EXPLANATORY MEMORANDUM TO

THE REGISTRAR OF COMPANIES AND APPLICATIONS FOR STRIKING OFF REGULATIONS 2008

2008 No. [DRAFT]

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

The Registrar of Companies and Applications for Striking Off Regulations make provision relating to the voluntary striking off of companies under Part 31 of the Companies Act 2006 ('the 2006 Act') and provision under Part 35 of the 2006 Act relating to the functions of the Registrar and the delivery of documents to the Registrar. This includes provision about:

- information that must be contained in an application made by a company to have its name struck off the register;
- circumstances where the Registrar can annotate the register;
- the circumstances where the Registrar must rectify the register when an application is made to him to do so, including the procedure for making and determining such applications;
- documents relating to a Welsh company that can be delivered to the Registrar in Welsh without an accompanying translation into English;
- documents that can be drawn up and delivered to the Registrar under companies legislation in a language other than English provided that they are accompanied by a certified translation into English;
- the only characters and symbols that may be used in names and addresses in a document delivered to the Registrar.

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

None

4. Legislative Background

4.1 Under the Companies Act 1985 ('the1985 Act') functions of the Registrar of Companies were provided for under Part 24. Part 35 of the 2006 Act, which replaces Part 24 of the 1985 Act and other law relating to the Registrar's functions, sets out the basic powers and duties of the Registrar and contains provisions about the delivery of documents to the Registrar. These Regulations exercise the regulation making powers under sections 1081(2), 1095(1) and (2), 1104(2)(a), 1105(2)(d) and 1108(2) of Part 35.

There is also a new power in section 1117 (not exercised in these Regulations) for the Registrar to make Rules about certain matters including the form in which documents are delivered to him.

4.2 Part 31 of the 2006 Act contains the provisions on the dissolution of companies and their restoration to the register. Chapter 1 contains provisions about striking company names off the register which restate those in sections 652 to 653 of the 1985 Act, with one change of effect. Section 652A of the 1985 Act currently provides that, in certain circumstances, a private company may apply to be struck off the register. Section 1003 of the 2006 Act restates the 1985 Act provisions, but also extends them to allow both private and public companies to make such an application for voluntary striking off. The power in section 1003(2)(b) of the 2006 Act is exercised in these Regulations to provide for the prescribed information which an application must contain.

4.3 The powers exercised in the Regulations are a mixture of negative and affirmative powers, but the Regulations are made subject to the affirmative procedure by virtue of section 1292(4) of the 2006 Act.

5. Territorial Extent and Application

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 Registrar of Companies and Applications for Striking Off Regulations are compatible with the Convention rights.

7. Policy background

7.1 It is important that the Companies House register is a useful and accurate source of information for users. Part 35 of the 2006 Act provides new powers and duties for the Registrar to carry out certain actions to maintain the register. Part 35 includes a power for the Secretary of State to make regulations requiring the Registrar to remove from the register, on application, material that derives from anything invalid or ineffective or that was done without the company's authority, or that is factually inaccurate or derived from something factually inaccurate or forged ('rectification'). Regulations 4 and 5 provide for this in respect of particular material. Among other things this will be a way to have certain fraudulently filed material removed from the register without making an application to the court. The procedure can be used in respect of material filed which could be used to commit fraud, for example, names and addresses and details of a change of registered office that could be used in cases such as company hijacking, or the false appointment of company directors or secretaries. The Regulations provide for who can make an application to rectify the register and the material that can be rectified in this way, and sets out the requirements for making an application and the process for determining applications. The Regulations also (separately and without the need for an application to be made) authorise the Registrar to annotate the register where he believes that any material is misleading or confusing.

7.2 Part 35 also provides the basic rule that documents relating to "Welsh companies" which are required to be delivered to the Registrar under companies and insolvency legislation may be drawn up and delivered to the Registrar in Welsh, provided that when delivered they are accompanied by a certified translation into English. (Section 88 of the 2006 Act provides that a "Welsh company" means a company as to which it is stated in the register that its registered office is to be situated in Wales (rather than in England and Wales).) Regulations can make exceptions to the translation rule and regulation 6, which replaces the current provision in regulation 4 of the Companies (Welsh Language Forms and Documents) Regulations 1994, prescribes documents relating to certain "Welsh companies" that can be delivered to the Registrar in Welsh without a certified translation into English. (In such cases the Registrar must obtain a translation into English if the document is to be available for public inspection.) Regulation 6 does not permit documents to be provided to the Registrar in Welsh without a certified translation into English if they relate to a company any of whose shares are admitted to trading on a regulated market.

7.3 Part 35 of the 2006 Act also allows certain documents to be drawn up and delivered to the Registrar under companies and insolvency legislation in a language other than English, but requires that they must be accompanied by a certified translation into English when delivered to the Registrar. (This provision does not apply to Welsh documents relating to Welsh companies, which are dealt with as explained above.) The Regulations add further documents to the list of documents in the 2006 Act that can be delivered in this way under companies legislation.

7.4 Documents delivered to the Registrar could contain the name and address of the company and/or the name and address of individuals (e.g. directors) in a character set that is different from that with which most Companies House users are familiar. In order for the Registrar to ensure that the information contained in documents is filed on the register in a way that is accessible to users, the Regulations provide the characters and symbols that are permitted in names and addresses (to the exclusion of other characters and symbols). The Regulations list a number of documents which are exempted from this requirement.

7.5 In addition, Part 35 provides new powers for the Registrar to make Rules in some areas that are currently covered by powers to make secondary legislation (for example, about the form of documents delivered to the Registrar). These Regulations will dovetail with the Registrar's Rules, which will come into effect along side the Regulations in October 2009; together they represent a step change in relation to the powers of the Registrar to ensure that the Companies House register is maintained as an accurate source of information, and will ensure that there is more flexibility and a less administratively complex procedure when future changes are necessary.

7.6 Section 1003 of Part 31 of the 2006 Act provides for a company to be able to make an application to have its name struck off the register. The power under section 1003 (2)(a) provides for the application (which must be made on the company's behalf by all or a majority of its directors) to contain prescribed information. The Regulations require the application to contain a declaration that neither section 1004 (circumstances in which an application cannot be made because of the activities of the company) or 1005 (circumstances in which an application cannot be made because other proceedings have not been concluded) of that Act prevent the application from being made and require that

the declaration must be made by the directors making the application. This is in addition to other requirements that are imposed by the Registrar under Rules on the application, for example on the form of the document, authentication and delivery requirements.

Consultation

7.7 In February 2007 the Department of Trade and Industry sought views on proposals relating to the Registrar's powers under Part 35 in the consultation "Implementation of Companies Act 2006". The proposed approach was generally supported. In the light of the responses, draft regulations were prepared. These were placed on the BERR website in July 2007 together with summaries of the responses to the consultation and the Government's response. An email alert was sent to over 700 individuals and organisations who had asked to be kept informed of Companies Act 2006 developments. These draft Regulations were generally welcomed.

7.8 Revised draft regulations, which took account of the comments on the previous draft and reflected further discussions with Companies House on the Registrar's new powers, were placed on the BERR website for information on 2 May 2008.

8. Impact

The instrument has a negligible impact on the costs of business, charities or voluntary bodies. An Impact Assessment has therefore not been produced.

9. Contact

Alicia Law at the Department for Business, Enterprise and Regulatory Reform (telephone: 0207 215 5387 or e-mail:Alicia.law@berr.gsi.gov.uk) can answer any queries regarding the instrument.