EXPLANATORY MEMORANDUM TO

THE REGISTRAR OF COMPANIES AND APPLICATION FOR STRIKING OFF (AMENDMENT) 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 amend the Registrar of Companies and Applications for Striking Off Regulations 2009 (SI 2009/1803) ("the 2009 Regulations") to introduce a new administrative procedure for removing material naming a person as a company director from the public companies register.

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 1095 of the Companies Act 2006 ("the 2006 Act") allows the Secretary of State to make regulations for removing material from the public register. The 2009 Regulations, made under section 1095, allow specified persons to make applications to the registrar of companies to remove inaccurate information, or any information deriving from anything invalid or ineffective, from the public register. If any valid objection to an application is made, the registrar must reject the application.

4.2 Section 102 of the Small Business, Enterprise and Employment Act 2015 amends this procedure for removal in relation to material on the public register naming a person as a director in cases where the application for removal is made by or on behalf of that person. Section 102 is being commenced alongside these regulations.

4.3 These regulations amend the 2009 Regulations further to the new section 1095 provisions that section 102 introduces. They provide that where such an application is made by or on behalf of the person named as a director, in order to prevent the material from being removed from the register, a company must provide evidence to the registrar that the person consented to act as a director of the company.

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 Registrar of Companies and Application for Striking Off (Amendment) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The 2006 Act requires all UK companies to have at least one director. Companies must notify the registrar of companies within 14 days of a director's appointment. Details of the company's directors are made publicly available on the companies register held by Companies House.

7.2 In the majority of cases, directors are appointed with their knowledge and consent. However, there are a small number of cases where companies wrongly appoint people as directors and their name appears on the public register as a company director. It is not in the interests of a person to be identified as a director of a company without having consented to act as such. It also has the potential to mislead those seeking to do business with such a company.

7.3 At present, a person can apply to the registrar to have their name taken off the public register as a director of the company on the grounds that they were falsely appointed. However, under the existing procedure under the 2009 Regulations, the company can stop an application merely by objecting, without having to provide any evidence to support their objection.

7.4 The aim of the regulations is to provide an expedient process which will enable the registrar, on application, to remove details of a director's appointment from the public register where there is no evidence that the person consented to be a director.

Consolidation

7.5 The Department for Business, Innovation and Skills has no plans for consolidation at this time.

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 person alleges they have been appointed as a director of a company without their consent. The consultation asked for views on whether companies should be required to provide evidence of a director's appointment in the event of a dispute.

8.2 125 responses were received to this question. 86% of respondents agreed that companies should be required to provide evidence, whilst only 9% disagreed.

9. Guidance

9.1 Companies House will make available guidance on the new procedure for objecting to a director's appointment on the public register.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be around £6,900 a year.

10.2 The impact on the public sector is negligible as the number of applications is expected to be small. The regulations amend an already existing procedure which is carried out by the registrar of companies

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.