

BIS | Department for Business
Innovation & Skills

**REVISED SCHEME FOR
REGISTRATION OF CHARGES
CREATED BY COMPANIES AND
LIMITED LIABILITY
PARTNERSHIPS**

Proposed revision of Part 25,
Companies Act 2006

AUGUST 2011

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Questions

We would welcome your comments, by **30 September 2011**, on the annotated mock-up of Part 25 amended in line with the Government's revised proposals and in particular on

- the appropriate requirement to **certify** that the instrument being filed is a true copy of the original noting that it will be possible to file electronically (see paragraph 10 and proposed section 860A(2));
- the proposed definition of "**date of creation**" and, in particular, on its likely impact on costs for the registration of securities granted by Scottish companies (see paragraph 8 and proposed section 863A);
- the abolition of extra time for charges created outside the United Kingdom (see paragraph 10 and section 870); .
- the proposed safeguards for the **filing of satisfaction or release** (see paragraph 9 and section 872);
- the proposals for rectification of the register (section 873);
- the assumptions of costs and benefits in the draft Impact Assessment (see pages 38-46); and
- whether the scheme should also apply to unregistered companies and mutuals (ie Industrial & Provident Societies) (see paragraph 11) .

You may reply however you find most convenient, but it would be helpful if you were to email your comments to **anne.scrope@bis.gsi.gov.uk**. The postal address is:

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Next Steps

The intention is:

- to publish draft regulations in early 2012. Please note that the precise wording of the amended Act may differ from those in the mock-up as this is a guide to what is intended;
- for the amendments to Part 25 to come into force on 1 October 2012.

Background

1. Under English law, companies are able to use any or all of their assets as security for loans. This involves the creation of a charge over the company's assets. The scope for companies to use assets as security for loans is more restricted under Scots law as that law does not recognise fixed non-possessory charges over goods.

2. Schemes for registration of company charges are set out in Part 25 of the Companies Act 2006¹; chapter 1 provides a scheme² for charges created by companies incorporated in England & Wales and Northern Ireland; chapter 2 provides a scheme for charges created by companies incorporated in Scotland. These schemes, which are intended to prevent the concealment by companies of secured credit, have been criticised particularly because:

- the list of registrable charges has not been revised in line with changes in law and commercial practice;
- the particulars on the public record for a charge may not be an accurate reflection of the charge created; and
- the procedures for registration are cumbersome; and
- of the differences between the scheme for Scottish companies and that for other UK companies.

3. In March 2010, the Department published a consultation document with proposals for the registration of charges created by companies and limited liability partnerships. The summary of responses was published in September and, in December, the Government published their response to this consultation, together a draft Impact Assessment. All these documents are available on the Department's website

<http://www.bis.gov.uk/Consultations/registration-of-charges?cat=closedwithresponse> .

Following this consultation, the proposals have been developed in discussion with key stakeholders. The cost assumptions in the draft Impact Assessment have also been revised in the light of the helpful comments received (see the extract on pages below).

We would be grateful for further advice on the likely costs and benefits.

¹ Part 25, which largely re-enacts the law as it was in Part 12 of the Companies Act 1985.

² The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 apply this scheme to charges created by registered overseas companies over property in the UK. Amending regulations, coming into force on 1 October 2011, will remove the requirement for these charges to be registered at Companies House.

Summary of Proposals

4. The main intention of the changes is to provide for a single scheme that applies to charges created by UK companies and LLPs regardless of either the location of the charged assets or the law used to create the charge. Key elements of the revised scheme include:

- the possibility of filing electronically;
- the charge instrument being placed on the public record;
- If there is a charge instrument, then the brief particulars being only:
 - the registered name and number of the chargor;
 - the date of creation of the charge, and
 - tickboxes to show whether
 - the charge is the subject of a court order for registration more than 21 days after the date of its creation;
 - the instrument has been redacted along with confirmation that only permitted material has been redacted; and
 - it is a floating charge and, if so, whether it has a negative pledge.

5. Some stakeholders, notably banks and credit-reference agencies, have pressed for more particulars to be filed, particularly a brief description of the charged property. They are particularly concerned that this information will no longer be in the summary available through CompaniesHouseDirect. However providing this information is particularly costly (see Impact Assessment) yet the conclusive certificate applies to the charge itself, ie as described in the instrument rather than as described in the brief particulars. This means that there is a real risk that those who rely on the brief particulars may be misled. This risk greatly reduces any benefit from this information. Other stakeholders, notably legal firms that register charges for clients, have questioned why it is intended to require any brief particulars, ie why it will not be sufficient simply to file the charge instrument. There are two reasons for requiring brief particulars. First, sufficient information is required to ensure that the charge instrument is filed against the right company. Second, further particulars are needed for the benefit of those who use the register – including bulk downloaders and those doing broad-brush analyses rather than in-depth consideration of a particular company. Information provided in a PDF document, eg in the instrument, is more expensive to access and cannot be manipulated as easily as information provided in forms. The primary purpose of the further particulars is to provide sufficient information on the company's record so that those inspecting it can make an informed decision as to whether to inspect the filed instrument.

6. The revisions to the scheme will be made by Regulations under section 894 of the Companies Act 2006 which provides power to amend Part 25 by altering, adding or repealing provisions and to make consequential amendments. Part 25 relates solely to the registration of charges that have been created by companies. It does not, and cannot, affect how charges are created or their relative priority.

7. **We would welcome your comments on the annotated provisional mock-up of Part 25 amended in line with the Government’s revised proposals** – see pages 8-33. A note describing the procedures for registration under the new scheme is at page 34-40.

8. The proposals include a definition of “**date of creation**” for the purpose of registration of charges (see section 863A). For Scottish companies, this will replace the definition in section 879(5); for other UK companies, this is new. Under current law, the procedures at Companies House for registering standard securities and securities over ships or aircraft created by Scottish companies are significantly different to those for other UK companies with registration at Companies House. Under the proposals, registration at Companies House will no longer have to be subsequent to registration at the relevant specialist registry for Scottish companies. The Department is most grateful to Geoffrey Yeowart, partner Hogan Lovells International LLP and Dr Hamish Patrick, partner Tods Murray LLP, for their help in devising the definition for a UK-wide scheme. **We would welcome comments on the proposed definition of “date of creation” and, in particular, its likely impact on costs for the registration of securities granted by Scottish companies.**

9. Under the proposals, any filing of **satisfaction or release** will remain voluntary but, where the filing is by the chargor, there will have to be a statement explaining why it is not being made by the chargee (see section 872). This new requirement is intended to be a safeguard against fraudulent filing. At present, the only safeguard is the general false statement offence.

- **Do you consider that this safeguard is needed? If so,**
 - **would the requirement for the particulars to include the identity of the person filing be sufficient (ss(2)(a)(i)&(b)(i)); or**
 - **should there also be a requirement for an explanation (ss(6))?**
- **What do you consider would be the extra cost for filers from this new requirement?**

10. **It would also be helpful to have views** on the following aspects of the revised scheme.

- What would be most appropriate certification that the instrument being filed is a true copy of the original (subject to the permitted redactions) (see section 860A(2)).
- The abolition of extra time for charges created outside the United Kingdom (see section 870).
- The proposed provisions for rectification of the register (see section 873).

For charges over registrable land and standard securities, there will continue to be a need for registration at the relevant land registry. At some future date, it is hoped that it will be possible to make provision so that a charge or security registered at a land registry in the UK is treated as if registered at Companies House – thus ending the need for double registration.

Coverage of Part 25

11. Part 25 of the Companies Act applies to companies, including SEs, incorporated in the United Kingdom. At present, these provisions also apply to limited liability partnerships and European Economic Interest Groupings. It is intended that the amended Part 25 will continue to apply to these bodies. Part 25 does not at present apply to either unregistered companies (ie those companies created by Royal Charter and other means other than incorporation under the Companies Act 2006 or its predecessors and which are subject to prescribed provisions of the Companies Act) or to mutuals (ie industrial and provident societies). **Should the amended Part 25 also apply to unregistered companies and/or mutuals?**

12. Overseas companies will cease to be subject to the scheme for registration of company charges from 1 October 2011.

Annotated Mock-up of Part 25 amended in line with the Government's proposals

Objective: A single UK-wide scheme that applies to charges created by any company incorporated under the Companies Act 2006 or its predecessors, ie merging of Chapters 1 and 2 of Part 25. These instructions are on the basis that the provisions of Chapter 1 will be revised and those of Chapter 2 repealed. Electronic filing must be possible. .

Draft Regulations will be available in early 2012: the precise wording may differ from that below. This mock-up is a guide to what is intended.

PART 25, COMPANIES ACT 2006 – amended as proposed	COMMENTARY – with questions in bold
<i>new text is in bold italics; text to be deleted is struck through</i>	
860 Charges created by a company	
<p>(1) Where a company that creates a charge to which this section applies wishes that charge to be registered by the registrar in accordance with this Chapter, it must deliver the prescribed statement of particulars of relating to the charge required by section 860A(1), together with the instrument (if any) by which the charge is created or evidenced documents required by section 860A(2) and the further particulars required by section 860A(4), to the registrar for registration before the end of the period allowed for registration delivery.</p>	<p>The sanction of invalidity will continue to apply (s.874) if a registrable charge is not registered. As the criminal sanction will be abolished (see s.860(4)-(6) below), there will no longer be an obligation to register. Rather, whether to register the charge or not will be a commercial decision for the company or any person interested in the charge taken in the light of the sanction of invalidity.</p> <p>Registration of a registrable charge will be effected by the registrar on delivery of a certified copy of the instrument, if any, together with the specified particulars before the end of the period allowed for delivery. If delivery after the period is allowed, the court order allowing late registration must also be filed.</p> <p>Under s.466 of the Companies Act 1985 (which will be amended consequentially by the regulations), this</p>

	provision will apply equally to an instrument of alteration of a floating charge under Scots law.
(2) Registration of a charge to which this section applies may instead be effected on the application of <i>The provisions of subsection (1) apply to</i> a person interested in it <i>the charge as they apply to the company which created the charge.</i>	As now, either the chargee or chargor will be able to register the charge. It will also continue to be possible for the filing to be done by another – eg lawyer – on the chargor or chargee’s behalf.
(3)Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on registration.	It is intended to remove this provision as it is believed to be unnecessary.
(4)If a company fails to comply with subsection (1), an offence is committed by— (a)the company, and (b)every officer of it who is in default. (5)A person guilty of an offence under this section is liable— (a)on conviction on indictment, to a fine; (b)on summary conviction, to a fine not exceeding the statutory maximum. (6)Subsection (4) does not apply if registration of the charge has been effected on the application of some other person.	Abolition of criminal sanction for failure to register a charge. There will not be an obligation to register; the sanction of invalidity will mean that the decision to register is purely a commercial one..
(7)This section applies to the following charges— (a)a charge on land or any interest in land, other than a charge for any rent or other periodical sum issuing out of land, (b)a charge created or evidenced by an instrument which, if executed by an individual, would require	See proposed section 860B below. .

<p>registration as a bill of sale,</p> <p>(c) a charge for the purposes of securing any issue of debentures,</p> <p>(d) a charge on uncalled share capital of the company,</p> <p>(e) a charge on calls made but not paid,</p> <p>(f) a charge on book debts of the company,</p> <p>(g) a floating charge on the company's property or undertaking,</p> <p>(h) a charge on a ship or aircraft, or any share in a ship,</p> <p>(i) a charge on goodwill or on any intellectual property.</p>	
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860A Particulars and documents to be delivered to registrar

<p>(1) The statement of particulars concerning the charge must contain –</p> <p>(a) the registered name and number of the company</p> <p>(b) the date of creation of the charge;</p> <p>(c) where the charge is created or evidenced by an instrument, that there is such an instrument:</p> <p>(d) where there is no instrument of charge -</p> <p>(i) a short description of the property charged,</p> <p>(ii) the amount secured by the charge;</p>	<p>If Part 2 ,Bankruptcy and Diligence etc (Scotland) Act 2007 is brought into force, there may also be a further amendment to this section to allow the form to contain a tickbox to indicate whether a floating charge is also to be created under the Bankruptcy and Diligence etc (Scotland) Act 2007</p> <p>Some stakeholders, notably banks and credit-reference agencies, have pressed for more particulars to be filed, particularly a brief description of the charged property. They are particularly concerned that this information will no longer be in the summary available through CompaniesHouseDirect. However providing this information is a particularly costly (see Impact Assessment) yet the conclusive certificate applies to the charge itself, ie as described in the</p>
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<p><i>(iii) the names and addresses of the persons entitled to it;</i></p> <p><i>(e) where the charge is, or any of the terms of the charges are expressed to be, a floating charge, whether its terms prevent the chargor from creating any further security that will rank equally with or ahead of the charge.</i></p>	<p>instrument rather than as described in the brief particulars. This means that there is a real risk that those who rely on the brief particulars may be misled. This risk greatly reduces any benefit from this information.</p> <p>Other stakeholders, notably legal firms that register charges for clients, have questioned why it is intended to require any particulars of the charge, ie why it will not be sufficient simply to file the charge instrument. There are two reasons for requiring particulars of the charge. First, sufficient information is required to ensure that the charge instrument is filed against the right company. Second, further particulars are needed for the benefit of those who use the register – including bulk downloaders and those doing broad-brush analyses rather than in-depth consideration of a particular company. Information provided in a PDF document, eg in the instrument, is more expensive to access and cannot be manipulated as easily as information provided in forms. The primary purpose of the particulars is to provide sufficient information on the company's record so that those inspecting it can make an informed decision as to whether to inspect the filed instrument.</p>
<p><i>(2) The documents to be delivered to the registrar are –</i></p> <p><i>(a) where the charge is created or evidenced by an instrument, a certified copy of that instrument; and,</i></p> <p><i>(b) where the court has made an order under section 873(2), a copy of that order.</i></p>	<p>Under English law, it is possible to create a charge orally. We understand that this is extremely rare. The instrument is excluded from the restrictions on characters and symbols that may be filed under Regulation 8 of the Registrar of Companies and Applications for Striking Off Regulations 2009 (SI2009/1803).</p> <p>If the instrument is in a language other than English</p>

	<p>then, under s.1105, it must be accompanied by a certified translation into English.</p> <p>The requirements for certification of the copy will be set out in the Registrar’s Rules. Views are sought on what these requirements should be.</p>
<p>(3) The following material may be removed from the instrument of charge before the copy is certified for the purposes of subsection (2)(a): -</p> <p>(a) personal information relating to an individual:</p> <p>(b) commercially sensitive information that:</p> <p>(i) is not necessary for the definition of the property charged;</p> <p>(ii) is not required for the purposes of evidencing the matters set out in subsection (1)..</p>	<p>This permits the redaction of, for example, individuals’ usual residential addresses, email addresses and telephone numbers of individuals, national insurance numbers, passport numbers, and details of bank accounts that appear in the instrument.</p> <p>S.860A(1) requires the particulars to include a statement (probably a tickbox) that there has been no redaction of material other than that permitted under this provision</p>
<p>(4) The further particulars are-</p> <p>(a) where the court has made an order under section 873, that there is such an order; and</p> <p>(b) where a certified copy of the document has been redacted in accordance with section 860A(3), a statement that the document has been redacted in accordance with the provisions of that section.</p>	<p>The intention is that the form created by Companies House will provide a tickbox for these particulars.</p>
<p>860B Type of charge to which section 860 applies</p>	
<p>(1) Section 860 applies to —</p>	<p>All charges created by the company will be registrable. There will continue to be exclusions in other statutes</p>

<p><i>(a) any charge, including a charge on land or any interest in land;</i></p> <p><i>(b) any standard security, assignation in security, and any other right in security constituted under the law of Scotland;</i></p> <p><i>(c) any pledge under which the debtor has possession of collateral and attorns to the pledgee or constitutes the pledgee civil possessor as if the pledge were a charge, created by a company.</i></p>	<p>(eg The Financial Collateral Arrangements (No.2) Regulations 2003). Express exclusions are stated in section 860B(2).</p> <p>NB charges resulting by the operation of law or imposed by court orders will not be registrable.</p>
<p>(2) Section 860 does not apply to –</p> <p><i>(a) cash taken or held by a landlord to secure liabilities of a tenant under a lease</i></p> <p><i>b) a charge that secures the underwriting obligations of members of Lloyds; or</i></p> <p><i>(c) a pledge over documents or corporeal moveables.</i></p>	<p>The express exclusions will be for</p> <ul style="list-style-type: none"> • rent deposit deeds, and • charges created by corporate members of Lloyds, noting that Lloyd’s Membership Byelaw (No.17 of 1993) precludes these companies from carrying on any business or activity other than its underwriting business at Lloyd's. • The exclusion for pledges is for the avoidance of doubt.
<p>861 Charges to which section 860 applies: supplementary</p>	
<p>(1) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 860(7)(a) 860B(1) an interest in the land.</p> <p>(2) It is immaterial for the purposes of this Chapter where land subject to a charge is situated.</p> <p>(3) A further charge is held to be created if an existing charge is amended so that further</p>	

<p>assets are added or the amount secured is increased.</p> <p>The deposit by way of security of a negotiable instrument given to secure the payment of book debts is not, for the purposes of section 860B(1) a charge on those book debts.</p> <p>(4) A charge on land, for the purposes of section 860B(1), includes a charge created by a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35).</p> <p>(5) In this Chapter—</p> <ul style="list-style-type: none"> • “charge” includes mortgage • “company” means a UK registered company. 	
<h2>862 Charges existing on property acquired</h2>	
<p>(1) This section applies where a company acquires property which is subject to a charge of a kind which would, if it had been created by the company after the acquisition of the property, have been required to be capable of being registered under this Chapter Part.</p> <p>(2) The company must may deliver the prescribed statement of particulars of relating to the charge, together with a certified copy of the instrument (if any) by which the charge is created or evidenced, the documents required by section 860A(2) and the further particulars required by section 860A(4) to the registrar for registration.</p>	<p>Would there be an advantage in making it an offence to dispose of property subject to an unregistered charge?</p>
<h2>862A Company holding property as trustee</h2>	
<p>(1) Where the company is acting as trustee for the assets which are the subject of the charge, the company may file with the registrar a statement to that effect.</p>	<p>This is so that a corporate trustee is able to make filings that will ensure that its the public record is not</p>

(2) If filed after the registration of the charge, the statement must include:

(a) the registered name and number of the company, and

(b) (i) for a charge was created before 1/10/2012:

a. the date of the creation of the charge

b. a description of the instrument (if any)

c. short particulars of the property charge (ie as required when the charge was registered)

(ii) for a charge created on or after 1/10/2012, the unique reference number allocated to the charge by the registrar.

misleading.

863 Charge in series of debentures

(1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which debenture holders of that series are entitled *pari passu* is created by a company, it is for the purposes of section 860(1) sufficient if the required **statement of particulars**, together with the deed containing the charge (or, if there is no such deed, one of the debentures of the series) **and the further particulars required by section 860A(4)** are delivered to the registrar before the end of the period allowed for ~~registration~~ **delivery**.

(2) The **statement of particulars must contain the** following ~~are the required particulars:~~ —

(a) the ~~total amount secured by the whole series~~ **particulars required by section 860A(1)(a)** **and (b)**, and

(b) the dates of the resolutions authorising the issue of the series and the date of the

<p>covering deed (if any) by which the series is created or defined,—and</p> <p>(c) a general description of the property charged, and</p> <p>(d) the names of the trustees (if any) for the debenture holders.</p> <p>(3) Particulars of the date and amount of each issue of debentures of a series of the kind mentioned in subsection (1) must be sent to the registrar for entry in the register of charges.</p> <p>(4) Failure to comply with subsection (3) does not affect the validity of the debentures issued.</p> <p>(5) Subsection (2) to (of section 860) apply applies for the purposes of this section as they apply it applies for the purposes of that section.</p>	
<p>863A Date of creation</p>	<p>The Department is most grateful to Geoffrey Yeowart, partner Hogan Lovells International LLP and Dr Hamish Patrick, partner Tods Murray LLP, for their help in devising this definition.</p>
<p>(1) References in this Part to the date of the creation of a charge are—</p> <p>(a) in the case of a standard security or charge created or evidenced by an instrument which is a deed and has immediate effect on execution and delivery, the date on which such deed is executed and delivered;</p> <p>(b) in the case of a charge created or evidenced by an instrument (other than a deed) which has immediate effect on execution, the date on which the instrument is executed;</p> <p>(c) in the case of a charge created or evidenced by an instrument which has been executed and held in escrow or held as undelivered or otherwise on terms that such instrument does not have immediate effect, the date on which the instrument is</p>	<p>A UK-wide definition is needed for a UK scheme. At present, there is a definition of date of creation in Chapter 2 (Scotland) (ie s.879(5)) but not in Chapter 1 of Part 25. Under current law, the procedures at Companies House for registering standard securities and securities over ships or aircraft created by Scottish companies are significantly different to those for other UK companies with registration at Companies House. Under the proposals, registration at Companies House will no longer have to be subsequent to registry at the relevant specialist registry for Scottish companies.</p> <p>NB Reference to delivery of a deed under this provision is part of its execution. It is not delivery to the Companies House.</p>

released from escrow or otherwise takes effect; and

(d) in the case of a charge created in any other way, the date on which the charge takes effect.

(2) Where a charge is created or evidenced by an instrument made between two or more parties, the period for registration shall not commence to run before the instrument has been executed by all parties to it.

(3) The registrar shall be entitled without further inquiry to accept a charge as created –

(a) in the case of a charge referred to in subsection (1)(a) or (b), on the date of the instrument creating or evidencing the charge (or, if different, the date stated in the particulars delivered to the registrar as being the date on which the instrument was executed by the last party to execute it);

(b) in the case of a charge referred to in subsection (1)(c) or (d), the date stated on the particulars delivered to the registrar as being the date on which the instrument (in the case of subsection (1)(c)) or charge (in the case of subsection (1)(d)) took effect.

(4) References in this section to “deed” shall be to-

(a) a deed governed by the law of England and Wales; or

(b) an instrument governed by law other than the law of England and Wales which requires delivery under that law in order to take effect.

~~866(2)(5)~~ Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under section 860 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the **another** country in which the property is situated.

NB Date of creation for a conditional charge must be time when agreement takes effect, not when the condition is fulfilled (*re Lind*).

NB An extract/certificate from a land, IP, share or other register is NOT what "evidences" a charge.

Views are sought both on this proposed definition and on the likely reduction in costs resulting from the consequential change in procedures for charges created by Scottish companies.

<i>(6) References in this section to “delivery” shall not be construed as delivery to the registrar</i>	
864 Additional registration requirement for commission etc in relation to debentures	
865 Endorsement of certificate on debentures	
866 Charges created in, or over property in, jurisdictions outside the United Kingdom	
867 Charges created in, orvr property, in another United Kingdom jurisdiction	
868 Northern Ireland: registration of certain charges etc. affecting land	
869 Entries on the register of charges to be kept by registrar	
<p>(1) The registrar shall keep, with respect to each company, a register of all the charges requiring registration under this Chapter - <i>enter on the register -</i></p> <ul style="list-style-type: none"> <i>(a) a unique reference code allocated by the registrar to the charge; and,</i> <i>(b) the documents referred to in section 860A(2);</i> <i>(c) the date on which he registered the charge -</i> 	<p>The statutory requirement to keep a register of charges for each company is an anachronism. This register is not available on WebCheck or CompaniesHouseDirect.</p> <p>S.1080 provides that the register includes information contained in documents delivered to the registrar. This will include the particulars set out in section 860A(1)(a)–(d) and 860A(4).</p> <p>S.1080 also provides that the registrar may keep the information in any form he thinks fit provided it is possible to inspect it and produce a copy of it. This is the basis for the current provision of information relating to charges through WebCheck and CompaniesHouseDirect. This will continue.</p>

<p>(2)In the case of a charge to the benefit of which holders of a series of debentures are entitled, the registrar shall enter in the register the required particulars specified in section 863(2).</p> <p>(3)In the case of a charge imposed by the Enforcement of Judgments Office under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981, the registrar shall enter in the register the date on which the charge became effective (41)In the case of any other charge, T (a)if it is a charge created by a company, the date of its creation and, if it is a charge which was existing on property acquired by the company, the date of the acquisition,</p> <p>(b)the amount secured by the charge;</p> <p>(c)short particulars of the property charged, and</p> <p>(d)the persons entitled to the charge.</p>	<p>The removal of s.869(3) is consequential to the removal of s.868. In future the registrar will be able to file the particulars and the documents in such manner as he sees fit</p>
<p>(52)The registrar shall give a certificate of the registration of any charge registered in pursuance of this ChapterPart, stating the amount secured by the charge. which shall contain:-</p> <p>(a) the registered name and number of the company which created the charge;</p> <p>(b) the information entered on the register in respect of the charger.</p>	<p>The certificate of registration will be conclusive only that the charge is not invalid as a result of failure to register within 21 days. In the event of a late registration as directed by a court, the certificate will be conclusive evidence that any timing condition provided by the court has been satisfied and the charge will not be invalid because its particulars and instrument were not delivered within 21 days of its creation. The certificate will not be conclusive evidence of any other matter, such as the charged assets or the existence of a negative pledge.</p>
<p>(63)The certificate—</p> <p>(a)shall be signed by the registrar or authenticated by the registrar's official seal, and</p> <p>(b) is conclusive evidence that the delivery requirements of this Chapter as to registration section 860 have been satisfied.</p>	
<p>(7)The register kept in pursuance of this section shall be open to inspection by any person.</p>	<p>Section 1085 provides a right of access to information on the public record.</p>

<p>870 The period allowed for registration registration <i>delivery to the registrar</i></p>	<p>Reference will be to “delivery” not “registration”, as the period does not extend beyond receipt by Companies House.</p>
<p>(1)The period allowed for registration of a charge created by a company is 21 days beginning with the day after the day on which the charge is created, or,</p>	<p>The deadline will apply to the delivery of the charge. Provided the requirements have been satisfied, it will subsequently be registered by the Registrar.</p>
<p>(b)if the charge is created outside the United Kingdom, 21 days beginning with the day after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.</p>	<p>Special provision for charges created elsewhere will not be not needed as filing can be electronic. If stakeholders consider some such provision is still needed, then it would be for charges created outside the EEA.</p>
<p>(2)The period allowed for registration of a charge to which property acquired by a company is subject is—</p> <p>(a)21 days beginning with the day after the day on which the acquisition is completed, or</p> <p>(b) if the property is situated and the charge was created outside the United Kingdom EEA, 21 days beginning with the day after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.</p>	<p>This provision will not be needed as section 862 is being repealed</p>
<p>(3)The period allowed for registration of particulars of a series of debentures as a result of section 863 is—</p> <p>(a)if there is a deed containing the charge mentioned in section 863(1), 21 days beginning with the day after the day on which that deed is executed, or</p> <p>(b)if there is no such deed, 21 days beginning with the day after the day on which the first debenture of the series is executed.</p>	

871 Registration of enforcement of security

(1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar.

(2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect.

(3) The registrar must enter a fact of which he is given notice under this section in the register of charges.

(4) A person who makes default in complying with the requirements of this section commits an offence.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(6) This section only applies to a receiver or manager appointed by a court in England, Wales or Northern Ireland, or under an instrument governed by the law of England and Wales, or Northern Ireland.

There may be some advantage in applying s.871 also to receivers appointed under Scots law (and making consequential amendment to ss.53 and 55 of the Insolvency Act 1986) as some north of the border (including me) take the view that an appointment of a receiver in relation to Scottish assets under a floating charge governed by English law granted by a foreign company will take place under Scots law (as s.72 of the Insolvency Act doesn't appear to apply to foreign companies and there is no other clear basis for recognition in Scotland of an English receiver appointed to a foreign company).

872 Entries of satisfaction and relief

(1) Subsection (2) applies if a statement is ***the particulars set out in subsection (2) are*** delivered to the registrar ***together with a statement*** verifying with respect to a registered charge—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or

(b) that ***all or*** part of the property or undertaking charged has been released from the charge or has ceased

The new requirement for either supporting evidence (eg a deed of discharge) or a public indication of its absence is intended to be a safeguard against fraudulent filing. It will be apparent to third parties if no supporting evidence was filed. At present, the only safeguard against fraudulent filing is the general false statement offence.

<p>to form part of the company's property or undertaking.</p>	<ul style="list-style-type: none"> • Do you consider that a safeguard is needed? If so, <ul style="list-style-type: none"> ○ would the requirement for the particulars to include the identity of the person filing be sufficient (ss(2)(a)(i)&(b)(i)) or ○ should there also be a requirement for an explanation (ss(6))? • What do you consider would be the extra cost for filers from this new requirement?
<p>(2) The particulars are –</p> <p>(a) in respect of a charge created before 1st October 2012-</p> <ul style="list-style-type: none"> (i) the name and address of the person delivering the statement and an indication of their interest in the charge; (ii) the registered name and number of the company that created the charge; (iii) the date of creation of the charge; (iv) a description of the instrument(if any); (v) short particulars of the property charged; (vi) whether the charge has been satisfied in whole or in part; and (vii) where the satisfaction is in part, a brief description of the assets released from the charge. <p>(b) in respect of a charge created on or after 1st October 2012-</p>	<p>S.1080 provides that the register includes information contained in documents delivered to the registrar. This will include the particulars set out in section 872(2).</p>

<p><i>(i) the name and address of the person delivering the statement and an indication of their interest in the charge;</i></p> <p><i>(ii) the registered name and number of the company that created the charge;</i></p> <p><i>(iii) the unique reference code allocated to the charge by the registrar;</i></p> <p><i>(iv) whether the charge has been satisfied in whole or in part ;</i></p> <p><i>(v) where the satisfaction is in part, a brief description of the assets released from the charge.</i></p>	
<p>(3) The registrar may enter on the register the statements referred to in subsections (1) and (5).</p> <p><i>(a) the particulars set out in subsection 2; and</i></p> <p>(b) a memorandum statement of satisfaction in whole or in part, or of the fact part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be).</p> <p>(4) Where the registrar enters a memorandum of satisfaction in whole, the registrar shall if required send the company a copy of it.</p> <p><i>(5) The statement shall contain the name and number of the company which granted the charge, and the unique reference number allocated to the charge by the registrar.</i></p> <p><i>(6) If the statement is delivered to the registrar by the company it shall be accompanied by a statement setting out the reasons why the delivery is not being made by the person entitled to the benefit of the charge.</i></p>	
<p>873 Rectification of register of charges</p>	

(1) Subsection (2) applies if the court is satisfied—

(a) that the failure to register a charge before the end of the period allowed for registration ~~registration~~ **delivery**, or the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction—

(i) was accidental or due to inadvertence or to some other sufficient cause, or

(ii) is not of a nature to prejudice the position of creditors or shareholders of the company, or

(b) that on other grounds it is just and equitable to grant relief.

(2) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

(3) Without prejudice to the discretion of the court in subsection (2), the conditions on which the court may make the order may include an order that a certified copy filed in accordance with section 860A(2) may be removed and substituted where the court is satisfied that—

(a) the filed copy contains material which could have been omitted in accordance with section 860A(3);

(b) the wrong instrument was filed;

(c) the copy was defective.

(4) Where the court makes an order containing the condition set out in subsection (3) it shall also order that a copy of its order shall be delivered to the registrar for filing.

The new court power will not cut across or contradict any removal powers provided by s.1096. It is meant to cover situations where, despite the requirement for certification, the wrong instrument is filed or the filed copy is missing pages.

This is a different replacement power/requirement to that provided for and limited by s.1076.

873A Notification of negative pledge

(1) Where , after the delivery and registration of a charge, the charge is amended by way of the addition of a term that prevents the company from creating any further security that will rank equally⁶ with or ahead of the charge either the company or the person taking the benefit of the charge may deliver to the registrar for filing a document setting out the particulars and containing details of the name and number of the company and, in the case of a charge created on or after 1 October 2012, the unique reference code of the charge.

(2) Subsection (1) is subject to the provision of section 466 of the Companies Act 1985.

874 Consequence of failure to register charges created by a company

(1) If a company creates a charge to which section 860 applies, the charge is void (so far as any security on the company's property or undertaking is conferred by it) against—

- (a) a liquidator of the company,
- (b) an administrator of the company, and
- (c) a creditor of the company,

unless that section is complied with.

(2) Subsection (1) is subject to the provisions of this Chapter.

(3) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.

No change.

875 Companies to keep copies of instruments creating charges

(1) A company must keep available for inspection a copy of every instrument creating a charge requiring registration **capable of being registered** under this Chapter, ~~including any document delivered to the company under section 868(3)(b) (Northern Ireland: orders imposing charges affecting land).~~

(1A) It is sufficient to comply with this section if the company keeps the document as delivered to the registrar under section 860A(2)(a).

(2) In the case of a series of uniform debentures, a copy of one of the debentures of the series is sufficient.

(3) Where a translation has been delivered to the registrar in accordance with section 1105, a copy of that translation.

876 Company's register of charges

(1) Every limited company shall keep available for inspection a register of charges **which are created orally and not evidenced by a charge instrument** and enter in it **the particulars required by section 860A(1)**—

~~(a) all charges specifically affecting property of the company, and~~

~~(b) all floating charges on the whole or part of the company's property or undertaking.~~

~~(2) The entry shall in each case give a short description of the property charged, the amount of the charge and, except in the cases of securities to bearer, the names of the persons entitled to it.~~

~~(3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he commits an offence.~~

~~(4) A person guilty of an offence under this section is liable—~~

~~(a) on conviction on indictment, to a fine;~~

Requirement for companies' own registers to be retained only for charges granted without an instrument.

(b) on summary conviction, to a fine not exceeding the statutory maximum

877 Instruments creating charges and register of charges to be available for inspection

(8771) This section applies to—

(a) documents required to be kept available for inspection under section 875 (copies of instruments creating charges), and

(b) a company's register of charges kept in pursuance of section 876.

(2) The documents and register must be kept available for inspection—

(a) at the company's registered office, or

(b) at a place specified in regulations under section 1136.

(3) The company must give notice to the registrar—

(a) of the place at which the documents and register are kept available for inspection, and

(b) of any change in that place,

unless they have at all times been kept at the company's registered office.

(4) The documents and register shall be open to the inspection—

(a) of any creditor or member of the company without charge, and

(b) of any other person on payment of such fee as may be prescribed.

(5) If default is made for 14 days in complying with subsection (3) or an inspection required under

The Companies (Fees for Inspection of Company Records) Regulations 2008 will continue to apply to requests to inspect these documents. The prescribed fee is £3.50 for each hour or part thereof during which the right of inspection is exercised.

<p>subsection (4) is refused, an offence is committed by—</p> <p>(a) the company, and</p> <p>(b) every officer of the company who is in default.</p> <p>(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.</p> <p>(7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.</p>	
<p>SCOTTISH PROVISIONS:</p> <p>Sections 878-892</p>	<p>These sections will be repealed</p>
<p>893 Power to make provision for effect of registration in special register</p>	
<p>(1) In this section a “special register” means a register, other than the register of charges kept under this Part, in which a charge to which Chapter 1 or Chapter 2 applies is required or authorised to be registered.</p> <p>(2) The Secretary of State may by order make provision for facilitating the making of information-sharing arrangements between the person responsible for maintaining a special register (“the responsible person”) and the registrar that meet the requirement in subsection (4).</p> <ul style="list-style-type: none"> • “Information-sharing arrangements” are arrangements to share and make use of information held by the registrar or by the responsible person. <p>(3) If the Secretary of State is satisfied that appropriate information-sharing arrangements have been</p>	<p>Consequential</p>

made, he may by order provide that—

(a) the registrar is authorised not to register a charge of a specified description under Chapter 1 ~~or Chapter 2,~~

(b) a charge of a specified description that is registered in the special register within a specified period is to be treated as if it had been registered (and certified by the registrar as registered) in accordance with the requirements of Chapter 1 ~~or, as the case may be, Chapter 2~~ and

(c) the other provisions of Chapter 1 apply to a charge so treated with specified modifications.

(4) The information-sharing arrangements must ensure that persons inspecting the register of charges—

(a) are made aware, in a manner appropriate to the inspection, of the existence of charges in the special register which are treated in accordance with provision so made, and

(b) are able to obtain information from the special register about any such charge.

(5) An order under this section may—

(a) modify any enactment or rule of law which would otherwise restrict or prevent the responsible person from entering into or giving effect to information-sharing arrangements,

(b) authorise the responsible person to require information to be provided to him for the purposes of the arrangements,

(c) make provision about—

(i) the charging by the responsible person of fees in connection with the arrangements and the destination of such fees (including provision modifying any enactment which would otherwise apply in

<p>relation to fees payable to the responsible person), and</p> <p>(ii) the making of payments under the arrangements by the registrar to the responsible person,</p> <p>(d) require the registrar to make copies of the arrangements available to the public (in hard copy or electronic form).</p> <p>(6) In this section “specified” means specified in an order under this section.</p> <p>(7) A description of charge may be specified, in particular, by reference to one or more of the following—</p> <p>(a) the type of company by which it is created,</p> <p>(b) the form of charge which it is,</p> <p>(c) the description of assets over which it is granted,</p> <p>(d) the length of the period between the date of its registration in the special register and the date of its creation.</p> <p>(8) Provision may be made under this section relating to registers maintained under the law of a country or territory outside the United Kingdom.</p> <p>(9) An order under this section is subject to negative resolution procedure.</p>	
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894 General power to make amendments to this Part	
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<p>(1) The Secretary of State may by regulations under this section—</p> <p>(a) amend this Part by altering, adding or repealing provisions,</p>	
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(b) make consequential amendments or repeals in this Act or any other enactment (whether passed or made before or after this Act).

(2) Regulations under this section are subject to affirmative resolution procedure.

CONSEQUENTIAL AMENDMENTS TO COMPANIES ACT 2006

Further consequential amendments may be necessary to other legislation.

1087 Material not available for public inspection

- (1)The following material must not be made available by the registrar for public inspection—
 - (a)the contents of any document sent to the registrar containing views expressed pursuant to section 56 (comments on proposal by company to use certain words or expressions in company name);
 - (b)protected information within section 242(1) (directors' residential addresses: restriction on disclosure by registrar) or any corresponding provision of regulations under section 1046 (overseas companies);
 - (ba)representations received by the registrar in response to a notice under—
 - (i)section 245(2) **F2** (notice of proposal to put director's usual residential address on the public record), or
 - (ii)any corresponding provision of regulations under section 1046 (overseas companies);
 - (c)any application to the registrar under section 1024 (application for administrative restoration to the register) that has not yet been determined or was not successful;
 - (d)any document received by the registrar in connection with the giving or withdrawal of consent under section 1075 (informal correction of documents);
 - (e)any application or other document delivered to the registrar under section 1088 (application to make address unavailable for public inspection) and any address in respect of which such an application is successful;

(f) any application or other document delivered to the registrar under section 1095 (application for rectification of register);

(g) any court order under section 1096 (rectification of the register under court order) that the court has directed under section 1097 (powers of court on ordering removal of material from the register) is not to be made available for public inspection;

~~(h) the contents of —~~

~~(i) any instrument creating or evidencing a charge, or~~

~~(ii) any certified or verified copy of an instrument creating or evidencing a charge,~~

~~delivered to the registrar under Part 25 F4 (company charges) or regulations under section 1052 (overseas companies);~~

(i) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone;

j) the contents of any documents held by the registrar pending a decision of the Regulator of Community Interest Companies under—

(i) section 36A of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (eligibility for registration as community interest company),

(ii) section 38 of that Act (eligibility for conversion to community interest company), or

(iii) section 55 of that Act (eligibility for conversion from community interest company to charity),

and that the registrar is not later required to record;]

(k) any other material excluded from public inspection by or under any other enactment.

(2)A restriction applying by reference to material deriving from a particular description of document does not affect the availability for public inspection of the same information contained in material derived from another description of document in relation to which no such restriction applies.

(3)Material to which this section applies need not be retained by the registrar for longer than appears to the registrar reasonably necessary for the purposes for which the material was delivered to the registrar.

Procedures for registration of charge

Usual procedure – ie electronic with instrument

1. Filer for chargee applies for chargee authentication code from Companies House to enable it to register electronically charges created by companies other than itself. This authentication code will be used for all charges registered by that filer. Companies House will send the code by post to the filer's registered office or to their principal place of business.

2. Filer e-sends to Companies House a certified copy of instrument and brief particulars on form with chargee authentication code if filer is chargee or chargee's agent or usual authentication code if filer is chargor. The certified copy of the instrument may be redacted to conceal details of bank accounts; national insurance numbers, passport numbers, usual residential addresses, email addresses and telephone numbers of individuals; and any sensitive commercial information provided that is not essential for identifying the charged assets.

3. The brief particulars will be:

- (a) the registered name and number of the chargor;
- (b) the date of creation of the charge.
- (c) whether any of the terms of the charge are expressed to be a floating charge. If so, whether its terms prevent the chargor from creating any further security that will rank equally with or ahead of the charge.
- (d) A statement (via a tickbox) that there has been no redaction of material other than that permitted under this provision.

4. Companies House check:

- (a) delivery was within time, ie within 21 days of the creation of the charge,
- (b) the company named in the instrument is same as in particulars;
- (c) company's registered name and number match.

5. Companies House:

- (a) allocate a reference code linking the charge instrument to the brief particulars
- (b) enter the code, the filed particulars, and the date of registration (**not** date of delivery) of charge on the chargor's record together with a link to the instrument;
- (c) issue to the filer a Certificate of Registration, identifying the charge by its code. The Certificate will be conclusive evidence
 - (i) of the identity of the chargor, and
 - (ii) that the Companies Act's requirements for registration of the charge have been satisfied.

The Certificate will replicate the brief particulars but will not be conclusive evidence of them.

- (d) notify the chargor by sending a copy of the Certificate of Registration
- (e) update the summary for the company showing the number of charges created and the numbers outstanding or satisfied or part-satisfied

Special Procedures

6. If the charged assets include registrable **land** in England & Wales or Northern Ireland or If the instrument is a standard security (ie relates to land in Scotland), then the relevant land registry is likely to require both the Certificate of Registration and a copy of the instrument on the public record at Companies House so that the Unique Reference Code linking the two documents can be checked.

7. If the instrument is not in English, a certified translation of the instrument must also be filed.

8. **Late registration:** Companies House will reject a filing that is delivered to it more than 21 days after the creation of the charge unless it is accompanied by a copy of a court order directing that the period be extended and that all terms and conditions in the order have been satisfied. In the event of a late registration as directed by a court, the certificate will be conclusive evidence that any timing condition provided by the court has been satisfied and the charge will not be invalid because it was not registered within 21 days of its creation.

9. **Paper filing** will be subject to the different Registrar Rules that apply to such filings rather than those that apply to electronic filing, eg a signature rather than authentication code may be required. .

10. If there is **no instrument**, filing will be means of a form with:

- (a) the registered name and number of the company that created the charge;
- (b) tickbox to indicate that there is no instrument
- (c) the name and address of the chargee.
- (d) a brief description of the property covered;
- (e) the date of creation of the charge.
- (f) whether any of the terms of the charge are expressed to be a floating charge. If so, whether:its terms prevent the chargor from creating any further security that will rank equally with or ahead of the charge

The statement will be treated the same as an instrument as regards being allocated a unique reference code and being put on the public record.

11. **Late redaction:** If the filed copy of the instrument includes material that it was permitted to redact, then a court order may be obtained so that it is removed and replaced by a copy redacted in accordance with the order. A copy of the court order must be filed with the replacement instrument.

12. **Rectification:** There will be a court power to order the removal and replacement of charge instruments, for example:

- if the filed copy of the instrument includes sensitive material that has not been redacted;.
- if a copy of the wrong instrument were filed or if the copy were incomplete.

The Registrar must annotate the record to reveal the change and to remove any consequential inconsistency.

13. **Chargor voluntarily** may voluntarily file :

- (a) a statement that it was acting as a bare trustee for the assets subject to a register charge. This should either accompany the registration of the charge or include the unique code allocated to it; and
- (b) a charge over acquired property.

14. The addition of a **negative pledge** may be filed; this will not be required.

Notice of satisfaction

15. The following information will be required.

- (i) if the charge was created before 1/10/2012,
 - a. name and address of the person filing the notice and their status relative to the charge and, under the Registrar's rules, the filer's authentication code;
 - b. the registered name and number of the company that created the charge;
 - c. the date of the creation of the charge
 - d. a description of the instrument (if any)
 - e. name and address of person filing the notice if not the company that created the charge and their status relative to the charge;
 - f. short particulars of the property charge (ie as required when the charge was registered);
 - g. tick-box to indicate whether total or partial satisfaction;

- (ii) if the charge was created on or after 1/10/2012,
- a. name and address of the person filing the notice and their status relative to the charge and, under the Registrar's rules, the filer's authentication code;
 - b. the registered name and number of company that created the charge;
 - c. the unique reference number allocated to the charge by the registrar;
 - d. tick-box to indicate whether total or partial satisfaction. If partial satisfaction, then a brief description of the assets released from the charge.

and in all cases, there must also be filed either:

- the chargee's statement of verification or a statement of satisfaction or release or a deed of discharge;
- a briefly explanation why there is no statement of verification or a statement of satisfaction or release or a deed of discharge

16. Companies House will:

- (a) check that the unique code, registered name and registration number of the company match the particulars already on the public record;
- (b) update the company's record as to the number of charges outstanding or satisfied or part-satisfied;
- (c) place the "particulars of satisfaction" on the company's record
- (d) place the accompanying statement on the public record.

Extract from revised draft Impact Assessment

A draft Impact Assessment was published in December 2010 as part of the Government Response to the 2010 consultation - <http://www.bis.gov.uk/Consultations/registration-of-charges?cat=closedwithresponse> . We intend to revise the Impact Assessment to take account of the useful comments we have received on the assumptions of costs and benefits. Below is an extract from the revised draft; Options 1, 2 and 3 relate only to the definition of registrable charges; Options 4 and 5 relate to the changes in registration procedures. The main impact is expected from the proposed changes to the procedures.

Registrable charges

Option 1: no change

1 Under this option there would continue to be separate lists of registrable charges for companies registered in Scotland and for those registered elsewhere in the UK. There would be no change in the obligation for corporate members of Lloyds. Companies would continue to be required to register any existing charges over property they acquire.

Option 2: update the list of registrable charges

2 Under this option, the list would be amended following the provisions of the 1989 Act (which were not brought into force). This would meet the main criticisms of the current scheme. The main changes would be

- to apply the requirement to register to charges over tangible moveable property rather than to "a charge created or evidenced by an instrument which, if executed by an individual would require a bill of sale".
- to make clear that book debts include those assigned to the company;
- to make clear that the requirement to register a floating charge applies to all floating charges, including those on only part of the company's property;
- to provide a definition of intellectual property for the purpose of a charge over intellectual property;
- to make clear that a shipowner's lien on subfreights is not chargeable;

The list of registrable charges would be kept under review in case any other type of charge should be made registrable. Section 894 provides power to amend the relevant provision.

Option 3: Make all charges registrable unless explicitly excluded.

3 For UK companies, the proposed exclusions would be:

- (a) cash taken or held by a landlord to secure liabilities of its tenant under a lease, ie rent security deposits; and
- (b) charges that secure the underwriting obligations of corporate members of Lloyds.

The exclusion for rent security deposits would remove the uncertainty that arises because whether or not they are registrable depends on technical details. The exclusion for corporate members of Lloyds is because their registration serves no useful purpose; these companies are not permitted to undertake any other business.

4 The list of exclusions from registrable charges would be kept under review and amended from time to time. A change to the list could not be retrospective. This means that the sanction of invalidity would continue to apply until any change to the list comes into force.

Under both Option 2 and Option 3:

- o the criminal sanction for failure to register a registrable charge would be abolished;
- o there would be no requirement to register existing charges over property acquired with a charge attached but it would be possible to do so and it would be an offence to sell or to charge assets subject to an unregistered charge;

Costs and benefits

5 The benefit of Option 1 is that it would avoid any transitional costs. This option has been rejected because it does not address the problems described in paragraph 16 above. Furthermore it would mean that it would not be possible to prevent a double-registration requirement when the relevant sections of the Bankruptcy and Diligence etc (Scotland) Act 2007 are brought into force.

6 Under both Options 2 and 3, the criminal sanction for failure to register a charge would be repealed. This will make the decision to register a purely commercial decision for the lender. The sanction of invalidity will be retained. This means an unregistered registrable charge is not valid against a liquidator, administrator or any creditor. A decision not to register is likely to be taken for short-term charges, for example over goods in transit.

7 The main benefit from both Options 2 and Option 3 would be the reduction in uncertainty. There have been several court cases where whether or not a charge was registrable has been an important element. There has also been uncertainty over whether the requirement to register applies to rent deposit deeds and of overseas trust deeds created by members of Lloyds. The options should reduce the need to register charges "just in case". Either option would provide a more coherent scheme than at present. Also, under both Options 2 and 3, corporate members of Lloyds would no longer be required to register any charges. Consultation with Lloyds suggested that the savings to corporate members from registration fees alone of an exclusion that applied to only certain Lloyd's trust deeds would be about £17,000 a year (based on the average number of registrations in the 3 years to 2009). In addition there would be an annual saving of about 100 hours of staff time. Assuming costs of £50 per hour, this would bring total annual savings to £22,000 a year ($=£17,000 + (100*£50)$). The savings from the total exclusion for Lloyds corporate members are provisionally estimated to be over double at £50,000 a year. There would be no transitional costs.

8 Neither Option 2 nor Option 3 is expected in general either to increase or to reduce ongoing costs for companies other than corporate members of Lloyds as there would not be any impact on the cost of registering charges. There would be transitional costs, particularly for lenders' legal advisers; these are subsumed into those relating to changes in procedures (see paragraph 57 below).

Risks and Assumptions

9 The principal assumption is that lenders will continue to require security for their loans to companies.

10 It is also assumed that whether Option 2 or 3 is adopted it will not in practice affect whether or not a particular charge will be registered. This assumption has been adopted because, in practice, virtually all charges are registered as:

- (a) most charging documents include charges that are definitely registrable as well as those which are not; and
- (b) the sanction of invalidity means that lenders take a cautious approach, registering if in doubt as to whether or not the charge is registrable.

11 A key difference between these three options is how they accommodate changes in commercial practice as to the types of assets used as security. The inconsistencies of the current list is a result of piecemeal changes. Recent examples of new types of charge are those over receivables such as income from projects funded under the Private Finance Initiative (PFI) and over North Sea petroleum licences and Joint Operating agreement. We understand that nevertheless the former are generally registered but that the latter are registered only if combined with charges over other assets.

- Under options 1 and 2, future changes would be additions to the list of registrable charges with the sanction of invalidity applying to the added category of charge when the change came into force;
- Under option 3, future changes would be additional exclusions with the sanction of invalidity continuing to apply to the deleted category until the change came into force.

Under options 1 and 2, if new types of charge are adopted by companies and their lenders then it would take time for these to become registrable if that were considered appropriate. Under option 3, it would take time for new types of charge to be made unregistrable if that were to be considered appropriate: the sanction of invalidity would continue to be applicable until any new exclusion came into force. The arguments in favour of Option 3 are technical but, given the sanction of invalidity, of great commercial significance. However, as it is proposed to abolish the criminal sanction for failure to register a charge, the decision whether to register a registrable charge will be a commercial decision for the chargee.

Administrative burden

12 The list of registrable charges does not result in an administrative burden.

Conclusion

13 Option 2 is the preferred option.

Procedures for registering charges

14 **Option 4: no change** (see paragraphs 6-11 above). This option was rejected because it requires those filing to compile brief particulars and Companies House to make a judgment as to whether these brief particulars are an adequate description of the charged property. Furthermore, under current law the certificate issued by Companies House on filing (the “conclusive certificate”) is sufficient evidence for the courts that the requirements of the 2006 Act for the registration of a charge have been satisfied. This means that the validity of the charge is protected by registration even if the filing has a seriously inaccurate description of the assets covered by it.

15 Under Option 4 it would not be possible to develop information-sharing arrangements between Companies House and specialist registers so that charges do not have to be registered at both places (see paragraph 19).

16 **Option 5: the charge instrument (if any) to be placed on the public record.** In the previous draft Impact Assessment, this option was for an extract to be placed on the public record. Stakeholders have made clear that they would prefer to file the complete instrument: they were particularly concerned at the costs associated with decision as to precisely what would be filed. Following further discussion and consideration of the practicalities, it is now proposed that the complete instrument be filed with provision to allow redaction of:

- details of bank accounts; and
- national insurance numbers, passport numbers, usual residential addresses, email addresses and telephone numbers of individuals

The existing requirement for the company to make the instrument available to public would be revised so that a copy of either this redacted document or the original unredacted may be provided.

17 There would continue to be a requirement to file brief particulars as Companies House would not extract information from the charge instrument for populating the chargor's record but the particulars would no longer include:

- a description of the instrument (if any) creating or evidencing the charge;
- the amount secured by the charge;
- the name and address of the person entitled to the charge;
- short particulars of the property charged a description of the instrument (if any) creating or evidencing the charge;

The required particulars would be only:

- the registered name and number of the chargor
- the date of the creation of the charge;
- by means of a tick-box, whether the charge is the subject of a court order for registration more than 21 days after the date of its creation;
- by means of tick-boxes, whether it is a floating charge and if so, whether there is a negative pledge;
- where the copy of the instrument has been redacted (see paragraph 16) a statement, by means of a tickbox) that the redaction is accordance with the rules; and
- in the case of an oral charge only (which is extremely rare):
 - a statement that it is an oral charge;
 - the name and address of the person entitled to the charge;;
 - the amount secured by the charge; and
 - a brief description of the charged assets.

18 It is intended to retain the existing provision for voluntary filing of satisfaction or discharge with new safeguards against fraudulent filing. Various options were considered, such as restricting the ability to file a memorandum of satisfaction to the chargee with the chargor having a statutory right to demand its filing. Such options were rejected following consultation as the enforcement of such rights would be high cost and there would need to be provision to cover situations such as the chargee being a "Special Purchase Vehicle" that ceased to exist on repayment of the loan. It is proposed to require the filing either to be accompanied by the statement of satisfaction or discharge or to include, by means of a tick-box, a statement that no such statement is available: the tick-box will alert those inspecting the register.

19 Electronic filing would be possible. This would require Companies House to design, construct and implement appropriate electronic filing systems to enable people to deliver charges electronically. This could be either through specific software or via the Companies House website. The requirements for the form, authentication and manner of delivery of charges information would be covered by the Registrar's rules, with changes to guidance and internal procedures. Companies House would initiate a communications programme to inform customers of the changes in the requirements. Chargees wishing to file electronically would have first to register for this purpose; registration is free but there will be a fee for filing charge documents subsequently.

20 Under this option, Companies House would:

- check that the requirements for registration have been satisfied, ie that:

- delivery was within time, ie within 21 days of the creation of the charge or subject to a court order that the period be extended,
- the company named in the instrument is same as in particulars ;
- company's registered name and number match.
- allocate a unique reference code to the charge linking the charge instrument to its particulars;
- enter the code, particulars in the register and the and the date of registration (**not** date of delivery or creation) of charge on the chargor's record;
- place the instrument with its unique reference number on the register;
- issue a certificate of registration with the unique reference code that will be conclusive evidence as to:
 - the identity of the chargor; and
 - the Companies Act's requirements for registration of the charge have been satisfied;

The Certificate will also replicate the brief particulars but will not be conclusive evidence of them;

- notify the chargor by sending a copy of the Certificate of Registration;
- update the summary for the company showing the number of charges created and the numbers outstanding or satisfied or part-satisfied

21 The filer – or any other person – would be able to buy a copy of the filed instrument from Companies House through either Webcheck or Companies House Direct. The current fee for copies of filed documents is £1.

22 Under this option, the requirement for limited companies to keep a register of their charges would only be retained for charges for which there is no instrument.

23 The filing requirements under option 5 would facilitate the development of between Companies House and other registers.

24 Consideration was also given to two other possible changes to procedures

- **All-electronic filing.** This would be the same as Option 5 except that Companies House would only accept electronic delivery of documents to register a charge. However this would not bring the cost savings normally associated with all-electronic filing as Companies House would still have to check that the requirements for registration have been satisfied before issuing the conclusive certificate. Therefore this option was rejected.
- **Abolition of requirement to file the instrument,** safeguarded by a requirement that the filing be made by the company. This was proposed in the 2010 consultation document but was rejected by the vast majority of respondents. It has not been considered further.

Costs and benefits

25 Companies House also faces costs, including staff salaries, overheads, etc for the team that handles registration of charges. In total the costs to Companies House are around £400,000 per annum as estimated by Companies House. Companies House, as a trading fund, operates on a cost-recovery basis. The current fee for registration of a charge is £13. The new regime will lead to a reduction in the costs of Companies House relating to handling and processing a registered charge, while the new procedures for placing instruments and statements of satisfaction on the public record will involve new costs. Companies House expect that the total costs will be similar to the present regime.

Current situation

26 Under Option 4 there would be no change. Around 75,000 charges are registered a year and whilst there is a registration fee applicable to charges (currently costing £13 per charge) this is not the main cost associated with filing of charges. Legal and administrative costs involved in preparing the brief particulars for filing form the majority of the costs. The total cost associated with the current requirements is estimated, by consultation with stakeholders, to be about £300 per charge registered (including the registration fee of £13) by or on behalf of one of the 6 lenders who, in 2010, accounted for about two-thirds of lending to UK companies and for routine cases filed by lawyers. The costs are very much higher for bespoke financing packages: the sanction of invalidity ensures that considerable care is taken. We have been advised by a law firm that in such cases the minimum time involved is about:

- 6-8 hours at £190 per hour of trainee time to read into the underlying facility and security document to pick out the right clauses and to decide which definitions to include etc. (they noted that a complicated refinancing may involve considerably longer) (8 x £190 = £1,520) and
- 45 minutes for separate reviews by both an associate (at £290 per hour) and either a managing associate or partner (at £495 per hour) (£217+£371 = £588)

The working assumption is that bespoke financing packages account for about 5,000 registrations a year.

Total Costs for Businesses (for filing charges):

70,000 charges x £300 a routine charge	= £21m
5,000 charges x £2,100 a charge in a bespoke financing package	= £11m
Total	= £32m

. As Companies House operates as a trading fund, their costs are recouped through the fees charged for filing: these are included in the estimated total costs for business above.

. Noting that the information that must be entered in their register of charges is all information that must be included in the filing at Companies House, the cost for companies of keeping registers of charges is estimated at £5 per charge. Companies are entitled to charge a prescribed fee for allowing inspection. This fee, currently £3.50 per hour, is set at a level intended to cover the company's costs.

Benefits

27. **Benefits to Businesses from new filing procedures:** The changes in procedures under Option 5, in particular the reduction in the information required to be filed as part of the brief particulars, are expected to reduce the costs associated with submitting a charge for registration. In 2010, 6 lenders accounted for about two-thirds of lending to UK companies. Following discussions with stakeholders, in this Impact Assessment it is assumed that there will be cost savings on the costs discussed in the section above of:

- electronic filing of 60,000 routine cases at a cost of £100 which results in a saving of £200 each: 60,000 * £200 = £12m;
- electronic registration of 5,000 charges in bespoke financing packages will cost £400 each which results in a saving of £1,700 each: 5,000 * £1,700 = £8.7m;
- paper registration of 10,000 routine cases at a cost of £150, ie a saving of £150 each, ie £1.5m

This gives a total estimated annual saving of £22.2m from the changes in filing procedures.

28 **Benefits to Business relating to Standard Securities.** Under Option 5, the procedures for registering both standard securities and securities over incorporeal moveable property for

Scottish companies will be simplified by the proposed definition of “date of creation”: it will be possible to file simultaneously at the two Registries. (The use of section 893 so that double registration is no longer required for standard securities will be a separate project.)

29 **Benefits to Businesses from reducing the number of filings rejected:** The changes are also expected to significantly reduce the number of filings rejected. In the 10 months to January 2010, 2,168 (nearly 3% of filings) were rejected because they were made more than 21 days after the date of creation and a further 14,037 for other reasons (eg missing information). The cost consequent to a late registration is assumed to be about £500 and for re-submission of filing rejected for other reasons about £100.

Under Option 5, the number of late filings is estimated to be reduced by 50 per cent of filings with a saving of about £650kpa. The number rejected for other reasons is estimated to be reduced by 10,000 a year, in which case the saving would be £1m.

Cost Saving from reducing the number of late filings:

2,168 Estimated annual late filings x 50 % x £500 = £0.5m

Cost Savings from reducing the number of rejections for other reasons:

10,000 Reduction in rejections x £100 = £1m

Total Cost Saving from reducing the number of late and other rejected filings: £1.5m

30. Retaining the requirement for companies to keep a register of their charges when this information does not have to be filed would significantly increase the costs, possibly to about £50 per charge. Abolition of this requirement (except for charges for which there is no instrument), is expected to yield an annual saving of 75,000 charges x £5 = £0.38m.

31 **Benefits to Companies House:** It is estimated that in the longer term Option 5 would reduce the operational costs for Companies House by 25-30 per cent, ie yields savings of £100k-120k per annum.

32 Operational Cost Saving for Companies House:

25% reduction of annual costs (£400k) = £100k

30% reduction of annual costs (£400k) = £120k

While, ultimately any savings will be passed on to businesses in the shape of lower registration fees, development costs must be recovered in the short to medium term. Therefore the likely future reduction in fees has not been included in the calculation of savings for business.

Costs

One off- Transitional Costs – Option 5

33 There would be transitional costs for law firms and banks, in familiarising themselves with the new requirements and procedures and a one-off registration fee (probably £10) for filing electronically. Our working assumption is that there would be one-off costs of about £1,000 for the largest lenders making most filings and the law firms who make many filings a year (100 parties in total) and £250 for each firm making only a few charges (5,000 firms accounting for 10,000 registered charges).

Familiarisation Costs:

100 x £1000 = £0.1m

5,000 firms x £250 = £1.3m

Total Familiarisation Costs = £1.8m

One off costs to Companies House: There would be substantial one-off costs of the order of £200k-£500k for setting up the system.

Table 1 - Summary Table of Costs and Benefits from Option 5

Costs – Transitional Costs	
Familiarisation Costs to Businesses	£1.8m
One-off costs to Companies House	£0.2-£0.5m
Total Transitional Costs	£2 – £2.3m
Benefits – Annual Cost Savings*	
Total Cost Saving to Businesses from new filing procedures	£22.2m
Benefits to Businesses from reducing the number of filings rejected	£1.5m
Cost Saving to Scottish Solicitors	
Benefits from abolition of requirement for register of charges	£0.2m
Total Benefits to Businesses	
Cost Saving to Companies House	£0.4m
Total Benefits	£24.3m
	£0.1m
	£24.4m
Net Present Value (over 10 years)	£208m

*Note: Annual benefits undiscounted. Totals do not add exactly due to rounding.

Risks and assumptions

34 Key difference between the options are the information filed; what is placed on the public record; and the consequences of filing. Under Option 4, the required particulars include “short particulars of the property charged” and that the registration certificate is sufficient evidence for the courts of compliance with all the registration requirements – ie that lack of registration will not render it invalid against a liquidator, administrator or any creditor. Under Option 4, no part of the instrument is placed on the public record. (There is, however, a public right to inspect the instrument at the company.) Under Option 5, a copy of the instrument creating the charge will be placed on the public record. Under this option, the registration certificate would be sufficient evidence for the courts that the charge was registered timeously – ie that it will not be rendered invalid against a liquidator, administrator or any creditor by reason of not having been registered within 21 days of its creation or as directed by a court in the case of late registration.

35 The other main difference relates to filing procedures. Under Option 4, all filing must be in hard copy with the original (in Scotland, a certified copy) of the instrument creating the charge being delivered to the Registrar and, after checking, being returned to the filer. Under Option 5, filing may be in hard copy or by electronic means.

36 The broad estimate of development costs for Companies House is based on current knowledge of the high level requirement. It assumes that all development will be carried out by staff at Companies House (ie that there will not be a need for more expensive contractors) and that there will not be any significant new authentication procedures will need to be introduced for electronic filing.

Effect on third parties

37 Under common law, registration is constructive notice to those who should be reasonably expected to search the register. Other third parties are not affected by the registration of a charge or by failure to register it. In the case of assets for which there are specialist registers, the position of third parties may be affected by the rules of the specialist registers. Consideration has been given to making provision so that:

- any person taking a charge over the company’s property is deemed to have notice of any previously registered charge.
- a buyer of property subject to an unregistered charge takes free of the charge with an exception for property subject to the rules of a specialist register.

Following further discussion with stakeholders, this option has been rejected.

Conclusion

38 Option 5 is the preferred option.

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URN 11/1108