on the public sector.

9. Contact

Anne Scrope at the Department for Business, Enterprise and Regulatory Reform, tel: 020 7215 2194 or e-mail: anne.scrope@berr.gsi.gov.uk, can answer any queries regarding the instrument.

Department for Business, Enterprise and Regulatory Reform	Impact Assessment of Regulations for Fees for Inspection and Copying of Company Records	
Stage final	Version 03/09/09	Related Publications: draft Regulations, published on DTI website on 26 May 2007

Available to view or download at: www.berr.gov.uk/bbf/co-act-2006/index.html

Contact name for enquiries: Anne Scrope

Email address: anne.scrope@berr.gsi.gov.uk Telephone number: 0207 215 2194

What is the problem under consideration? Why is government intervention necessary?

Company law requires companies to provide access to specified company records. The fees that companies may charge for this access is set by Regulations. The existing Regulations must be replaced when the relevant provisions of the Companies Act 2006 replace those in the Companies Act 1985.

What are the policy objectives and the intended effects?

Fees are prescribed so that companies can recover their reasonable costs incurred in meeting this statutory obligation.

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

A. No change to current fees.

B. Adjust the current fees only for inflation since 1991

C Preferred option: adjust the current fees for inflation and changes in other costs.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

2013

Ministerial Sign-off:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Stephen Timms

Date 17th December 2007

SUMMARY: ANALYSIS & EVIDENCE

Policy Option C : Adjust the current fees for inflation and other changes in costs

ANNUAL COSTS

One off (Transition

Average Annual Cost
(excluding one-off)

0

Those making and those responding to requests will be potentially affected by the new fee structure. But other changes in CA06 mean it is unlikely that fees will be charged in many instances other than requests handled by commercial registrars on behalf of companies. This means the transitional costs will be minimal.

Total cost (PV)

Other **key non-monetised costs**
A few companies will not be able to recover their costs for requests for extracts of up to 100 entries from their registers.

ANNUAL BENEFITS

One off

Average Annual Benefit
(excluding one-off)

Total Benefit PV

Other **key non-monetised BENEFITS**
The fees would be at levels so that, on the one hand, companies can recover all reasonable costs in meeting most requests for access and, on the other, companies cannot use the fees to discourage access.

KEY Assumption/Sensitivities Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £-£	**NET BENEFIT** (NPV Best Estimate) £

What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	1.10.07				
Which organisation(s) will enforce the policy?	Companies House				
What is the total annual cost of enforcement for these organisations?	nil				
Will implementation go beyond minimum EU requirements	Not applicable				
What is the value of the proposed offsetting measure per year?	Not applicable				
What is the value of changes in green gas emissions?	Not applicable				
Will the proposal have a significant impact on competition?	No				
Annual cost per organisaton (excluding one-off)	Micro 0	Small 0	Med 0	Large 0	
Are any of these organisations exempt?	No	No	No	No	

Impact on Admin Burdens Baseline (2005 prices)

Increase of Decrease of **Net Impact**

Evidence Base
for Summary Sheets

1. The Companies Act 2006 (CA06) requires all companies to permit inspection and to provide copies of specified company records. Where copies are permitted, the company will always be able to charge a prescribed fee. Companies will also be to charge a prescribed fee for inspection of some records by some people. Table 1 shows the position as it will be under CA06 and also the current position under the Companies Act 1985.

2. The fees are paid to companies by those using their statutory right of access to the companies' records. There are no payments to Government or any public authority. The fees are transfers wholly within the private sector. We understand that many companies waive their right to the prescribed fees except for copies of 1,000s of entries from registers. Such requests may be made for improper purposes. It is likely that there will be fewer such improper requests under CA06 as provides a safeguard against abuses of the right of access to companies' registers of members[1] and registers of debenture holders. It requires any request for access to include the name and address of the person seeking access and say what the information will be used for and whether it will be shared with anyone else and, if so, to whom and for what purpose. The company must, within 5 working days, either comply with the request for access or apply to the court. The court will allow the company not to comply if it is not satisfied that the access is being sought for a proper purpose. A similar safeguard is provided for public companies' registers of interests in shares disclosed.

3. The current fees date back to 1991. They are set by Schedule 2 of the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991 (SI 1991/1998). The fees are:

£2.50 for inspection for each hour or part thereof;
£0.10 per hundred words or part thereof for copies of trust deeds and minutes of meetings;

and for copies of all other records and registers:

£2.50 for the first 100 entries or part thereof;
£20.00 for the next 1000 entries or part thereof, and
£15.00 for every subsequent 1000 entries of part thereof.

These regulations must be replaced when the relevant provisions of the CA06 come into force: this will be in two tranches on 01.10.07 and 01.10.08. Sections 116 – 119 of CA06, which relate to inspection and copying of companies' registers of members, will come into force on 1.10.07. Therefore regulations prescribing the fees for this access are needed from that date. The Regulations also provide for the fees for a copy of directors' service contracts, qualifying indemnity provision, records of resolutions and meetings, the report to members of the outcome of an investigation into interests in shares and the register of interests disclosed. From 01.10.08. these Regulations will be replaced by The Companies (Company Records and Fees) Regulations 2007.

These regulations must be replaced when the relevant provisions of the CA06 come into force. The Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 (S.I. 2007/2612) which came into force on 1 October 2008 prescribed-

- a fee for the inspection of the register and index of member's names;
- a fee for the copy of a company's register of members and copy of entries in the register of interests in shares disclosed; and
- a fee for a copy of a director' service contract, a copy of a director's qualifying indemnity provision, a copy of records of resolutions and meetings and a copy of any report under section 805 of the CA06.

4. These fees which are prescribed in these Regulations are identical to those prescribed in S.I. 2007/2612. For the Regulations under CA06, the objective is to set the fees at levels so that, on the

[1] In practice, for companies limited by shares, members are shareholders

one hand, companies can recover all reasonable costs in meeting a request for access and, on the other, that companies cannot use the fees to discourage access. The fee needs to be appropriate for all companies noting that, for example, several companies' registers of members have hundreds of thousands of entries but over 95 per cent of private companies and over 70 per cent of public companies have fewer than 5 members.

5. Option A is to keep the current fees, with the fee for copies of directors' indemnities and directors' service contracts (for which the right of access is new) set at the same as that for copies of trust deeds..

6. Option B is to adjust the current fees for inflation. If the 1991 fees were adjusted for inflation (and rounded), they would be:

£3.50 for inspection for each hour or part thereof;
£0.15 per hundred words or part thereof for for copies of trust deeds, minutes of meetings, directors' indemnities and directors' service contracts:

And for copies of all other records and registers

£3.50 for the first 100 entries or part thereof;
£35.00 for the next 1000 entries or part thereof, and
£20.00 for every subsequent 1000 entries or part thereof.

7. Option C is to revise the structure of the fees. Prior to 1991, the fee for copies of registers appears to have been based on the cost of a person copying out the material at issue, pre-dating the widespread use of electronic records. The 1991 fee structure is more realistic but does not reflect the reduction in the cost of providing copies. Noting that paragraphs 1-4 above contained 490 words and that the cost of photocopying an A4 page is commonly 10p, it is proposed that the prescribed fee for copies be 20p per thousand words. Draft Regulations and a draft Impact Assessment were published in May 2007. The fees proposed were:

£3.50 for inspection for each hour or part thereof;
10 pence per five hundred words or part thereof for copies of records

and for copies of entries in registers provided:

£3.50 for the first 50 entries
£31.50 for the next 950 entries
£20 for the next 4,000 entries
£25 for every subsequent 5,000 entries

8. Respondents were content with the proposed fees for inspection and copies of records provided that cost of delivering the copy could also be charged. As regards copies in entries in registers, they made clear that the cost of providing copies of a few entries is higher than the fee proposed in the May draft as the information to be copied must first be extracted from the register. On the other hand, they pointed out that the cost of providing hundreds of thousands of entries does not vary with the number of entries copied. Noting the comments on the draft Impact Assessment and also that over 90 per cent of companies have fewer than 5 members, respondents' views were sought on revised proposals for copies of entries in registers:

Reasonable costs incurred in delivering the copy plus

£1 for each of the first 10 entries
£10 for the next 90 entries
£20 for the next 900 entries
£40 for the next 49,000 entries
£40 for the remainder of the entries in the register

Respondents considered that £1 for each of the first 10 entries was too complex and that the cap should be set at a higher number of entries. In the light of these comments, the Regulations provide for the following fees.

£5.00 for the first 5 entries
£30 for the next 95 entries
£30 for the next 900 entries
£30 for the next 99,000 entries
£30 for the remainder of the entries in the register

9. The actual fee paid is the cumulative fee. A comparison for Options A, B and C is set out below.

<table>
<tr><th>Number of entries</th><th colspan="2">Option A
Current fees</th><th colspan="2">Option B
Current fee adjusted for inflation</th><th>Option C
New structure</th></tr>
<tr><td>1-5</td><td colspan="2" rowspan="2">£2.50</td><td colspan="2" rowspan="2">£3.50</td><td>£5</td></tr>
<tr><td>6-100</td><td>£35</td></tr>
<tr><td>101-1,000</td><td colspan="2" rowspan="2">£22.50</td><td colspan="2" rowspan="2">£38.50</td><td>£65</td></tr>
<tr><td>1,001-1,100</td><td rowspan="2">£95</td></tr>
<tr><td>1,101-100,000</td><td colspan="2" rowspan="2">£22.50 + £15 for every further 1000, giving</td><td colspan="2" rowspan="2">£38.50 + £20 for every further 1000, giving</td></tr>
<tr><td rowspan="4">More than 100,000</td><td rowspan="4">£125</td></tr>
<tr><td>Entries</td><td>fee</td><td>Entries</td><td>fee</td></tr>
<tr><td>50,000</td><td>£757.50</td><td>50,000</td><td>£1018.50</td></tr>
<tr><td>500,000</td><td>£7,507.50</td><td>500,000</td><td>£10,018.50</td></tr>
<tr><td>1,000,000</td><td>£15,007.50</td><td>1,000,000</td><td>£19,018.50</td></tr>
</table>

TABLE 1: STATUTORY RIGHTS OF ACCESS TO COMPANY RECORDS

Record to which there is a right of access under the Companies Act 2006	**Section Companies Act 2006**	**Access rights**	**Section Companies Act 1985**	**Change**
Contracts relating to purchase of own shares	702	Inspection only. Free: public	169	No change
Directors' indemnities	238	Inspection free; Fee for copy Members only.	318	Right to copy is new
Directors' service contracts	229	Inspection free; Fee for copy Members only.	318	Right to copy is new
Documents relating to redemption or purchase of own shares out of capital	720	Inspection free; Fee for copy Members & creditors only	175	Right to copy is new
Instruments creating charges and register of charges	877 & 892	Inspection only Free: Members & creditors Fee: Public	408 & 423	No change
Records of resolutions, etc	358	Members Inspection free Fee for copy	383	Currently apply to minutes of meetings. No change in access rights.
Register of debenture holder and its index	744	Inspection: free for Debenture holders; fee for all others. Fee for copy.	191	Change to how requests for access are handled – see below
Register of directors	162	Inspection only. Free for members; Fee for public	288	May be kept separately from register of secretaries
Register of directors' interests in share or debentures			325	No requirement to keep or to allow inspection
Interests in shares disclosed: report to members of outcome of investigation, the register and its index	807 & 811	Inspection free; fee for copy public	219	Change to how requests for access are handled – see para 2 above
Register of members and its index	116	Inspection: free for members; Fee for others. Fee for copy.	356	Change to how requests for access are handled – – see para 2 above.
Register of secretaries	275	Inspection only. Free for members; Fee for public	288	May be kept separately from register of directors
Trust deed securing a debenture	749	Copy for fee. Holders of debenture only	191	No change

Specific Impact Tests - Checklist

Competition assessment. Options A and B are likely to result in some companies being able to charge fees that discourage use of the statutory right of access to certain documents. While, in practice, many companies waive their right to collect fees, particularly when these exceed their costs, it would be better if the prescribed fees were no more than sufficient to ensure that a company can recover its reasonable costs in meeting a request for access. Option C is therefore preferred.

Small firms Impact Test. The fee structure is intended to ensure that the prescribed fees enable companies to recover their costs when providing copies of their full registers.

Legal Aid The Regulations do not provide a sanction.

Other tests. The Regulations will not have an affect on environmental or social issues.

Type of testing undertaken	*Results in Evidence Base? (Y/N)*	*Results annexed? (Y/N)*
Competition Assessment	*Y*	
Small Firms Impact Test	*Y*	
Legal Aid	*N*	
Sustainable Development	*N*	
Carbon Assessment	*N*	
Other Environment	*N*	
Health	*N*	
Race Equality	*N*	
Disability Equality	*N*	
Gender Equality	*N*	
Human Rights	*N*	
Rural Proofing	*N*	