EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) ORDER 2011

2011 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes consequential amendments to, and repeals and revocations of, UK legislation mostly dealing with financial services to take account of the provisions of the Companies Act 2006 ("the 2006 Act").

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

3.1 None.

4. Legislative Context

4.1 The 2006 Act provides for a single consolidated company law regime applying to the whole of the UK. It repealed most of the Companies Act 1985, the Companies (Northern Ireland) Order 1986, and the Open-Ended Investment Companies Act (Northern Ireland) 2002.

4.2 The main purpose of this Order is to make consequential amendments to primary and secondary legislation which contains references to the provisions of earlier enactments which have now been superseded, repealed or revoked by the provisions of the 2006 Act. This Order also revokes explicitly two pieces of secondary legislation which were impliedly revoked by the 2006 Act: the Companies (Single Member Private Limited Companies) Regulations 1992, and the Companies (Single Member Private Limited Companies) (Northern Ireland) Regulations 1992.

4.3 In addition to these consequential amendments, the Order corrects an error made in relation to the repeal of the Companies Consolidation (Consequential Provisions) Act 1985 (the "1985 Act"), the provisions of which need to be replaced by provisions which are consistent with those in the 2006 Act. Sections 1295 and 1300 of the 2006 Act provide for the repeal, by order, of enactments specified in Schedule 16 to that Act. The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 ("the Eighth Commencement Order") purported to repeal the 1985 Act by bringing section 1295 of, and Schedule 16 to, the 2006 Act into force on 1 October 2009 (see Part 1 of Schedule 1 to that Order). This was an error as the 1985 Act was not included in Schedule 16. However, the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (the "Consequential Amendments Order") further indicated that it had been the intention that the repeal of the 1985 Act was intended to take effect on

1 October 2009; see article 12 of that Order, which impliedly repealed the 1985 Act with effect from that date. To leave things as they are would be potentially confusing to a future reader of the legislation, so this Order includes a substantive provision which explicitly repeals the 1985 Act and consequentially removes the reference to the repeal from the Eighth Commencement Order.

4.4 Article 12 of, and Schedule 3 to, the Consequential Amendments Order contain savings relating to the repeal of the 1985 Act and the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986. The error referred to in the previous paragraph casts some doubt on the effect of these savings in relation to "old public companies" incorporated in Great Britain. In order to make it clear beyond doubt that these savings apply in relation to such companies the savings are repeated in article 5 of, and Schedule 1 to, this Order.

4.5 The Order also makes three corrections to the 2006 Act itself. In particular, article 28(2) corrects an inadvertent omission. Under the 2006 Act, public companies must satisfy the "authorised minimum requirement" – a requirement that the aggregate nominal value of the company's allotted share capital is not less than a monetary amount called the "authorised minimum". A new public company must initially satisfy the authorised minimum requirement by reference either to sterling shares or euro shares (and not both). The sterling amount of the "authorised minimum" is £50,000 and the euro amount is currently €57,100. After that, there is no constraint on the denomination of a public company's share capital. Public companies can have share capital denominated in any currency, and their share capital can be denominated in a single currency or a mix of currencies (section 542(3)). However, when a public company reduces its share capital, there is a check as to whether it still satisfies the authorised minimum requirement, and there needs to be a way of working out whether it does. If the company has its capital denominated entirely in sterling or entirely in euros, it is simply a case of checking that the value is not less than the sterling amount or (as the case may be) the euro amount mentioned above. For cases where the company's share capital is denominated in more than one currency (whatever those currencies may be) section 766 allows the Secretary of State to make provision by regulations for the application of the authorised minimum requirement, and this is currently dealt with in the Companies (Authorised Minimum) Regulations 2009 which lay down rules for assessing whether aggregate values are equivalent to the prescribed sterling or euro figure. However, there is no power to deal with the case where there has been a reduction of share capital that leaves the company with shares denominated entirely in one currency other than sterling or euros. The amendments contained in article 28(2) address this omission by enabling regulations to be made that deal with this potential situation.

4.6 Schedule 2 to the Order makes consequential amendments to the Open-Ended Investment Companies Regulations 2001 to ensure that the regime applicable to Open-Ended Investment Companies is compatible with the new company law regime and extends those Regulations to cover Northern Irish Open-Ended Investment Companies.

4.7 Schedule 3 contains transitional provisions in relation to Open-Ended Investment Companies which were incorporated under the Open-Ended Investment Companies (Northern Ireland) Regulations 2004.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury, Mark Hoban, has made the following statement regarding Human Rights:

"In my view the provisions of the Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 are compatible with the Convention rights."

7. Policy background

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

7.1 The passing of the 2006 Act requires consequential amendments to be made to, and revocations and repeals made of, other enactments the provisions of which have now been superseded by the provisions of the 2006 Act. This Order makes the necessary consequential amendments, along with a small number of correcting measures to address minor errors and to ensure that legislation is clear for future readers. This Order also revokes explicitly two pieces of secondary legislation which were impliedly revoked by the 2006 Act. The policy objective underpinning these measures is to ensure that the companies legislation is clear, consistent and coherent.

7.2 Along with consequential amendments, the Order contains transitional arrangements to ensure a smooth changeover from the requirements of the Open-Ended Investment Companies Act (Northern Ireland) 2002 to the provisions of section 262 of the Financial Services and Markets Act 2000, and from the Open-Ended Investment Companies Regulations (Northern Ireland) 2004 to the Open-Ended Investment Companies Regulations 2001.

8. Consultation outcome

Given that the Order simply makes consequential amendments and minor corrections, no consultation was undertaken.

9. Guidance

It is not intended that any guidance will be issued.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The Order does not apply to small business.

12. Monitoring & review

12.1 This instrument will be reviewed as part of the Companies Act 2006 evaluation.

13. Contact

Ruth Hopkinson at HM Treasury Tel: 020 7270 4458 or email: ruth.hopkinson@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.