EXPLANATORY MEMORANDUM TO

THE COMPANIES HOUSE TRADING FUND (AMENDMENT) ORDER 2009

2009 No. 2622

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

2. Purpose of the instrument

2.1 A UK-wide Register of Companies is being created through the integration of the Northern Ireland Companies Registry with Companies House. The latter currently only has jurisdiction in Great Britain. This amendment to the Companies House Trading Fund Order 1991 is being made to incorporate the funding of the Northern Ireland Registry into the Companies House Trading Fund.

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

3.1 None

4. Legislative Context

4.1 The enabling Act is the Government Trading Funds Act 1973. The Companies House Trading Fund Order 1991 established the Companies House Trading Fund. This Order is now to be amended by the Companies House Trading Fund (Amendment) Order 2009.

4.2 The Companies Act 2006 ("the 2006 Act") provides for a single company law regime for the whole of the UK under the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform (BERR). One effect of the new UK-wide regime is that the Companies Registry in Northern Ireland will become the responsibility of the Secretary of State with effect from 1 October 2009.

4.3 A UK-wide Register of Companies will be created through the integration of the Northern Ireland Registry with Companies House. The purpose of the amended Order is to reflect this change in terms of the funding of the combined registries.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Ian Pearson, the Economic and Business Minister, has made the following statement regarding Human Rights:

In my view the provisions of the Companies House Trading Fund (Amendment) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 In developing the 2006 Act the then Department of Trade and Industry and the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland, as part of the consultation on the Company Law Reform Bill[1], consulted widely on proposed changes to company law, including on unifying the company law system across the UK. This included a separate consultation in Northern Ireland. There was strong support for the proposal for UK-wide legislation and the alignment of company law. The 2006 Act therefore extends to Northern Ireland[2].

7.2 All companies in England, Wales and Scotland are registered at Companies House, an Executive Agency of BERR. There are currently Registrars for England and Wales (the Chief Executive of Companies House), for Scotland, and for Northern Ireland. At present the Companies Registry in Northern Ireland is part of DETI and the Registrar is appointed under separate Northern Ireland legislation[3]. DETI has responsibility for the funding of the NI Registry and bids for funds from the Northern Ireland Assembly.

7.3 In line with the creation of a single company law regime applying to the whole of the UK, the Northern Ireland Registry will be integrated with Companies House, to create a single UK Registry of Companies. Companies House has had Trading Fund status since October 1991. The Companies House Trading Fund Order 1991 specifies the fund's "funded operations", and the Order therefore needs to be amended to reflect this change.

7.4 The integration will deliver a number of benefits. Customers of Companies House will be able to refer to one register for registration and information relating to UK companies, and all UK customers will have access to the same products and services at the same price. Registration functions in Northern Ireland will be maintained with no detrimental impact. The office in Belfast will remain, but will use systems, hardware, processes and corporate standards in common with Companies House.

7.5 The alternative would be for BERR to manage the Northern Ireland Registry, directly or indirectly, separately from Companies House Registry. In the Government's view this approach would have a number of significant disadvantages. For example, there would be no UK-wide database of registered companies and customers would continue to have to search two registries to access information; there would be no UK-wide uniformity of fees; and Northern Ireland companies would be highly likely to face higher fees, because fees would have to be updated to ensure full cost recovery and because a separate registry would not benefit from economies of scale.

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[1] http://www.berr.gov.uk/bbf/co-act-2006/

[2] Company law remains a transferred matter in NI, subject to the jurisdiction of the NI Assembly, and the 2006 Act could be separately amended or repealed in NI if that were so desired.

[3] The Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (NI6)).

8. Consultation outcome

8.1 There was a full public consultation in August 2008 on the proposal to create a UK-wide Register of Companies and on the draft Order[4]. The consultation was distributed to stakeholders in Northern Ireland, and, in total, around 800 UK organisations were directly contacted.

8.2 There were only four responses to the consultation. Three supported the proposal to amend the Companies House Trading Fund Order. One respondent raised points outside the scope of the consultation.

8.3 In view of the responses the Government has decided, as proposed, to amend the Companies House Trading Fund to integrate the funding of the Northern Ireland Registry. The response to the consultation has been published on the BERR website, and two copies have been laid before Parliament in accordance with section 6(4) of the Government Trading Funds Order 1973.[5]

9. Guidance

9.1 As this is an amendment to the existing Companies House Trading Fund Order, there is no need for specific guidance. The Department has however published the Government's response to its consultation. Companies House will inform customers of the general change to the Companies House Trading Fund Order, particularly those customers in Northern Ireland.

10. Impact

10.1 An Impact Assessment of the effect of merging the two registries has been produced and is attached to this explanatory memorandum.

11. Regulating small business

11.1 The Order itself places no new regulatory burden on small business, but, by merging the Northern Ireland and Great Britain registries, all Northern Irish companies will benefit from a unified fees structure, which will reflect economies of scale.

12. Monitoring & review

12.1 Companies House will continue to undertake an annual fees review, to ensure that UK-wide fees are set at the right levels.

12.2 In addition, the integration of the Northern Ireland Registry will be reflected in the Companies House report and accounts for 2009/10, and the accounts will be

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[4] Government proposal to amend the Companies House Trading Fund August 2008 URN 08/1178

[5] http://www.berr.gov.uk/whatwedo/businesslaw/co-act-2006/made-or-before-parliament/page35232.html

prepared in accordance with a direction by the Treasury in pursuance of section 4(6) of Government Trading Funds Act 1973. This annual report will be available in July 2010.

13. Contact

13.1 Alicia Law at the Department for Business, Enterprise and Regulatory Reform tel: 020 7215 5387 or email: alicia.law@berr.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
BERR	**Impact Assessment on Amending the Companies House Trading Fund Order to Incorporate Northern Ireland (NI)**	
Stage: Final	**Version:** 1	**Date:** April 2009
Related Publications: Regulatory Impact Assessment, Companies Act 2006		

Available to view or download at:
www.berr.gov.uk/consultations/open-consultations/index.html

Contact for enquiries: Alicia Law **Telephone:** 020 7215 5387

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

The Companies Act 2006 ("the 2006 Act") will create a company law regime applying to the whole of the UK. At present the Companies Registry in Northern Ireland is part of the Department of Enterprise, Trade and Investment in Northern Ireland.

Government intervention is necessary to create a unified Registry of Companies, which would allow customers in Northern Ireland (NI) to take advantage of economies of scale inherent to a UK-wide registry regime.

What are the policy objectives and the intended effects?

It is proposed that the most efficient and cost effective mechanism for managing a UK Registry will be to have a unified Registry of Companies, bringing service levels, products and fees into line across the UK. There would be minimal disruption to companies in NI as the Belfast office would remain in place. There would be considerable benefits, both for customers searching a single electronic UK Register, and for filing customers, who would be able to access a full range of electronic services for incorporation and filing of an annual return, company detail changes and annual accounts.

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

Amend the current Companies House Trading Fund Order to include the Registry of Northern Ireland. This would ensure parity of fees across the UK and the most efficient and effective mechanism for managing a UK Registry.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Companies House will continue to undertake an annual fees review, to ensure that UK wide fees are set accurately on a cost recovery basis.

Ministerial Sign-off For final 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:

Ian Pearson

..... Date: 5th May 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: Amend the current Companies House Trading Fund Order to include the Registry of Northern Ireland

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 200,000	
Average Annual Cost (excluding one-off)	
£ 0	

Description and scale of **key monetised costs** by 'main affected groups' Companies House will have to update and modify their existing infrastructure to incorporate the NI Registry

Total Cost (PV) **£ 200,000**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ 0	
Average Annual Benefit	
£ 193,000	10

Description and scale of **key monetised benefits** by 'main affected groups' . NI customers will benefit from economies of scale enjoyed by Companies House, allowing a wider range of products and services to be delivered at a lower cost than the current situation.

Total Benefit (PV) **£ 1,607,000**

Other **key non-monetised benefits** by 'main affected groups'. There will be one point of contact for all queries relating to UK companies. Further, there will be access for all UK companies to Companies House broader range of products and services, which include more electronic services and same day services.

Key Assumptions/Sensitivities/Risks The fee structure at Companies House will remain the same after incorporating the NI Registry and it has been assumed that companies from the NI Registry will take up electronic filing in line with the position currently in GB.

Price Base Year 2008 2008 2008	Time Period Years 10	**Net Benefit Range** (NPV) **£ 1,407,000**	**NET BENEFIT** (NPV Best estimate) **£ 1,407,000**

What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	October 2009
Which organisation(s) will enforce the policy?	Companies House
What is the total annual cost of enforcement for these organisations?	£ N/A
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?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

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**

Evidence Base (for summary

[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.]

1. INTRODUCTION

1.1 The Companies Act 2006 ("the 2006 Act") provides for a single company law regime for the whole of the UK under the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform.

1.2 This sets the scene for a single UK Companies Register. It is proposed that the most efficient mechanism to achieve a unified Register would be to integrate the Northern Ireland (NI) Registry with the Great Britain (GB) Registry at Companies House.

1.3 Companies House has Trading Fund status, as set out in the Companies House Trading Fund Order 1991 ("the order").

2. BACKGROUND

2.1 In June 2005 the DTI issued a White Paper on Company Law Reform[6], setting out a series of measures for the proposed Company Law Reform (later Companies) Bill. This Bill became the Companies Act 2006 on receiving Royal Assent on 8 November 2006 and will be fully implemented by October 2009.

2.2 The consultations on company law addressed whether the law should apply to the whole of the UK. Previously Companies Acts had applied only to England, Wales and Scotland, but in practice were generally replicated in subsequent NI legislation. The positive outcome of these consultations means that when the 2006 Act is fully implemented it will apply to the whole of the UK.

3. OPTIONS

OPTION 1- PREFERRED OPTION: AMEND THE CURRENT TRADING FUND TO INCORPORATE THE NI REGISTRY

3.1 With the Companies Act 2006 applying to all UK Companies, it makes sense to have a single Registry of UK Companies. The Companies House Registry is made up of 2.5 million companies, and the NI Registry is made up of 38,000 companies. Therefore, to take full advantage of the economies of scale, and broader range of premium, same day or electronic services available at Companies House, it is proposed that the NI Registry should be incorporated into the Companies House Registry. The Trading Fund Order needs to be amended to integrate the funding of the NI Registry into the Companies House Trading Fund.

[6] http://www.berr.gov.uk/bbf/co-act-2006/

BENEFITS OF OPTION 1

- Access for all UK companies to Companies House's broader range of products and services, including more electronic services and premium or same day services.
- NI customers will benefit from economies of scale, allowing products and services to be delivered at a lower cost to businesses that currently use the NI Registry.*
- Existing NI company data will be migrated to give customers full UK information on companies in one place.
- Customers have one point of contact for all queries relating to UK companies: customers would have access to the Companies House Contact Centre, and Companies House Information Centres, for all queries relating to any UK company.
- There will be a common fee structure across the UK*.
- There will be no need for the NI Registry to develop (at additional cost) a system to reflect the October 2009 implementation of the 2006 Act.

3.2 Due to the nature of the benefits associated with option 1 it is quite difficult to quantify a value for each benefit. However making some reasonable assumptions which will be explained in due course, it will be possible to estimate two of the benefits mentioned above (indicated by the *).

3.3 We have compared the existing products that are available at the NI Registry to the equivalent products that are available at Companies House. We have estimated that having a common fee structure across the UK based on the current Companies House fee structure will result in annual savings of £193,000. This annual saving is due to the economies of scale and the availability of electronic services that a UK-wide Registry would bring current and future NI customers.

3.4 The benefit of £193,000 has been estimated using the standard cost model (Price X Quantity). The price in this calculation is the difference in price for each comparable service / product available at the NI Registry and Companies House (see Annex B). The main savings will occur when a NI company incorporates (£15), changes its name (£30), files an annual return electronically (£5) or registers a mortgage /charge (£12). An increase in costs will occur when companies file their annual returns by paper (£10). The quantity in this calculation is the number of companies that would be affected on the NI Registry for each service / product. This number multiplied by the price and quantity gives a 'net benefit' for each service / product. Finally, all the net benefits for each service / product are added together to give an overall net benefit of £193,000 per annum.

3.5 For example, it currently costs £35 for a company to incorporate at the NI Registry, whereas the equivalent service at Companies House costs £20. The difference in price between the NI Registry and Companies House is £15 . In 2007/08 there were 3,884 companies (including Limited Liability Partnerships) newly incorporated on the NI Registry, giving a net benefit of £58,260.

Key assumptions of this quantified benefit:

- The fee structure at Companies House will remain the same after incorporating the NI Registry.
- It has been assumed that companies from the NI Registry will take up electronic filing in line with the position currently in GB. The position in GB is that 85% of companies file annual returns electronically, with the remaining companies filing annual returns in paper form. Note: If the split of NI companies who submit their annual returns differs from the one assumed it will result in a significant change in the quantified benefit for this option. However, evidence from GB would suggest that, over time, the number of companies that file their annual returns electronically is increasing. Therefore in reality, this benefit may actually be underestimated (this split can be easily monitored by Companies House, hence this figure can be further verified or adjusted over time).

COSTS OF OPTION 1

- Companies House will have to update and modify their existing infrastructure to incorporate the NI registry. This will be a one-off cost estimated at £200,000.
- Customers of the NI Registry will have to be informed that the information they require will now be available from Companies House.
- Bulk customers of the NI Registry only will no longer be able to get updates for just NI companies. They will have to get an update of the whole UK companies population. At present the cost for bulk customers at the NI registry is a one off £30 fee, whereas at CH the monthly subscription is £30 (or £300 annually). However, there is only one customer of the NI registry that is not a CH customer and from I October 2009 they will be obtaining NI Registry information from elsewhere.

3.6 Disregarding the one-off cost to Companies House of modifying their existing infrastructure to incorporate the NI registry, the net benefit (quantified benefits minus quantified costs) for this option is therefore £193,000 per annum.

OPTION 2 – ALTERNATIVE: FOR BERR TO MANAGE THE EXISTING NORTHERN IRELAND REGISTRY

3.7 Under the Companies Act 2006, the Companies Registry in Northern Ireland will become the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform with effect from 1 October 2009. The Department could elect to manage the NI Registry, directly or indirectly, separately from the Companies House Registry [7], but it believes this approach would have a number of significant disadvantages with associated costs.

BENEFITS OF OPTION 2

If this option is chosen it is expected to bring no additional benefits.

[7] The relatively small-scale operation needed to run a separate Northern Ireland Registry means that it is perhaps not feasible to establish a Trading Fund to facilitate the work. Although Companies House operates successfully as a Trading Fund, this is partly because it can spread costs, for items such as IT development, across many more customers than a separate Northern Ireland Registry would be able to do.

COSTS OF OPTION 2

- BERR will need to put in place a system to manage and finance the NI Registry.
- New targets and delivery standards would have to be agreed by Ministers.

3.8 The nature of the costs associated with this option are very difficult to quantify. The costs would include initial set-up and additional running and administrative costs that we expect would be significantly higher year on year (due to no economies of scale) than if Companies House does the work (as per option 1). In addition, if option 2 is chosen, the qualitative benefits of option 1 will not be realised, and the disadvantages of having two registries as set out in the consultation document will remain.

PREFERRED OPTION

Although it has not been possible to quantify all of the costs and benefits associated with the options set out above, it is clear that the preferred option is option 1 (Amend the current trading fund to include NI registry) given the net benefit calculation and the policy benefits. The net benefit of option 1 is calculated as £193,000 per annum but in practice this is likely to underestimate the level of net benefits given that a number of benefits, including the value to NI customers of a wider range of products and electronic services, have not been quantified. Option 2 would incur costs but no benefit when compared to the current situation.

SPECIFIC IMPACT TESTS

4. Small Firms Impact Test

4.1 No Small Firms Impact Test has been completed because the only external impact on customers might be in terms of the fees set for product and services. Under the Competition Act 1998 Companies House is prohibited from setting differential prices for the same product to different customers that might distort competition.

4.2 One of the tenets of the 2006 Act was “think small first”, and it shifted the emphasis of the law in favour of the 95% of limited companies which are small, including such measures as greater clarity and simplicity. (See http://www.berr.gov.uk/files/file29023.pdf for the Impact Assessment for the Companies Act.)

5. Competition Assessment

5.1 The Competition Act 1998 prohibits the abuse of a dominant position in a market. As Companies House is dominant in the market for company information, by virtue of its statutory function, it must ensure that it does not abuse this position either by exploiting customers, or by anti competitive behaviour.

5.2 The Office of Fair Trading (OFT) have historically not regarded prices for statutory services, set on a cost recovery basis, as falling within the Competition Act. Companies House was recently a case study in the OFT’s report into the commercial use of public sector

information, which was published in November 2006. The report concluded that Companies House provides unrefined data to the public on a cost recovery basis.

6. Equality Duties: Race, Disability and Gender

6.1 After initial screening as to the potential impact of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

7. Enforcement, sanctions and monitoring

7.1 The NI Registry and Companies House have similar enforcement and penalty regimes.

8. Implementation and delivery plan

8.1 It will be necessary to amend the current Companies House Trading Fund Order as part of the proposal to create a unified UK register.

9. Summary and Conclusions

9.1 The Companies 2006 Act will create a single company law regime applying to the whole of the UK. As a result the Companies Registry in NI, which is currently part of the DETI, will become the responsibility of the Secretary of State for BERR with effect from 1 October 2009. Option 1 is the preferred option. The net benefits of including the NI registry within the existing trading fund (option 1) are likely to be strongly positive but we have only been able to quantify some of the likely savings to NI businesses. This suggests an annual saving of at least £193,000 giving a net present value over ten years of at least £1.4 million. This is in addition to the listed advantages of a combined registry and the likely costs associated with option 2 (BERR establishing its own systems for managing a NI registry).

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	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	N/A	No
Sustainable Development	N/A	No
Carbon Assessment	N/A	No
Other Environment	N/A	No
Health Impact Assessment	N/A	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	N/A	No
Rural Proofing	N/A	No

Annexes

ANNEX A – COMPANIES HOUSE TARGETS 2008/9

Customer Targets	
Customer Satisfaction	86%
Increase in e-filing by volume	26%
WebFiling, Web Check and CHD availability	99%
Search customer can access their requested documents on CH systems within 60 Seconds	Average
Complaints resolution within 5 days	97.5%
Accounts Compliance	95.3%
CEO case responses within 10 days	100%
Process Targets	
Image quality	99.5%
Electronic transactions available to the public within 72 hours	Average
Paper documents available to the public within 8 days	Average
Finance Targets	
Invoices paid within 30 days	100%
Average rate of return	3.5%
Reduction in operating cost per company	15% over 3 years

Annex B: Northern Ireland and Companies House Fees Comparisons Table, used to estimate the benefits of option 1 (where there are comparable services /products)*

Product/ Service	NI Price	CH Price	Difference	Volume[a]	Net benefit
Companies and LLPs					
i. Company incorporation	£35	£20	£15	3884	£58,260
ii. Re-registration of a company	£35	£20	£15	13	£195
iii. Change of name	£40	£10	£30	660	£19,800
iv. Re-Registration and Change of Name	£75	£30	£45	0	£0
v. Registration mortgage/charge	£25	£13	£12	4827	£57,924
vi. Annual document filing fee				22354[D]	
Paper	£20	£30	-£10	3353	-£33,531
Electronic	£20	£15	£5	19001	£95,005
vii. Restoration Order	£50	£300[b]	-£250	21	-£5,250
viii. Application for strike-off	£10	£10	£0	$	£0
LPs					
i. Registration	£2	£2	£0	$	£0
EEIGs					
i. Registration/establishment in GB	£50[c]	£20		0	£0
ii. Change of name	None requested	£10		0	£0
iii. Registration mortgage/charge	None requested	£13		0	£0
Overseas companies					
i. Registration	£35	£20	£15	72	£1,080
ii. Annual fee (attached to accounts)				235	
Paper	£20	£30	-£10	94	-£940
Electronic	£20	£15	£5	141	£705
iii. Registration of mortgage/charge	£25	£13	£12	4	£48
					£193,296

*For annual returns, it has been assumed 85% of all companies will file annual returns electronically (15% paper); this is in line with what is currently being observed in GB. Source: Companies House Statistics

[a] This column represents the number of companies / LLPs at the NI Registry that use each service / product. The volume is based on the latest information, covering the period 31st March 2007 -1st April 2008

[b] CH Recovers Treasury Solicitors costs – usually around £300

[c] £50 Only when EEIG registered otherwise free