EXPLANATORY MEMORANDUM TO

THE COMMUNITY INTEREST COMPANY (AMENDMENT) REGULATIONS 2009

2009 No.

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 These Regulations amend various provisions of the Community Interest Company Regulations 2005 (SI 2005 No 1788).

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

3.1 None

4. Legislative Context

4.1 Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (the "2004 Act") and the Community Interest Company Regulations 2005 (the "2005 Regulations") introduced the community interest company (CIC) which came into existence in July 2005. These regulations amend the 2005 Regulations to reflect legislative and other developments since the CIC form was introduced.

4.2 These Regulations rely on powers in the 2004 Act as amended by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 which is also due to come into force on 1 October. These Regulations are therefore dependant on the prior approval and making of that Order.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Ian Lucas, has made the following statement regarding Human Rights:

In my view the provisions of the Community Interest Company (Amendment) Regulations 2009 are compatible with the Convention rights

7. Policy background

7.1 The CIC was introduced to provide a bespoke legal form for social enterprises that wanted to use the company form but with the assurance that assets would be used for the benefit of the community. Social enterprises are businesses with primarily

social objectives whose surpluses are principally reinvested for that purpose in the business or community. The CIC was intended to sit alongside existing forms commonly used by social enterprises eg Industrial and Provident Societies and charitable companies, offering greater choice and flexibility to the sector. The 2004 Act established the role of Regulator of Community Interest Companies to oversee CICs and to maintain public confidence in the new form. Since the form became available in July 2005, over 2,700 CICs have been registered by the Regulator.

7.2 Key features of the CIC are:

- the community interest test which a CIC must satisfy to be approved by the Regulator;
- the "asset lock" which restricts the distribution of a CIC's assets except as permitted by regulations;
- the community interest report which a CIC must produce annually.

7.3 The CIC is a new legal form establishing itself in the sector. Since the introduction of the form, a number of technical points have been raised in relation to the Regulations. In addition, there have been developments with regard to Industrial and Provident Societies and charities since the passage of the 2004 Act and 2005 Regulations. This Instrument amends the 2005 Regulations to update and clarify the Regulations for the benefit of CICs, prospective CICs and the Regulator.

7.4 The principal changes include provisions to enable a CIC to convert to the asset locked form of a community benefit society (a form of Industrial & Provident Society) or a Scottish charity to convert to a CIC; to remove requirements relating to alternate Directors and casting vote; and to add a reasonable person's test to the section of the community aspect of the community interest test.

8. Consultation outcome

8.1 The Department published a consultation document on 23 February 2009. The consultation ran for six weeks reflecting the fact that the amendments do not propose a change of direction in the Government's policy. 12 responses were received from individuals, representative bodies and legal firms. The proposals were supported by a majority of respondents though the level of support varied with significant concerns raised on some points. In two instances, where there were mixed views raising significant concerns, these provisions have been removed and will be considered further with interested bodies. Another proposed amendment has been omitted in light of respondents' views. On the amendment relating to alternate Directors, we have revised our approach in light of respondents' comments.

8.2 A more detailed analysis of the responses to the consultation is set out on the BIS website (www.bis.gov.uk)

9. Guidance

9.1 Guidance is provided by the Regulator of Community Interest Companies through her website on compliance with the regulatory regime. This guidance will be updated as necessary to take account of the amendments to the Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not anticipated to be significant.

10.2 The impact on the public sector is expected to require the Office of the Regulator of Community Interest Companies to issue guidance arising from these amendment regulations and to require Companies House and the Regulator to make necessary changes to their procedures.

10.3 An Impact Assessment has not been prepared for this instrument as it is not anticipated that these changes will lead to any significant costs or burdens.

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 is to maintain a light touch regulatory framework for CICs.

11.3 The majority of CICs are small companies.

12. Monitoring & review

12.1 The Office of the Regulator will monitor the impact of the amendments and will advise the Department if they are not working as intended.

13. Contact

13.1 Jane Leavens at the Department for Business, Innovation and Skills, Tel: 020 7 215 1686 or email: jane.leavens@berr.gsi.gov.uk can answer any queries regarding the instrument.