EXPLANATORY MEMORANDUM TO

THE COMPANY AND BUSINESS NAMES (AMENDMENT) (No. 2) REGULATIONS 2007

2007 No. 3152

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 Company and Business Names (Amendment) (No.2) Regulations 2007 add "Government", "HPSS", "HSC" and "NHS" to the list of words and expressions in the Schedule to the Company and Business Names Regulations 1981 (S.I. 1981/1685). This means that the Secretary of State's prior approval is required by a company in order to include "Government" or "HPSS" or "HSC" or "NHS" in its registered name. Such approval is also required by any person with a place of business in Great Britain in order to carry on business in Great Britain under a name that includes that "Government", "HPSS", "HSC" or "NHS".

2.2 In addition "Department of Health" is added to the Schedule to S.I. 1981/1685. This means that any person who wishes to use the expression "NHS" as part of a company's registered name or as part of a business name must request, in writing, the views of the Department of Health as to the use of that expression and submit to the Secretary of State a statement that such a request has been made and a copy of any response received from the Department of Health when seeking either to register a company or approval to trade under such a name. The Regulations do not specify a body whose views must be sought by an applicant to use "HPSS", or "HSC". This is because the appropriate body is a Northern Ireland Department, which is outside the jurisdiction for these Great Britain regulations. Therefore it is more appropriate for the Registrar of Companies to seek the views of the appropriate Northern Ireland Department.

2.3 The Regulations will not affect any company that already has a name including "Government" or "HPSS" or "HSC" or "NHS". Similarly, the Regulations will not affect any business, whether or not incorporated, that already uses a name that includes either "Government" or "HPSS" or "HSC" or "NHS". There is a transitional provision for those to whom such a business is transferred.

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

3.1 The Regulations are made under section 29 of the Companies Act 1985 and sections 3 and 6 of the Business Names Act 1985. These provide that the Regulations be subject to Parliamentary approval after being made. The Department for Business,

Enterprise and Regulatory Reform wrote to the Speakers of both Houses inviting attention to the fact that these Regulations came into force on 6 November before they were laid before Parliament. The Letter to the Speaker of the House of Lords is copied to the Chairman of the House of Lords Merits of Statutory Instruments Committee and to the Chairman of the Joint Committee on Statutory Instruments.

3.2 "Government" was similarly prescribed by the Company and Business Names (Amendment) Regulations 2007 (SI 2007/1947), which were made on 9 July 2007, and came into force on 10 July before they were laid before Parliament. Due to an oversight within Government, these Regulations were not considered by Parliament before they lapsed. Therefore these Regulations are being provided free of charge to all known recipients of the earlier Regulations (SI 2007/1947).

4. Legislative Background

4.1 The Company and Business Names (Amendment) Regulations 2007 (SI 2007/1947) ceased to have effect from 18 October 2007 as they had not been considered by either House of Parliament by that date. Those Regulations did not prescribe "HPSS", "HSC", or "NHS" and did not specify the "Department of Health" as a body to be consulted.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Stephen Timms, MP, PC, Minister of State has made the following statement regarding Human Rights:

> In my view the provisions of the Company and Business Names (Amendment)(No.2) Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 Speed and ease of incorporation is one of the attractions of company law in Great Britain. Among the checks made by the Registrar of Companies are restrictions on the choice of name. The Secretary of State's prior approval is required for a company to be registered under a name that suggests a connection to Her Majesty's Government or a local authority or which includes a prescribed word. There is a risk of harm to the public from businesses whose names include "government", as this could falsely suggest they have the authority or status of Government, including that of a foreign government. There is also an immediate problem in that an increasing number of businesses, many of which are entirely unconnected with the NHS, are seeking to capitalise on the goodwill towards the NHS brand by using "NHS" in their company and business names. As "NHS" is not currently a prescribed word, there is high risk that NHS patients and the wider public will be misled into believing that companies and businesses with NHS in their names are part of, or have a connection with, the NHS. A similar risk relates to "HSC", the provider of integrated health and social care in Northern Ireland, and also to "HPSS", which although replaced by "HSC" in 2006, continues in general use.

7.2 In February 2007, the Department published the consultative document, Implementation of Companies Act 2006. Views were sought on whether there should be any deletions or additions to the current list of sensitive words and expressions. None of those who responded suggested the inclusion of "Government" or "HPSS" or "HSC" or "NHS" but there was general support for the current Regulations.

8. Impact

8.1 An Impact Assessment has not been prepared as no impact on the private sector is foreseen except for those who wish to include "Government" or "HPSS" or "HSC" or "NHS" in a company's registered name or their business name.

8.2 The impact on the public sector is minimal. The Department of Health will give their views on any applications to include "NHS" in a company or business name. Companies House will consider any application from a company or other business to use a name that includes "Government" or "HPSS" or "HSC" or "NHS". In the case of "HPSS" and "HSC", they will seek the views of the Northern Ireland Department of Health, Social Services and Public Safety.

9. Contact

Anne Scrope at the Department for Business, Enterprise and Regulatory Reform, tel: 0207 215 2194 or e-mail: anne.scrope@dti.gsi.gov.uk, can answer any queries regarding the instrument.