

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**GOVERNMENT PROPOSAL TO  
AMEND THE COMPANIES HOUSE  
TRADING FUND**

A consultative document

AUGUST 2008



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## Executive Summary

The Companies Act 2006 (“the 2006 Act”) will create a single company law regime applying to the whole of the UK. One effect of the new UK-wide regime will be that the Companies Registry in Northern Ireland, which is currently part of the Department of Enterprise, Trade and Investment in Northern Ireland (DETI), will become the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform with effect from 1 October 2009.

The Government proposes to create a UK-wide Register of Companies through the integration of the Northern Ireland Registry with Companies House. This would involve amending the Companies House Trading Fund Order to reflect the change.

## How to Respond

The Department for Business, Enterprise and Regulatory Reform invites comments on the issues set out in this consultative document.

When responding please state whether you are responding as an individual or representing the views of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Responses to this consultation, including supporting evidence, must be received by **Tuesday 18 November**. You are invited to send comments, preferably by email to:

[companiesact2006\\_consultation@berr.gsi.gov.uk](mailto:companiesact2006_consultation@berr.gsi.gov.uk)

If responding by letter, please send to:

Alicia Law  
Corporate Law and Governance  
Department for Business, Enterprise and Regulatory Reform  
Bay 558  
1 Victoria Street  
London SW1H 0ET  
Fax: 020 7215 0235

This consultation is being conducted under the terms of the Government's Code of Practice on Consultations.<sup>1</sup>

### Confidentiality and Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of this information we will take full account of your explanation. But we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### Additional Copies

You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BERR Publications Orderline  
ADMAIL 528  
London SW1W 8YT  
Tel: 0845-015-0010  
Fax: 0845-015-0020  
Minicom: 0845-015-0030

An electronic version can be downloaded from the Department's website at:  
<http://www.berr.gov.uk/consultations/index.html>

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<sup>1</sup> <http://bre.berr.gov.uk/regulation/consultation/code/criteria.asp>

## Help with queries

Questions about the consultation can be addressed to Alicia Law using the contact details given above.

If you have comments or complaints about the way this consultation is being conducted, these should be sent to:

Vanessa Singhateh  
Consultation Co-ordinator  
Department for Business, Enterprise and Regulatory Reform  
Better Regulation Team  
1 Victoria Street  
London SW1H 0ET  
E-mail: [Vanessa.Singhateh@berr.gsi.gov.uk](mailto:Vanessa.Singhateh@berr.gsi.gov.uk)

A copy of the Code of Practice on Consultation is at Annex C.  
<http://bre.berr.gov.uk/regulation/consultation/code/criteria.asp>

## Impact Assessment

An Impact Assessment (see Annex B) has been developed to assess the cost and benefits of the proposal to amend the Companies House Trading Fund.

A Regulatory Impact Assessment (RIA) was developed on the impact of the 2006 Act. This is available at: <http://www.berr.gov.uk/files/file29937.pdf>

You are invited to comment on the analysis, and/or provide further evidence to demonstrate potential costs or benefits of the proposal set out in the consultative document.

## Consultation Question

The consultation asks the following question;

**Do you agree that the Companies House Trading Fund Order should be amended to include the Northern Ireland registry, creating a UK wide Registry?**

This is repeated in the main text, and in order to fully understand it, we suggest that it is necessary to read the text.

## Scope of Consultation

In unifying the Company Law regime across the UK, the Companies Act 2006 (“the 2006 Act”) sets the scene for a single Registry of UK companies. This consultation seeks your views on the proposal that the best mechanism to create a UK-wide Registry of Companies would be to integrate the Northern Ireland Registry with Companies House, by means of amending the Trading Fund.

In developing the 2006 Act, the then Department for Trade and Industry (DTI), now the Department for Business, Enterprise and Regulatory Reform (BERR), and the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland consulted widely on proposed changes to company law<sup>2</sup>. This consultation does not re-open the debate on this issue, nor does it consider the status of Companies House as a Trading Fund.

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<sup>2</sup> <http://www.berr.gov.uk/bbf/co-act-2006/>

### **BACKGROUND**

#### **The Companies Act 2006**

1.1 In June 2005 the DTI issued a White Paper on Company Law Reform<sup>3</sup>, setting out a series of measures for the proposed Company Law Reform (later Companies) Bill. This Bill became the Companies Act on receiving Royal Assent on 8 November 2006 and will be fully implemented in October 2009.

1.2 The last major piece of companies' legislation to apply to the whole of the UK was the Companies (Consolidated) Act in 1908. The 1929 Act and its successors, including the 1985 Act, extended to Great Britain only, but their effects were generally replicated for Northern Ireland (NI) in subsequent NI legislation. Company law remains a transferred matter under the Northern Ireland Act 1998.

1.3 The practical consequences of these arrangements were that NI businesses suffered delays in seeing the benefits from updates to company law, and administrative resources were wasted in drafting and administering laws, which in practice had no substantive differences to those in place in England, Wales and Scotland.

1.4 As a result, consultations on the Company Law Reform Bill requested views on unifying the company law system across the UK. A separate consultation was issued in NI in September 2005 (See Annex D). Strong support was given on the proposal for UK-wide legislation and the alignment of company law in NI with that in England, Wales and Scotland. The consultation responses indicated that there would be real benefits to business with the introduction of UK-wide law. The positive outcomes resulted in the 2006 Act being extended to Northern Ireland.<sup>4</sup>

#### **Background on Registries**

1.5 The United Kingdom has enjoyed a system of company registration since 1844. All limited companies in England and Wales and in Scotland are registered at Companies House, an Executive Agency of BERR, which maintains registers in England and Wales and in Scotland. There are more than 2.5 million limited companies registered in Great Britain, and more than 350,000 new companies are incorporated each year.

1.6 There are currently Registrars for England and Wales (the Chief Executive of Companies House), for Scotland, and for Northern Ireland. The Registrars for England and Wales and for Scotland are appointed under the Companies Act 1985.

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<sup>3</sup> <http://www.berr.gov.uk/bbf/co-act-2006/>

<sup>4</sup> Company law remains a transferred matter in NI, subject to the jurisdiction of the NI Assembly, and the 2006 Act could be separately amended or repealed in NI if that were so desired.

In reality the Registrar for Scotland reports to the Registrar for England and Wales, who is based at Companies House in Cardiff.

1.7 At present, in Northern Ireland, the Companies Registry is part of the Department of Enterprise, Trade and Investment (DETI), and currently has 38,000 limited companies listed. A Registrar is appointed by DETI under separate Northern Ireland legislation (the Companies (Northern Ireland) Order 1986 (1986/1032 (NI6))). DETI bids for funds, known as Supply Estimates, to the Northern Ireland Assembly on an annual basis. Resources required by the Registry to fund its operation form part of DETI's bid. Fees are set to recover the full cost of chargeable services delivered by the Registry. However, receipts cannot be used to fund expenditure and are therefore surrendered as Consolidated Fund Extra Receipts (CFERs).

1.8 The business of Companies House is the registration and provision of company information. This involves:

- the incorporation and registration of new companies and changes of company name;
- the dissolution of companies and striking off the register of defunct companies;
- ensuring that companies comply with the statutory information disclosure requirements of the Companies Acts and any other relevant legislation;
- registering and retaining company information; and
- making the information available for public inspection and use.

## **Companies House - A Trading Fund**

1.9 Companies House has Trading Fund status, which essentially allows the organisation to directly manage its own finances.

1.10 Companies House became a Trading Fund in October 1991. It met the Government Trading Act 1990 requirements in that it has revenue principally of receipts, has fluctuating capital expenditure and was able to achieve efficiencies through acquiring the status. For example, Trading Fund status enabled Companies House to respond more quickly to the ever changing demands of the customer, including greater flexibility to pass on efficiency savings to customers in reduced fees, and to enable a higher level of customer service. Trading Fund status has helped instil real commercial focus in Companies House, which in turn has stimulated innovation. The greater flexibility to plan ahead in meeting its financial objectives over a period of years rather than annually, has enabled investments to improve services for the benefit of customers

1.11 As a Trading Fund Companies House has a statutory duty to break even over time ("taking one year with another"), to set fees on a strict cost-recovery basis and

to achieve a rate of return, currently set by HM Treasury at 3.5%, on average capital employed.

1.12 Companies House has a Framework Document<sup>5</sup> in place, which is key to the accountability process, and outlines its aims and objectives as a Trading Fund. This sets out the relationship with its lead Department, BERR, and establishes the boundaries between policy and service delivery functions and also describes the monitoring, accountability and reporting arrangements.

## Why Trading Funds are in Place

1.13 Trading Funds were introduced by the Government Trading Funds Act 1973 ("the 1973 Act") as a means of financing the revenue-generating operations of a Government Department, which would otherwise be financed through the Parliamentary vote process. The 1973 Act does not define a "Trading Fund", but section 4 of Cm 914 *The Financing and Accountability of Next Steps Agencies (December 1989)* describes it as a "financing framework which covers operating costs and receipts, capital expenditure, borrowing and net cash flow."

1.14 The 1973 Act was limited in its application and was significantly amended in 1990 by the Government Trading Act 1990 ("the 1990 Act"), which allowed a wider range of activities to be considered as being eligible for financing by means of a trading fund.

1.15 The Next Steps initiative in the late 1980s/early 1990s saw some operational activities of some Departments transferred to separate agencies, including Companies House. This initiative and the principles of trading fund status have as their basis the concept of undertaking commercial or executive activities in separate, self-accounting units.

1.16 Although a Trading Fund may be described as "a statutory fund", it is not a body corporate operating at arms length from Government in the same way as Non-Departmental Public Bodies (NDPBs) or public corporations. The responsible Minister remains accountable to Parliament, not only for the policy and resources framework within which a trading fund operates, but also for all of its operations and actions. The aim of establishing a trading fund is to enable them to operate within a "strategic control framework".

## Benefits

1.17 The *Review of Trading Fund Policy*<sup>6</sup> identified the following benefits which result from operating as a trading fund:

- It provides a real focus on outputs and performance;

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<sup>5</sup> A copy of the Framework Document can be found at [www.companieshouse.gov.uk/about/corporateDocuments.shtml](http://www.companieshouse.gov.uk/about/corporateDocuments.shtml)

<sup>6</sup> Review of Trading Fund Policy, HM Treasury, October 2003

- It leads to a change in culture within the organisation in that it becomes a value-driven business with greater focus on the needs of the customer;
- It facilitates the funding of minor projects (which can be financed from self-generated income);
- It allows more autonomy to management on financial and managerial issues;
- It enables the recruitment of staff who are comfortable working in a commercial environment;
- It allows for quicker responses to a changing environment and can aid longer term planning;
- It encourages managers and staff to think commercially, find opportunities to cut costs and seek more efficient ways of operating and to expand the business where appropriate;
- It allows for improved use of working capital, asset disposals and rationalisations and pricing flexibility; and
- It results in improved efficiency for UK Plc.<sup>7</sup>

### **Government Assessment of Trading Funds**

1.18 This proposed amendment to the Companies House Trading Fund is being undertaken as a result of a change in Companies legislation. In parallel HM Treasury and BERR are carrying out a Government Assessment into trading funds which is due to report in the autumn. The purpose of this review is to assess the governance structure of trading funds and to look closely at the public sector information held in order to distinguish what is required by Government for public tasks and to ensure that this information is made available as widely as possible for use in downstream markets. The proposed change to the Companies House Trading Fund for the purpose of incorporating the Northern Ireland Registry will not be affected by the review.

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<sup>7</sup> Guide to the Establishment and Operation of Trading Funds, HMT, May 2004, p11- 12

## **PROPOSAL**

1.19 It is proposed that the Northern Ireland Registry of Companies should be integrated with Companies House, to create a single UK Registry of Companies. This would reflect the fact that the 2006 Act provides for a single company law regime applying to the whole of the UK.

1.20 In practical terms the merger would mean that customers would be able to refer to one Register only for registration and information relating to UK companies. It would also mean that all UK customers had access to the same products and services at the same price.

1.21 The system would operate in much the same way as Companies House currently works with Scotland. The Registrar for Northern Ireland would be retained, and would be an appointee of the Secretary of State for BERR, as is the case for England and Wales and for Scotland; in practice the Northern Ireland Registrar would report to the Chief Executive of Companies House. The office in Belfast would remain, but would use systems, hardware, processes and have corporate standards in common with Companies House. Registry operations in Northern Ireland would be maintained with no detrimental impact upon customers, but the existing company data would be migrated to give customers full UK information on companies. There would be a common fee structure, and customers would have the benefit of common filing and search services covering the whole of the UK. There would be an exercise to value and transfer (if applicable) relevant assets and liabilities.

1.22 Integrating the Northern Ireland Registry with Companies House would deliver a number of benefits:

- Access for all UK companies to Companies House broader range of products and services, including more electronic services and premium or same day services;
- Economies of scale, allowing products and services to be delivered at a lower cost to business;
- Existing NI company data will be migrated to give customers full UK information in companies;
- There will be a common fee structure across the UK;
- Customers have one point of contact for all queries relating to UK companies;
- Customers would have access to Companies House Contact Centre, and Companies House Information Centres for all queries relating to any UK company; and
- There will be no need for Companies House Northern Ireland to develop (at additional cost) a system to reflect the October 2009 implementation of the 2006 Act.

1.23 The Government has not identified any significant disadvantages to this approach.

## **Why the Trading Fund Needs to be Amended**

### **The Companies House Trading Fund Order 1991 ("the Order")**

1.24 The Order sets out the basis for Companies House Trading Fund status. Currently the Trading Fund defines the Registrar of Companies by reference to the 1985 Act. That means the Registrar of England and Wales and the Registrar of Scotland.

1.25 Section 1060 of the Companies Act extends the definition of Registrar of Companies to include the Registrar for Northern Ireland. Therefore, there is a disjoint between the 2006 Act and the Order. The Order needs to be amended to remove this disjunction, and to enable there to be a merger of the Registry in Northern Ireland with the Registries in Great Britain.

1.26 The Chief Executive is the Accounting Officer for Companies House. His responsibilities in this respect, which include ensuring the propriety and regularity of public finance and the keeping of proper records, are set out in an "Accounting Officer's Memorandum" issued by HM Treasury, and elaborated upon in the Framework Document. In order to fulfil this role, a clear legal basis is required.

### **Process for Amending the Companies House Trading Fund Order**

1.27 The Order would be amended under the 1973 Trading Funds Act. The draft Companies House Trading Fund (Amendment) Order is attached at Annex A for information. Following the conclusion of this consultation, the Department will consider the responses to the consultation and then (unless it considers that it is no longer appropriate) lay before the House of Commons a draft of the Order, possibly amended to take account of the consultation responses. If the House of Commons, after a debate, approves the draft Order, the Secretary of State (or one of the other Ministers in the Department) and then two Treasury Ministers will sign the Order, after which it will come into force on 1st October 2009.

## **ALTERNATIVE APPROACH**

1.28 Under the Companies Act 2006, the Companies Registry in Northern Ireland will become the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform with effect from 1 October 2009. The alternative would therefore be for BERR to manage the Northern Ireland Registry, directly or indirectly, separately from the Companies House Registry.<sup>8</sup>

1.29 While Northern Ireland companies are familiar with the existing service, in the Government's view this approach would have a number of significant disadvantages:

- The Northern Ireland Registry would be separate from the Companies House Registry, so there would be no UK-wide database, meaning customers would continue to have to search two registries to access information about UK companies, maintaining an existing burden on business and which may have a slight impact on the UK's reputation internationally;
- New targets and delivery standards would have to be agreed by Ministers;
- There would be no UK-wide uniformity of fees; Northern Ireland Companies would be highly likely to face higher fees - above what they currently pay as well as above Companies House fees - because Northern Ireland fees would have to be updated to ensure full cost recovery (see Annex B) and because a separate Northern Ireland Registry does not benefit from the economies of scale which Companies House enjoys;
- Without significant investment (and higher fees) to the Northern Ireland Registry, Northern Ireland companies would not have access to the types of electronic services and premium or same day services which are already available to companies in England, Scotland and Wales;
- Without significant ongoing investment (resulting in higher fees) to the Northern Ireland Registry, services available to Northern Ireland Companies would continue to fall behind those available to Companies in England, Scotland and Wales;
- Due to the need for continues investment in the medium and long-term, this option is less desirable than the proposed option;
- Duplicating the systems and processes which are already in place in Companies House would be administratively burdensome and unnecessarily costly; and
- Potentially fewer electronic and premium services available with regard to Northern Ireland.

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<sup>8</sup> The relatively small-scale operation needed to run a separate Northern Ireland Registry means that it is perhaps not feasible to establish a Trading Fund to facilitate the work. Although Companies House operates successfully as a Trading Fund, it is partly because it can spread costs, for things like IT development, across many more customers than a separate Northern Ireland Registry could.

## **SUMMARY AND QUESTION**

1.30 The 2006 Act unifies Company Law across the UK, and sets the scene for a single UK Registry of Companies. We believe there are clear benefits to merging the Companies House Registry with the Northern Ireland Registry. We would welcome your views, and would be grateful if you would respond to the following question:

**Do you agree that the Companies House Trading Fund Order should be amended to include the Northern Ireland registry, creating a UK wide Registry?**

### Timing

2.1 The deadline for comments on the proposal in this document is **Tuesday 18 November**. Responses received after the deadline may not be taken into account.

2.2 The Government is committed to common commencement dates for Regulations. In general, Regulations come into force on either 6 April or 1 October. Subject to the responses to this consultation the Government is proposing to amend the Order to come into effect 1 October 2009, the date appointed for the final implementation of the 2006 Act. . A Government Response to the consultation, providing a summary of responses and the outcome of the consultation, will be published on the BERR website within three months of the closing date of the consultation.

*Draft Order laid before the House of Commons under section 6(2) of the Government Trading Funds Act 1973, for approval by resolution of that House.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2008 No. XXX**

**GOVERNMENT TRADING FUNDS**

**The Companies House Trading Fund (Amendment) Order 2009**

<i>Made</i> - - - -	***
<i>Coming into force</i> - -	<i>1st October 2009</i>

It appears to the Secretary of State for Business, Enterprise and Regulatory Reform (“the Secretary of State”) that—

- (a) the operations defined in this Order as “the additional funded operations” (being operations which will when this Order comes into force be operations of a Department of the Government for which he is responsible) are suitable to be financed by means of the fund established by the Companies House Trading Fund Order 1991<sup>(a)</sup> and, in particular, to be so managed that the revenue of the fund will consist principally of receipts in respect of goods and services provided in the course of the additional funded operations and the existing funded operations described in Schedule 1 to that Order; and
- (b) the financing of the additional funded operations by means of that fund will be in the interests of improved efficiency and effectiveness of the management of those operations.

In accordance with sections 1(3) and 6(4) of the Government Trading Funds Act 1973<sup>(b)</sup>, the Secretary of State has taken such steps as appear to him to be appropriate to give an opportunity to give such persons as appear to him to be appropriate to make representations to him and has laid before Parliament a report about the representations received and his conclusions.

In accordance with section 2 of the Act of 1973, the Secretary of State has determined with Treasury concurrence that the assets and liabilities inserted into Schedule 2 to the 1991 Order by article 6 of and the Schedule to this Order are properly attributable to the additional funded operations and are suitable to be appropriated to the fund established by the 1991 Order.

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(a) S.I 1991/1795

(b) 1973 c. 63, as amended by the Government Trading Act 1990 (c. 30). That Act, as so amended, is set out in Schedule 1 to the Act of 1990. Section 2 of the Act, as so amended, was further amended by section 119 of the Finance Act 1991 (c. 31); and section 2B of the Act, as so amended, was repealed by the Finance Act 1993 (c.34).

In accordance with section 6(2) of the Act of 1973, a draft of this Order has been laid before the House of Commons and has been approved by a resolution of that House.

The Secretary of State, in exercise of the powers conferred by sections 1, 2 and 6(1) of the Act of 1973, and with the concurrence of the Treasury, makes the following Order:

1. This Order may be cited as the Companies House Trading Fund (Amendment) Order 2009 and comes into force on 1st October 2009.

2. In this Order, “the 1991 Order” means the Companies House Trading Fund Order 1991.

3. The funded operations provided for in the 1991 Order include the additional funded operations defined in article 2 of the 1991 Order as inserted by article 5(2) of this Order.

4. The Crown assets and liabilities inserted into Schedule 2 to the 1991 Order by article 6 of and the Schedule to this Order shall be appropriated as assets and liabilities of the fund established by article 3 of the 1991 Order.

5.—(1) Article 2 of the 1991 Order is amended as follows.

(2) After the definition of “the Act of 1973” insert—

““the additional funded operations” means—

- (a) the operations described in paragraphs 1, 2 and 4 of Schedule 1 when carried on in exercise of the functions of the registrar of companies for Northern Ireland in accordance with the Companies Act 2006, and
- (b) without prejudice to paragraph (a), the performance by the registrar of companies for Northern Ireland of any function imposed upon him by law as at 1st October 2009 and the performance of any functions performed as at that date by any officer employed within Companies House which immediately before that date had been functions of the Department of Enterprise, Trade and Investment for Northern Ireland;”.

(3) In the definition of “the registrar of companies”, for “the Companies Act 1985” substitute “the Companies Act 2006”.

6. Schedule 2 to the 1991 Order is amended as provided in the Schedule to this Order.

Parliamentary Under Secretary of State

Date

Department for Business, Enterprise and Regulatory Reform

We concur.

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

## SCHEDULE

Article 6

### Assets and liabilities inserted into Schedule 2 to the 1991 Order

7. After the fourth item under “Assets” add—

“Plant and computers as immediately before 1st October 2009 used or allocated for use in the additional funded operations.

Intangible assets arising from the additional funded operations as carried on up to that date.

Current assets as immediately before that date used or allocated for use in, or arising from, the additional funded operations.”

8. In the item under “Liabilities”, for “as at that date” substitute “as at 1st October 1991”.

9. After that item add—

“Creditors as immediately before 1st October 2009 arising from the additional funded operations.”

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Companies House Trading Fund Order 1991 by adding to the operations of Companies House funded under that Order its operations as the companies registry for Northern Ireland in accordance with the extension of the Companies Act 2006 to Northern Ireland. The Order adds to the assets and liabilities of the fund the assets and liabilities attributable to the operations of the Northern Ireland companies registry.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BERR</b>	<b>Title:</b> <b>Impact Assessment of Amending the Companies House Trading Fund Order to Incorporate Northern Ireland (NI)</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1	<b>Date:</b> August 2008
<b>Related Publications:</b> Regulatory Impact Assessment, Companies Act 2006		

Available to view or download at:

[www.berr.gov.uk/consultations/open-consultations/index.html](http://www.berr.gov.uk/consultations/open-consultations/index.html)

**Contact for enquiries:** Alicia Law

**Telephone:** 020 7215 5387

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

When fully implemented the Companies Act 2006 ("the 2006 Act") will create a company law regime applying to the whole of the UK. At present the Companies Registry in Northern Ireland is part of the Department of Enterprise, Trade and Investment in Northern Ireland.

Government intervention is necessary to create a unified Registry of Companies, which would allow customers in Northern Ireland (NI) to take advantage of / benefit from economies of scale inherent to an UK-wide registry regime.

**What are the policy objectives and the intended effects?**

It is proposed that the most efficient and cost effective mechanism for managing an UK Registry will be to have a unified Registry of Companies, bringing service levels, products and fees into line across the UK. There would be minimal disruption to companies in NI as the Belfast office would remain in place. There would be considerable benefits; to search customers of a single electronic UK Register, and to filing customers who would access a full range of electronic services for incorporation and filing of an annual return, company detail changes and annual accounts.

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

We have considered two options;

1. Amend the current Companies House Trading Fund Order to include the Registry of Northern Ireland
2. For BERR to manage the existing Northern Ireland Registry

Option 1 is the preferred option as we believe this would ensure parity of fees across the UK, be the most efficient and cost effective mechanism for managing an UK Registry.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Companies House will continue to undertake an annual fees review, to ensure that UK wide fees are set accurately on a cost recovery basis

**Ministerial Sign-off** For consultation 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:

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>1</b>	<b>Description:</b> Amend the current Companies House Trading Fund Order to include the Registry of Northern Ireland
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Companies House will have to update and modify their existing infrastructure to incorporate the NI Registry	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	£ 200,000			
	<b>Average Annual Cost</b> (excluding one-off)			
	£		<b>Total Cost (PV)</b>	£
Other <b>key non-monetised costs</b> by 'main affected groups'				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' . NI customers will benefit from economies of scale enjoyed by Companies House, allowing a wider range of products and services to be delivered at a lower cost than the current situation.	
	<b>One-off</b>	<b>Yrs</b>		
	£			
	<b>Average Annual Benefit</b> (excluding one-off)			
	£ 193,000	10	<b>Total Benefit (PV)</b>	£ 1,607,000
Other <b>key non-monetised benefits</b> by 'main affected groups'. There will be one point of contact for all queries relating to UK companies. Further, there will be access for all UK companies to Companies House broader range of products and services, which include more electronic services and same day services.				

**Key Assumptions/Sensitivities/Risks** The fee structure at Companies House will remain the same after incorporating the NI Registry and it has been assumed that companies from the NI Registry will take up electronic filing in line with the position currently in GB.

Price Base	Time Period	<b>Net Benefit Range</b> (NPV)	<b>NET BENEFIT</b> (NPV Best estimate)
Year 2008	Years 10	£ 1,407,000	£ 1,407,000

What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	October 2009			
Which organisation(s) will enforce the policy?	Companies House			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
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?	N/A	N/A	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	£ 0

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

## Evidence Base (for summary sheets)

[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.]

### 1. INTRODUCTION

1.1 The Companies Act 2006 (“the 2006 Act”) provides for a single company law regime for the whole of the UK under the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform.

1.2 This sets the scene for a single UK Companies Register. It is proposed that the most efficient mechanism to achieve a unified Register would be to integrate the Northern Ireland (NI) Registry with the Great Britain (GB) Registry at Companies House.

1.3 Companies House has Trading Fund status, as set out in the Companies House Trading Fund Order (“the order”) 1991.

### 2. BACKGROUND

2.1 In June 2005 the DTI issued a White Paper on Company Law Reform<sup>1</sup>, setting out a series of measures for the proposed Company Law Reform (later Companies) Bill. This Bill became the Companies Act on receiving Royal Assent on 8 November 2006 and will be fully implemented by October 2009.

2.2 The consultations on company law addressed whether the law should apply to the whole of the UK. Previously UK Companies Acts had applied only to England, Wales and Scotland, but in practice were generally replicated in subsequent NI legislation. The positive outcome of these consultations means that when the 2006 Act is fully implemented it will apply to the whole of the UK.

### 3. OPTIONS

#### **OPTION 1- PREFERRED OPTION: AMEND THE CURRENT TRADING FUND TO INCORPORATE THE NI REGISTRY**

3.1 With the Companies Act 2006 applying to all UK Companies, it makes sense to have a single Registry of UK Companies. The Companies House Registry is made up of 2.5 million companies, and the NI Registry is made up of 38,000 companies. Therefore, to take full advantage of the economies of scale, and broader range of premium, same day or electronic services available at Companies House, it is proposed that the NI Registry should be incorporated into the Companies House Registry. The Order would need to be amended to provide the legal certainty for incorporating the NI Registry into the Companies House Registry.

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<sup>1</sup> <http://www.berr.gov.uk/bbf/co-act-2006/>

## **BENEFITS OF OPTION 1**

- Access for all UK companies to Companies House broader range of products and services, including more electronic services and premium or same day services.
- NI customers will benefit from economies of scale, allowing products and services to be delivered at a lower cost to business that currently use the NI Registry.\*
- Existing NI company data will be migrated to give customers full UK information on companies in one place.
- Customers have one point of contact for all queries relating to UK companies: Customers would have access to Companies House Contact Centre, and Companies House Information Centres for all queries relating to any UK company.
- There will be a common fee structure across the UK\*.
- There will be no need for the NI Registry to develop (at additional cost) a system to reflect the October 2009 implementation of the 2006 Act.

3.2 Due to the nature of the benefits associated with option 1 it is quite difficult to quantify a value for each benefit. However making some reasonable assumptions which will be explained in due course, it will be possible to estimate two of the benefits mentioned above (indicated by the \*).

3.3 We have compared the existing products that are available at the NI Registry to the equivalent products that are available at Companies House. We have estimated that having a common fee structure across the UK based on the current Companies House fee structure will result in annual savings of £193,000. This annual saving is due to the economies of scale and the availability of electronic services that a UK-wide Registry would bring current and future NI customers.

3.4 The benefit of £193,000 has been estimated using the standard cost model (Price X Quantity). The price in this calculation is the difference in price for each comparable service / product available at the NI Registry and Companies House (see Annex B). The main savings will occur when a NI company incorporates (£15), changes its name (£30), files an annual return electronically (£5) or registers a mortgage /charge (£12). An increase in costs will occur when companies file their annual returns by paper (£10). The quantity in this calculation is the number of companies that would be affected on the NI Registry for each service / product. Multiplying the price and quantity gives a 'net benefit' for each service / product. Finally, all the net benefits for each service / product are added together to give an overall net benefit of £193,000 per annum.

3.5 For example, for a company to incorporate at the NI Registry the cost will be £35, the equivalent service at Companies House costs £20. The difference in price between the NI Registry and Companies House is £15 . In 2007/08 there were 3,884 companies (including Limited Liability Partnerships) newly incorporated on the NI Registry, giving a net benefit of £58,260.

### Key assumptions of this quantified benefit:

- The fee structure at Companies House will remain the same after incorporating the NI Registry.
- It has been assumed that companies from the NI Registry will take up electronic filing in line with the position currently in GB. The position in GB is that 85% of companies file annual returns electronically, with the remaining companies filing annual returns in paper form. Note: If the split of NI companies who submit their annual returns differ to the one assumed it will result in a significant change in the quantified benefit for this option.

However, evidence from GB would suggest, that over time, the number of companies that file their annual returns electronically is increasing. Therefore in reality, this benefit may actually be underestimated (this split can be easily monitored by Companies House, hence this figure can be further verified or adjusted over time).

## **COSTS OF OPTION 1**

- Companies House will have to update and modify their existing infrastructure to incorporate the NI registry. This will be a one-off cost estimated at £200,000.
- Customers of the NI Registry will have to be informed that the information they require will now be available from Companies House.
- Bulk customers of the NI Registry only will no longer be able to get updates for just NI companies. They will have to get an update of the whole UK companies population. At present the cost for bulk customers at the NI registry is a one off £30 fee, where at CH the monthly subscription is £30 or £300 annually. There are only a few customer of the NI registry that are not CH customers, therefore this cost is minimal.

3.6 Disregarding the one-off cost to Companies House of modifying their existing infrastructure to incorporate the NI registry, the net benefit (quantified benefits minus quantified costs) for this option is therefore £193,000 per annum.

## **OPTION 2 – ALTERNATIVE: FOR BERR TO MANAGE THE EXISTING NORTHERN IRELAND REGISTRY**

3.7 Under the Companies Act 2006, the Companies Registry in Northern Ireland will become the responsibility of the Secretary of State for Business, Enterprise and Regulatory Reform with effect from 1 October 2009. The Department could elect to manage the NI Registry, directly or indirectly, separately from the Companies House Registry<sup>2</sup>, but it believes this approach would have a number of significant disadvantages with associated costs.

## **BENEFITS OF OPTION 2**

If this option is chosen it is expected to bring no additional benefits.

## **COSTS OF OPTION 2**

- BERR will need to put in place a system to manage and finance the NI Registry.
- New targets and delivery standards would have to be agreed by Ministers.

3.8 The nature of the costs associated with this option are very difficult to quantify. The costs would include initial set-up and additional running and administrative costs that we expect would be significantly higher year on year (due to no economies of scale) than if Companies House does the work (as per option 1). In addition, if option 2 is chosen, the qualitative benefits of

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<sup>2</sup> The relatively small-scale operation needed to run a separate Northern Ireland Registry means that it is perhaps not feasible to establish a Trading Fund to facilitate the work. Although Companies House operates successfully as a Trading Fund, it is partly because it can spread costs, for things like IT development, across many more customers than a separate Northern Ireland Registry could

option 1 will not be realised, and the disadvantages of having two registries as set out in the consultation document will remain.

## **PREFERRED OPTION**

Although it has not been possible to quantify all of the costs and benefits associated with the options set out above, it is clear that the preferred option is option 1 (Amend the current trading fund to include NI registry) given the net benefit calculation and the policy benefits. The net benefit of option 1 is calculated as £193,000 per annum but in practice this is likely to underestimate the level of net benefits given that a number of benefits, including the value to NI customers of a wider range of products and electronic services, have not been quantified. Option 2 would incur costs but no benefit when compared to the current situation.

## **SPECIFIC IMPACT TESTS**

### **4. Small Firms Impact Test**

4.1 No Small Firms Impact Test has been completed because the only external impact on customers might be in terms of the fees set for product and services. Under the Competition Act 1998 Companies House is prohibited from setting differential prices for the same product to different customers that might distort competition.

4.2 One of the tenets of the 2006 Act was “think small first”, and it shifted the emphasis of the law in favour of the 95% of limited companies which are small, including such measures as greater clarity and simplicity. (See <http://www.berr.gov.uk/files/file29023.pdf> for the Impact Assessment for the Companies Act.)

### **5. Competition Assessment**

5.1 The Competition Act 1998 prohibits the abuse of a dominant position in a market. As Companies House is dominant in the market for company information, by virtue of its statutory function, it must ensure that it does not abuse this position either by exploiting customers, or by anti competitive behaviour.

5.2 The Office of Fair Trading (OFT) have historically not regarded prices for statutory services, set on a cost recovery basis, as falling within the Competition Act. Companies House was recently a case study in the OFT’s report into the commercial use of public sector information, which was published in November 2006. The report concluded that Companies House provides unrefined data to the public on a cost recovery basis.

### **6. Equality Duties: Race, Disability and Gender**

6.1 After initial screening as to the potential impact of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

### **7. Enforcement, sanctions and monitoring**

7.1 The NI Registry and Companies House have similar enforcement and penalty regimes.

## **8. Implementation and delivery plan**

8.1 Amending the current Companies House Trading Fund Order to include the Registry of NI from the 1<sup>st</sup> October 2009 will provide the legal certainty for a UK Registry.

## **9. Summary and Conclusions**

9.1 The Companies 2006 Act will create a single company law regime applying to the whole of the UK. As a result the Companies Registry in NI, which is currently part of the DETI, will become the responsibility of the Secretary of State for BERR with effect from 1 October 2009. Option 1 is the preferred option. The net benefits of including the NI registry within the existing trading fund (option 1) are likely to be strongly positive but we have only been able to quantify some of the likely savings to NI businesses. This suggests an annual saving of at least £193,000 giving a net present value over ten years of at least £1.4 million. This is in addition to the listed advantages of a combined registry and the likely costs associated with option 2 (BERR establishing its own systems for managing a NI registry).

## 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	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	N/A	No
Sustainable Development	N/A	No
Carbon Assessment	N/A	No
Other Environment	N/A	No
Health Impact Assessment	N/A	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	N/A	No
Rural Proofing	N/A	No

## Annexes

### ANNEX A – COMPANIES HOUSE TARGETS 2008/9

<b>Customer Targets</b>	
Customer Satisfaction	86%
Increase in e-filing by volume	26%
WebFiling, Web Check and CHD availability	99%
Search customer can access their requested documents on CH systems within 60 Seconds	Average
Complaints resolution within 5 days	97.5%
Accounts Compliance	95.3%
CEO case responses within 10 days	100%
<b>Process Targets</b>	
Image quality	99.5%
Electronic transactions available to the public within 72 hours	Average
Paper documents available to the public within 8 days	Average
<b>Finance Targets</b>	
Invoices paid within 30 days	100%
Average rate of return	3.5%
Reduction in operating cost per company	15% over 3 years

**ANNEX B – NORTHERN IRELAND AND COMPANIES HOUSE FEES  
COMPARISONS TABLE, USED TO ESTIMATE THE BENEFITS OF OPTION 1  
(WHERE THERE ARE COMPARABLE SERVICES /PRODUCTS)**

Product/ Service	NI Price	CH Price	Difference	Volume <sup>a</sup>	Net benefit
<b><i>Companies and LLPs</i></b>					
i. Company incorporation	£35	£20	£15	3884	<b>£58,260</b>
ii. Re-registration of a company	£35	£20	£15	13	<b>£195</b>
iii. Change of name	£40	£10	£30	660	<b>£19,800</b>
iv. Re-Registration and Change of Name	£75	£30	£45	0	<b>£0</b>
v. Registration mortgage/charge	£25	£13	£12	4827	<b>£57,924</b>
vi. Annual document filing fee				22354 <sup>b</sup>	
Paper	£20	£30	<b>-£10</b>	3353	<b>-£33,531</b>
Electronic	£20	£15	£5	19001	<b>£95,005</b>
vii. Restoration Order	£50	£300 <sup>c</sup>	<b>-£250</b>	21	<b>-£5,250</b>
viii. Application for strike-off	£10	£10	£0	\$	<b>£0</b>
<b><i>LPs</i></b>					
i. Registration	£2	£2	£0	\$	<b>£0</b>
<b><i>EEIGs</i></b>					
i. Registration/ establishment in GB	£50 <sup>d</sup>	£20		0	<b>£0</b>
ii. Change of name	None requested	£10		0	<b>£0</b>
iii. Registration mortgage/charge	None requested	£13		0	<b>£0</b>
<b><i>Overseas companies</i></b>					
i. Registration	£35	£20	£15	72	<b>£1,080</b>
ii. Annual fee (attached to accounts)				235	
Paper	£20	£30	<b>-£10</b>	94	<b>-£940</b>
Electronic	£20	£15	£5	141	<b>£705</b>
iii. Registration of mortgage/charge	£25	£13	£12	4	<b>£48</b>
					<b>£193,296</b>

<sup>a</sup> This column represents the number of companies / LLPs at the NI Registry that use each service / product. The volume is based on the latest information, covering the period 31<sup>st</sup> March 2007 -1<sup>st</sup> April 2008

<sup>b</sup> For annual returns, it has been assumed 85% of all companies will file annual returns electronically (15% paper); this is in line with what is currently being observed in GB. Source: Companies House Statistics

<sup>c</sup> CH Recovers Treasury Solicitors costs – usually around £300

<sup>d</sup> £50 Only when EEIG registered otherwise free

## Consultation Criteria

### The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

## Text of Consultation Letter from DETI

### CONSULTATION LETTER

Dear Consultee

I am writing to you seeking your views on new proposals for modernising company law. The substantive changes being proposed are contained in the Company Law Reform White Paper, published by DTI in March 2005, which has already been the subject of a consultation exercise in Great Britain. (The White Paper included draft clauses in many areas, and further detail was made available in subsequent draft clauses published in July 2005 on the DTI website – <http://www.dti.gov.uk>.)

The White Paper contains comprehensive proposals for updating and improving the Company Law Framework. It and the associated draft legislation cover a range of measures designed to support four key objectives:

- To enhance shareholder engagement and a long term investment culture;
- To ensure better regulation and a 'Think Small First' approach;
- To make it easier to set up and run a company; and
- To provide flexibility for the future.

The overall aim of these reforms is to ensure that company law in the United Kingdom remains up to date, flexible and accessible for all those who use it. This is essential to making certain that the UK continues to be an attractive place in which to set up and operate a business.

Achieving this aim is equally important for Northern Ireland. Implementing these reforms in a timely and consistent manner will give significant benefits for business, especially small businesses in the province.

In responses to previous consultations on company law, key stakeholders, particularly from business, have indicated that there will be real benefits to business in NI if changes in company law are introduced here at the same time as in Great Britain. Given that the companies legislation we introduce here represents parity with that in GB and that the current system inevitably leads to delays, I am proposing that the GB Company Law Reform Bill be extended to include Northern Ireland. Following the passage of this Bill any further subordinate legislation in the company law area would also be introduced on a UK wide basis, avoiding the present delay for Northern Ireland companies. Consideration would also need to be given to areas of law closely related to the subject of the Bill, where it might also be appropriate for legislation to be made consistently on a UK-wide basis – for example, Limited Partnerships, Limited Liability Partnerships, Community Interest Companies and European Company Statute. Views would be welcomed on these suggestions. These areas follow the company law model and as such we feel it would be sensible to include them.

The effect of these changes would be that NI businesses would in future enjoy the benefits of regulatory reforms offered to their GB counterparts in the same way and

at the same time. They would also benefit from the certainty created by common commencement dates for legislation, which have now been implemented in GB.

Northern Ireland stakeholders would continue to be consulted on proposed legislative changes in future – in fact they would be involved at an even earlier stage in the policy development process with increased opportunity to influence change – and company law would remain as a transferred matter. On its return, the Northern Ireland Assembly could at any point resume responsibility for drafting separate NI companies' legislation if it considered this to be desirable.

Implicit in the proposals is a degree of harmonisation between the current Northern Ireland and GB companies registries. However, we propose to ensure that there remains a registrar in Northern Ireland, providing a local interface for customers as currently exists. I believe companies in Northern Ireland would find this of value. The priority will be to provide a service that responds efficiently and effectively to customer requirements. There will also be greater facilities for e-communication as set out in the draft legislation and so the outcome of the changes will be an even more effective and accessible service to customers in Northern Ireland as elsewhere.

Once the Bill is in force, all new companies whether in Northern Ireland or anywhere else in the UK will be registered as UK companies but as existing Northern Ireland company law is largely identical in its effect to GB company law, the practical implications for existing companies would be very small.

I am therefore seeking your views on two issues. Firstly, there are the policy proposals contained in the White Paper itself. This would include your views on whether there are any equality issues surrounding the planned policies. I do not believe at this stage that the legislation will have any differential impact on particular groups in Northern Ireland but I would welcome your comments on this matter. The White Paper and draft Bill can be viewed at the following web address – <http://www.dti.gov.uk/cld/facts/clr.htm>

The second issue for your consideration is that of future responsibility for companies legislation that applies to Northern Ireland. It would be helpful to know whether you would in principle support the proposal for this and future company law to be made on a UK-wide basis, thus extending automatically to Northern Ireland without the need for separate legislation: and any concerns or detailed comments that you might have.

While I appreciate that there is much to consider the timescale for this consultation must take into account the proposed timing of the introduction of the Company Law Reform Bill. As we would wish to be included in the GB Bill, assuming the responses to this consultation support this position, and it will be introduced soon after the summer Parliamentary recess, I would ask that you provide your comments by **Wednesday 19th October 2005**.

**ANGELA SMITH MP**



