EXPLANATORY MEMORANDUM TO

THE COMPANY, LIMITED LIABILITY PARTNERSHIP AND BUSINESS NAMES (MISCELLANEOUS PROVISIONS) (AMENDMENT) REGULATIONS 2009

2009 No. 2404

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument has two purposes:

- to ensure that Friendly Societies and unregistered companies may carry on business under their own names; and
- to amend the list of designated indicators of legal status.

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

3.1 None

4. Legislative Context

Current provision

4.1 Section 34 of the Companies Act 1985, which will be repealed on 1 October 2009, makes it an offence for any person who is not incorporated with limited liability to trade or carry on business under a name or title of which "limited" or "cyfyngedig", or any contraction or imitation of either of those words is the last word. Section 26 provides the rules relating to the use of specified indicators of legal status in a company's registered name

4.2 The Company and Business Names Regulations 1981 (SI 1981/1685) provide that the Secretary of State's prior approval is required for the use of the expression "Industrial and Provident Society" in either a company's registered name or the name under which any person carries on business. These Regulations will be replaced from 1 October 2009.

Provisions coming into force on 1 October 2009

4.3 Section 65 of the Companies Act 2006 ("the 2006 Act") provides power to make Regulations to specify words and expressions associated with a particular type of company or form of organisation and to prohibit their use in company names. Section 66 of the 2006 Act provides power for Regulations to specify matters that are to be disregarded for the determination of whether one name is the same as another. The Company and Business Names (Miscellaneous Provisions) Regulations 2009 (SI 2009/1085), made under powers conferred by the 2006 Act, will come into force on 1 October 2009. Regulation 13 prevents any person (including a Friendly Society or unregistered company) carrying on business under a name that ends in "Limited" or "Ltd" or the Welsh equivalents of these words unless it is a UK or overseas company

or an Industrial & Provident Society who is registered or incorporated under that name.

4.4 Schedule 2 to the Regulations includes a list of words and expressions that are indicators of legal status specified in the 2006 Act or other legislation. Regulation 4 provides that a company may not use some of these words and expressions except at the end of its registered name. Regulation 7 provides that these words and expressions are disregarded when determining whether a name to be registered is the same as one already registered. Regulation 14 prohibits any person carrying on business in the UK under names that includes any of these words or expressions to which it is not entitled. This prohibition also applies to words and expressions similar to those listed if the name is likely to mislead the public as to the legal form of the company or business. The list of indicators of legal status:

- does not include the expression "Industrial and Provident Society";
- includes the wrong alternative to the expression "cwmni buddiant cymunedol cyhoeddus cyfyngedig".

4.5 Regulations 10 and 11 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (SI 2009/1804) apply sections 65 and 66 of the 2006 Act to Limited Liability Partnerships modified so as to apply the Company and Business Names (Miscellaneous Provisions) Regulations 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 It applies to the names under which any person carries on business in the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 The Instrument remedies defects in the Company and Business Names (Miscellaneous Provisions) Regulations 2009. It ensures that:

- as under the Companies Act 1985, Friendly Societies and unregistered companies are able to use names that end in "Limited" or "Ltd" or the Welsh equivalents;
- the expression "cwmni buddiant cymunedol c.c.c." is only used by community interest companies that are public limited companies where the register of companies states that their registered offices are in Wales and that similar expressions are not used.

It also adds "Industrial and Provident Society" to the list of expressions that may not be used by companies. This means these bodies are treated the same as others for which there is a specified indicator of their legal status. This ensures that the control

applies to similar expressions, such as "Industrial & Provident Society"; such expressions are not controlled by the expression being prescribed under the Company and Business Names Regulations 1981 or the Regulations that will replace them.

8. Consultation outcome

8.1 In February 2007, in the consultative document "Implementation of the Companies Act 2006", the Government sought views on proposals for rules relating to company names. Draft Regulations were published in July 2007 and April 2008. They were made on 24 April 2009. Subsequently City lawyers pointed out the defects addressed by this instrument.

9. Guidance

9.1 Advice, entitled "choose the right name for your business", is available from http://www.businesslink.gov.uk with links to the further advice provided by Companies House, both in hard copy and on its website www.companieshouse.gov.uk

10. Impact

10.1 The impact on business, charities or voluntary bodies is only in the event that they are adopting or a changing a name under which they carry on business in the UK.

10.2 The impact on the public sector is that Companies House must adapt its systems for registering company names to incorporate the changes to the rules. Companies House has been closely involved in the preparation of this instrument.

10.3 An Impact Assessment has not been prepared for this instrument because it has no effect on the continuing operation of businesses.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken does not affect the continued operation of any business under a name that is lawful when the Instrument comes into force.

12. Monitoring & review

12.1 The Company and Business Names (Miscellaneous Provisions) Regulations 2009, as amended by this instrument, will be reviewed, from 2011, as part of the Companies Act 2006 evaluation.

13. Contact

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