EXPLANATORY MEMORANDUM TO

THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY (EMPLOYEE INVOLVEMENT) (GREAT BRITAIN) REGULATIONS 2009

2009 No. 2401

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 Council Directive 2001/86/EC ("the EU Directive") supplements the Statute for a European company (SE)[1] with regard to the involvement of employees. The EU Directive was originally transposed for Great Britain by Part 3 of the European Public Limited-Liability Company Regulations 2004 ("the 2004 Regulations")[2]. Parallel to this instrument, the 2004 Regulations are being amended[3] to refer to the relevant provisions of the Companies Act 2006 ("the 2006 Act") and to reflect the extension of GB enactments relating to SEs to Northern Ireland. The employee involvement provisions in Part 3 of the 2004 Regulations are revoked by those amending regulations and are re-enacted without substantive amendment in these Regulations. Because of differences between employment law in Great Britain and Northern Ireland, there are separate equivalent regulations for Northern Ireland (the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009[4]).

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

3.1 None

4. Legislative context

4.1 The European legislation about the formation of a European Company or Societas Europaea ("SE") comprises Council Regulation 2157/2001 on the Statute for a European Company ("the EU Regulation") setting out the core company law framework and the EU Directive which specifies the employee involvement arrangements that apply to an SE. Part 3 of the 2004 Regulations implemented the EU Directive for Great Britain.

4.2 In light of the changes made to company law by the 2006 Act, the 2004 Regulations require consequential amendment. Further, section 1285 of

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[1] Council Regulation 2157/2001 on the Statute for a European Company
[2] S.I. 2004/2326.
[3] By the European Public Limited-Liability Company (Amendment) Regulations 2009 (S.I. 2009/2400).
[4] S.I. 2009/2402

the 2006 Act extends the 2004 Regulations to Northern Ireland, and repeals the equivalent Northern Ireland regulations[5]. The amendments to the 2004 Regulations, to be made in parallel to this instrument, therefore reflect the extension of their application from Great Britain to the United Kingdom.

4.3 Part 3 of the 2004 Regulations and Part 3 of the Northern Ireland equivalent regulations contain provisions regarding employee involvement arrangements for SEs. The employee involvement provisions for Great Britain and Northern Ireland differ in that they refer to different legislation and institutions.

4.4 In order to preserve the separate regimes for Great Britain and Northern Ireland, the provisions regarding employee involvement arrangements for SEs are covered in two new statutory instruments. For SEs with registered offices in Great Britain, the employee involvement provisions are covered by this instrument; for SEs with registered offices in Northern Ireland, the employee involvement provisions are covered by the European Limited-Liability (Employee Involvement) (Northern Ireland) Regulations 2009 (to be made at the same time as this instrument). These two statutory instruments will come into force on 1st October 2009, as will section 1285 of the 2006 Act and the instrument amending the 2004 regulations.

4.5 The regulations are made under section 2(2) of the European Communities Act 1972.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Lord Davies of Abersoch, the Minister for Trade, Investment and Business, has made the following statement regarding Human Rights:

In my view the provisions of The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 The EU Directive sets out requirements for the information, consultation and participation of employees in SEs. All SEs must have employee involvement arrangements. These will always cover information and consultation, and may cover employee participation on the board of the company in certain circumstances (in particular, if it existed within one or more of the companies forming the SE). The EU Directive requires the management of the participating companies and representatives of employees

[5] The European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (S.R. (NI) 2004 No 417) and the European Public Limited-Liability Company (Fees) Regulations (Northern Ireland) 2004 (S.R. (NI) 2004 No 2407).

to try to reach a voluntary agreement on the employee involvement arrangements, or else to agree to rely on national information and consultation rules where the SE has employees.

7.2 In respect of SEs registered in Great Britain, the EU Directive was implemented by Part 3 of the 2004 Regulations. The employee involvement provisions applying to SEs with registered offices in Northern Ireland and Great Britain are different and are contained in separate instruments because they plead into different employment law regimes.

7.3 The effect of this instrument is that the employee involvement regulations for SEs with registered offices in Great Britain are separate from the main body of the SE regulations. The substance of the provisions, however, remains the same as in Part 3 of the 2004 Regulations. There are no policy changes and as such the UK's approach to transposition of the EU Directive is unaffected.

8. Consultation outcome

8.1 This instrument is re-enacting Part 3 of the 2004 Regulations and therefore there are no policy changes requiring consultation.

9. Guidance

9.1 Companies House publishes guidance for SEs on their website http://www.companieshouse.gov.uk/.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies as this instrument re-enacts Part 3 of the 2004 Regulations.

10.2 The regulations have no impact on the public sector.

10.3 An Impact Assessment of the effect that the 2004 Regulations would have on the costs of business was prepared and placed in the library of both Houses of Parliament, as were Transposition notes. These documents can be obtained from the Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET, and can be downloaded from http://www.opsi.gov.uk/si/em_20042326_en.pdf. No further Impact Assessment has been produced.

11. Regulating small business

11.1 The legislation applies to small businesses that are SEs with registered offices in Great Britain.

11.2 These Regulations are not adding any additional burdens to small business.

12. Monitoring & review

12.1 These Regulations will be kept under review by the Department for Business, Innovation and Skills.

13. Contact

13.1 Kate Gillies at the Department for Business, Innovation and Skills (tel: 020 7215 0253 or email: kate.gillies@berr.gsi.gov.uk) can answer any queries regarding the instrument.