EXPLANATORY MEMORANDUM TO

THE COMPANIES (TRADING DISCLOSURES) (AMENDMENT) REGULATIONS 2008

2008 No.

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

2. Description

2.1 These amending Regulations deal with two further exceptions to the trading disclosure requirements imposed on companies registered in any part of the United Kingdom.

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

3.1 None

4. Legislative Background

4.1 These Regulations amend the Companies (Trading Disclosures) Regulations 2008 (SI 2008/495) by introducing two exceptions to the requirements placed on every company to display its registered name at all its premises:

- The first exception relates to insolvency. A company in respect of which a liquidator, administrator, or administrative receiver has been appointed will no longer have to display its registered name at any premises which are also the place of business of those insolvency specialists.
- The second exception relates to protection for sensitive locations. If every director of the company is one whose residential address cannot be disclosed by the registrar to a credit reference agency, then the company does not have to display its registered name at any place at which it carries on business (but this exception does not extend to the company's registered office or inspection place for the company's records).

These exceptions are in addition to those provided by SI 2008/945 for:

- companies that have never traded, and
- for premises primarily used for living accommodation (if not the company's registered office or the place where it keeps any company records available for inspection).

4.2 The First Company Law Directive (2003/58/EC) requires business letters, order forms and websites to include, where appropriate, the fact that the company is being wound up. This requirement is implemented by the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989, as amended by the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (SI 2006/3429) and The Companies (Trading Disclosures) (Insolvency) Regulations 2008 (SI 2008/1897).

4.3 The Companies (Disclosure of Address) Regulations 2008, which are to be laid shortly, provide for a director to apply for his residential address not to be disclosed to a credit reference agency. The main grounds for such an application will be that there is a serious risk that he, or a person who lives with him, will be subjected to violence or intimidation as a result of the activities of a company of which he is a director.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Ian Pearson, Economic and Business Minister, has made the following statement regarding Human Rights:

In my view the provisions of the Companies (Trading Disclosures) (Amendment) Regulations 2008 are compatible with the Convention rights.

7. Policy background

7.1 There are nearly 2.5 million companies incorporated in the UK. The policy objective is that the legal identity of every company should be revealed to all who have, or may wish to have, dealings with it. This is so that they are warned of its limited liability status and can discover information which the company is required to reveal about itself whether by filing at Companies House or by providing for inspection of its company records. Therefore the Companies (Trading Disclosures) Regulations 2008 (S.I. 2008/495) require the company's name to be included in specified documents, websites, and on signs at premises. These requirements replace similar requirements in the Companies Act 1985 and, insofar as they apply to companies, the Business Names Act 1985. There were no exceptions from either of these Acts' requirements for signs at premises.

Exception relating to insolvency

7.2 When a liquidator, administrator, or administrative receiver is appointed, the normal practice is to make their offices be the company's registered office; other business of the company may also be carried on at their offices. This is a short term measure: pending either the strike-off of the company or its restoration to solvency. Noting that the fact of the appointment and the identity of the appointment, as well as the new address of the registered office must be included in all the company's business letters, order forms and websites, the Government consider that the benefit of a sign in these circumstances does not justify the cost. The exception is not susceptible to abuse.

7.3 The policy is that the exception will not apply on the appointment of a receiver or manager to only part of a company: in these circumstances, the company continues to trade under the control of its directors, so the normal rules for signs will continue to apply.

Exception relates to protection for sensitive locations

7.4 The need for a sign at premises is greatest when the premises are a company's registered office or the place where it makes available for inspection those records it is required by statute to make available. At other premises, the Government consider that there are circumstances in which the requirement for the sign should not be imposed. The circumstances are that the company's activities are such that those at the premises are at risk of violence or intimidation. Such a company's directors will be able to apply for special treatment of their usual residential addresses, ie that these addresses will not be disclosed by the Registrar of Companies to credit reference agencies. Therefore whether the companies' directors have applied for this special treatment is a good indicator of whether the companies' activities are such that those at the premises are similarly at risk. Noting that a director may hold directorships in several companies and is able to apply for special treatment of his usual residential address if any one of these companies' activities put him or those who live with him at risk of violence or intimidation, the

exception for signs at company premises is only for those companies all of whose directors' usual residential addresses have special treatment.

Consultation

7.5 In February 2007, the Department of Trade and Industry sought views on proposals for regulations to replace the then current requirements relating to trading disclosures in the consultation document, Implementation of Companies Act 2006 (Chapter 2, Section D). The proposals did not include an exception from the requirement for signs at all companies' premises. However 3 of the 10 respondents sought an exception for "sensitive" premises.

7.6 The Government, in its response to this consultation, said that they would proceed on the basis of always requiring the registered name in signs but that there would be an exemption for premises of companies particularly at risk; this exemption would not extend to their registered offices or an alternative location for inspecting a company's records. Draft regulations were published on the BERR website in July 2007 together with a draft Impact Assessment. The Institute of Chartered Accountants in England and Wales (ICAEW), the Institute of Chartered Secretaries and Administrators (ICSA) and the Law Society commented on these draft Regulations.

7.6 The Companies (Trading Disclosures) Regulations 2008 (S.I. 2008/495), which came into force on 1 October 2008, were laid on 17 December 2007. These differed from the July draft:

- so as to take some account of concerns about the July 2007 draft raised by ICAEW and ICSA; and
- because the timetable for implementation of the Companies Act 2006 had been changed. The change in timetable meant that the exemption in the July draft for sensitive premises could not come into force until 1 October 2009.

During Parliamentary consideration of these Regulations, Gareth Thomas, Parliamentary Under Secretary of State for Trade and Consumer Affairs , said

> "From 1 October 2009, the exemption for sensitive premises will be introduced." (Hansard, Fifth Delegated Legislation Committee, Wednesday 6 February 2008).

7.7 In early February 2008, R3 (The Association of Business Recovery Professionals) contacted BERR to express concern about the impact of the requirement for signs on their members. They sought an exemption in the event that the registered office of a company in receivership is changed to that of the receiver. This request was subsequently supported by ICAEW who explained that "Insolvency practitioners almost invariably transfer the registered office addresses of the companies in respect of which they hold office to their own office premises." Draft Regulations incorporating such an exception were placed on the BERR website in April 2008. The only comments were supportive.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is low. Enforcement agencies, primarily Companies House and Local Authorities, will need to be aware of the changes.

9. Contact

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

Summary: Intervention & Options

Department /Agency:	Title:	
Business, Enterprise and Regulatory Reform	**Impact Assessment of The Companies (Trading Disclosures)(Amendment) Regulations 2008**	
Stage: final	**Version:** 2	**Date:** September 2009
Related Publications: The Companies (Trading Disclosures) Regulations 2008		

Available to view or download at:

http://www..opsi.gov.uk/si/si2008/uksi 20080495 en 1

Contact for enquiries: Anne Scrope **Telephone:** 0207 215 2194

What is the problem under consideration? Why is government intervention necessary?

The statutory requirement for companies to display signs at their premises creates problems for liquidators, etc and for companies whose activities attract threats.

What are the policy objectives and the intended effects?

To balance the need to ensure that the identity of a company occupying premises is public knowledge with (a) the practical problems that arise following the appointment of a liquidator, administrator, or administrative receiver; and (b) the risks to those working at the premises of companies whose activities them at risk of violence or intimidation.

What policy options have been considered? Please justify any preferred option.

A. Do nothing.

B. Limited exemptions (the preferred option - needed to meet policy objective)

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? From 2011 as part of the Companies Act 2006 evaluation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Ian Pearson

.....Date: 5th November 2008

Summary: Analysis & Evidence

Policy Option: B	Description: Limited exemptions

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	
£	
Average Annual Cost (excluding one-off)	
£	**Total Cost** (PV) £

Other **key non-monetised costs** by 'main affected groups' It will be more difficult: (a) to find the place to inspect the records of a company in liquidation, etc; and (b) to discover the identity of a company occupying premises if the premises are not its registered office or inspection place and the company's activities expose its staff to violence or intimidation.

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups' liquidators, administrators, and administrative receivers will no longer have to display a sign at their place of business with the name of any company to which they have been appointed.
One-off **Yrs**	
£	
Average Annual Benefit (excluding one-off)	
£	**Total Benefit** (PV) £

Other **key non-monetised benefits** by 'main affected groups' Reduced exposure to violence or intimidation of those who work at companies whose activities put them at risk.

Key Assumptions/Sensitivities/Risks The key assumption is that all companies comply with the current requirement.

Price Base Year	Time Period Years	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate) £

What is the geographic coverage of the policy/option?				UK	
On what date will the policy be implemented?				1 October 2009	
Which organisation(s) will enforce the policy?				CH & LAs	
What is the total annual cost of enforcement for these organisations?				£	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				Yes	
What is the value of the proposed offsetting measure per year?				£	
What is the value of changes in greenhouse gas emissions?				£	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** £

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

BACKGROUND

1. There are nearly 2.5 million companies incorporated in the UK. The Companies (Trading Disclosures) Regulations 2008 require every company to display its registered name at:

(a) its registered office and any inspection place (unless at all times since its incorporation it has been dormant);

(b) all other premises at which it carries on business (unless primarily used for living accommodation)

The policy objective is that the legal identity of every company should be revealed to all who have, or may wish to have, dealings with it. This is so that they are warned of its limited liability status and can discover information which the company is required to reveal about itself whether by filing at Companies House or by providing for inspection of its company records. The principal requirement is for the company's name to be included in specified documents, websites, and on signs at premises.

2. Following the appointment of a liquidator, administrator, or administrative receiver, it is normal practice to make their offices be the company's registered office; other business of the company may also be carried on at their offices. The Regulations provide for an exemption in these circumstances. If a receiver or manager is appointed to only part of a company, then the company would continue to trade under the control of its directors and the normal rules for signs would continue to apply.

3. In the second quarter of 2008, the seasonally adjusted number of company liquidations was 3,560; in addition, there were 1,115 receiverships and administrations (not seasonally adjusted). Noting that the Companies (Trading Disclosures) Regulations 2008 have special provision for premises which are shared by more than 5 companies, the cost of a sign in these circumstances is minimal. Nevertheless, insolvencey practitioners have sought this exemption.

4. During the Parliamentary consideration of the Companies (Trading Disclosures) Regulations 2008, an exemption was sought for companies whose activities attract violent objections. The need for a sign at premises is greatest when the premises are a company's registered office or the place where it makes available for inspection those records it is required by statute to make available. At other premises, the Government consider that the sign should not be required if the company's activities are such that those at the premises are at risk of violence or intimidation. The number of such premises is not known.

5. When the Companies (Disclosure of Address) Regulations, which will shortly be laid before Parliament, come into force, ie 1 October 2009, a director will be able to apply for special treatment of his usual residential address if the activities of one of the companies of which he is, was, or proposes to be a director are such that he, or a person who lives with him, will be subjected to violence or intimidation. All those who hold valid Confidentiality Orders when the Companies (Disclosure of Address) Regulations come into force will be deemed to have applied successfully for special treatment. 20,918 Confidentiality Orders were in existence at 24 July 2008. It is estimated that about two-thirds of these are held by directors with the others being held by company secretaries, permanent representatives of overseas companies, and members of Limited Liability Partnerships. It is likely that the number of companies all of whose directors' usual residential addresses will have special treatment will be fewer than 5,000. The number of their premises which are not registered offices or places for inspection of records is not known.

THE REGULATIONS

6. The Companies (Trading Disclosures)(Amendment) Regulations 2008 provide for two exemptions from the requirement for signs at premises:

(a) when a liquidator, administrator, or administrative receiver is appointed and the premises are also those of that liquidator, administrator or administrative receiver;

(b) when the usual residential addresses of all the company's directors have been granted special treatment and the premises are not the company's registered office or place for inspection of its records.

The financial benefit of these Regulations is minimal. The non-monetary benefits are likely to be considerable.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes