EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (CONSEQUENTIAL AMENDMENTS) (UNCERTIFICATED SECURITIES) ORDER 2009

2009 No. [XXXX]

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of the Companies Act 2006 (Consequential Amendments) (Uncertificated Securities) Order 2009 ("the Order") is to make amendments to the Uncertificated Securities Regulations 2001 ("the 2001 Regulations") to reflect changes in company law.

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

3.1 None.

4. Legislative Context

4.1 The Companies Act 2006 ("the 2006 Act") represented the final stage in a project to modernise UK company law and to replace the Companies Act 1985 ("the 1985 Act"). The provisions of the 2006 Act have been brought into force in stages. The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 brings into force almost all the remaining provisions of the 2006 Act on 1st October 2009. The Companies Act 2006 (Consequential Amendments) (Uncertificated Securities) Order 2009 makes consequential amendments to the 2001 Regulations, legislation for which Her Majesty's Treasury is responsible.

4.2 The 2001 Regulations make provision for the transfer without a written instrument, and the evidencing otherwise than by a certificate, of title to a unit of a security, in accordance with a computer-based system and procedures known as the "relevant system". The relevant system centres on a person known as the "Operator". The legal framework underlying the operation of the relevant system, together with the criteria which the Operator and the relevant system must meet, are enshrined in the 2001 Regulations. At present, the only Operator approved by the Treasury is Euroclear UK and Ireland.

4.3 The 2001 Regulations contain references to various definitions and provisions of the 1985 Act in many places. These will be out of date if they are not amended to refer to the equivalent provisions in the 2006 Act. This Order will be grouped for debate with the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Companies Act 2006 (Consequential Amendments) (Uncertificated Securities) Order 2009 are compatible with the Convention rights.

7. Policy background

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

7.1 As explained above, the Order updates the references to the 1985 Act in the 2001 Regulations to references to the 2006 Act. In the vast majority of cases, the definitions and provisions of the 2006 Act are exactly the same as those in the 1985 Act. There are two instances where this is not the case.

Refusal to Register

7.2 The 1985 Act provided that if a company refuses to register a transfer of shares, notice of the refusal should be sent to the transferor within two months. The 2006 Act reproduces this with the additional provision that the transferee is entitled to receive such further information about the reasons for the refusal to register a transfer as he or she might reasonably request.

7.3 This provision was based on a recommendation of the independent Company Law Review, which was concerned at the possibility of unfair prejudice by directors of small family companies. Such companies are unlikely to be of a sufficient size to be in a position to have their shares transferred by Euroclear.

7.4 Euroclear does not have an absolute or arbitrary discretion to refuse to register a transfer. Given this and the provisions referred to in paragraph 7.2 above, there is not the same concern that transferors and transferees may not receive an adequate explanation of a refusal to register a transfer as applies to companies more generally. Further, since the Euroclear system is fully automated, the additional requirement in the 2006 Act cannot be implemented without complicated system changes, which Euroclear estimate would cost around £4m. In these circumstances, the Order reproduces the provisions of the 1985 Act.

Date of Register

7.5 The 2006 Act also requires a company to inform a person inspecting its register of members of the most recent date (if any) on which alterations were made to the register and that there were no further alterations to be made. As with the provision relating to registration, this change followed a recommendation of the

Company Law Review and was designed to deal with problems relating to small family companies.

7.6 It is not possible for a company with uncertificated securities to comply with this requirement as its register of members is split between shares which are transferred by Euroclear and those which are transferred by a stock transfer form. Although the two parts of the register are reconciled daily, a company whose shares are transferred by Euroclear cannot give an intra-day guarantee that there are no further amendments in the pipeline without making further enquiries. Euroclear, in turn, is not in a position to respond to such enquiries without interrupting the settlement cycle, which would be expensive and futile, since when the settlement cycle resumed, it would be entirely possible that further transfers could take place before the close of business.

7.7 For this reason, the Order exempts companies with uncertificated securities from the requirement in the 2006 Act.

- ***Consolidation***

7.8 The Treasury does not have plans to consolidate the 2001 Regulations with amendments at this time. Commercial publishers produce consolidated versions of the 2001 Regulations, both in electronic and hard copy versions.

8. Consultation outcome

8.1 A full public consultation was not conducted in relation to this instrument, as the majority of changes it implements are simply administrative, and there are no policy issues for such a consultation exercise to determine.

8.2 However, the Order has been fully discussed with key stakeholders (BIS and Euroclear UK and Ireland) both of whom are content

9. Guidance

9.1 No guidance is being issued in relation to this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is de minimis.

10.2 The impact on the public sector is de minimis.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The 2001 Regulations are subject to a process of continuous review by the Treasury and BIS. Further significant changes are likely in the course of 2009-2010 to accommodate the settlement of a different type of security. At this point, it would seem sensible to review the changes implemented by this instrument.

13. Contact

Richard Duncan (Tel: 020-7270-5912) or email: richard.duncan@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.