EXPLANATORY MEMORANDUM TO

THE COMPANIES (ADDRESS OF REGISTERED OFFICE) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

1.1 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 To introduce a new administrative procedure to allow the registrar of companies to change the registered office address of a company or limited liability partnership (LLP) where, upon application, the registrar considers that the entity is not authorised to use that address.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and includes Northern Ireland.

4. Legislative Context

4.1 Section 86 of the Companies Act 2006 ("the 2006 Act") requires all companies to have a registered office to which all communications and notices may be addressed.

4.2 Section 87 of the 2006 Act enables a company to change the address of its registered office by providing notice to the registrar of companies. Currently, the 2006 Act only allows for the registered office address to be changed voluntarily by the company itself. Provision is made under regulation 4 of the Registrar of Companies and Striking Off Regulations 2009 (S.I. 2009/1803) for the rectification of a registered office address when that information was changed without the authority of the company.

4.3 Section 1097A of the 2006 Act, as inserted by section 99 of the Small Business, Enterprise and Employment Act 2015, gives the Secretary of State the power to make regulations under which, following a successful application, the registrar of companies will be required to change the address of the registered office of a company, where registrar is satisfied that the company is not authorised to use its current address. The regulations set out the application process and apply the new process to LLPs.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

5.3 The UK Government is responsible for company law in England and Wales, and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the Act and associated legislation on companies and partnerships should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State and Minister for Intellectual Property has made the following statement regarding Human Rights:

"In my view the provisions of The Companies (Address of Registered Office) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 All UK companies and LLPs must have a registered office within the UK to which all communications and notices can be addressed. The registered office can be a business address, the address of the company's accountants, or any other address the company chooses, including a residential address.

7.2 The registrar of companies receives complaints that some companies use as their registered office the address of another business or private individual with whom they have no connection, or an address which they are not authorised to use. This can have undesirable consequences for the private individuals or businesses affected – from receiving unsolicited correspondence intended for that company to receiving visits from bailiffs. While the number of complaints is small against the overall size of the public register (0.04%), the impact on those affected can be significant.

7.3 Currently, the 2006 Act only allows for the registered office address to be changed voluntarily by the company itself. Section 1097A of the 2006 Act, as inserted by the Small Business, Enterprise and Employment Act 2015, contains a power to make regulations setting up a new system to enable an address which a company is not authorised to use to be changed to an alternative.

7.4 The regulations implement this new procedure. They will allow a third party to object to the registrar about a company's or LLP's use of an address as a registered office. If the company or LLP fails to provide satisfactory evidence that it is authorised to use the address, the registered office address will be changed to an alternative address (a PO Box at Companies House).

Consolidation

7.5 The regulations do not amend another instrument.

8. Consultation outcome

8.1 In October 2013, the Government consulted on a package of deregulatory proposals relating to company filing requirements. This consultation included proposals on measures to deal with cases where a company uses an unauthorised registered office address. The consultation asked for views on whether companies should be required to have a demonstrable link to their registered office address.

8.2 133 responses were received to this question. 91% of respondents agreed that companies should be required to have a link to the registered office, whilst only 9% disagreed.

9. Guidance

9.1 Companies House will make available guidance on the new procedure for objecting to the use of an address as a registered office.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated as being in the region of £178,000 a year.

10.2 The impact on the public sector is negligible as the number of applications is expected to be small.

10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 The basis for the final decision on what action to take to assist small business is the number of small businesses that will be affected. The regulations will only affect those small companies where there is an application to the registrar to remove a director's appointment from the public register. Based on the current number of applications under the existing statutory procedure, the Government considers that this will only be a very small minority of small companies. Therefore, no specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

12. Monitoring & review

12.1 The regulations will be subject to a Post Implementation Review within five years of coming into force.

13. Contact

13.1 Rob Cottam at the Department for Business, Innovation and Skills Tel: 0207 215 0169 or email: rob.cottam@bis.gsi.gov.uk can answer any queries regarding the instrument.