



Department for Business, Innovation & Skills

COMPANIES ACT 2006 PART 25: REGISTRATION OF COMPANY CHARGES - EXPLANATORY NOTES FOR THE REVISED DRAFT REGULATIONS. JANUARY 2013

The current system of registration for company charges dates back to the start of the 20th century. Over one hundred years later and following extensive consultation a fully-modernised system has been developed, which aims to:

- streamline procedures and reduce costs for those putting information on the public record, in particular by enabling electronic filing
- reduce uncertainty as to what charges must be registered
- replace two current schemes which depend on the company's place of registration with a single scheme for all UK-registered companies
- improve the quality of information about security given by companies
- improve access to the instruments creating companies' charges

The Department estimates that these reforms, taken together, could save those presenting charges to the registrar around £21m per annum.

The draft regulations are made under section 894 of the Companies Act 2006 and amend the provisions of Part 25 of that Act. The provisions will be applied, with minor modifications, to limited liability partnerships by a further statutory instrument which will amend (by substitution) Part 9 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

The primary purpose of the draft regulations is to give effect to the Department's policy of providing for a single scheme for registration of company charges irrespective of the place of incorporation of the company within the UK (as in current Part 25 of the Act). This draft applies the provisions on registration to charges created by companies, which are registered in England and Wales, Northern Ireland or Scotland. Furthermore, the reforms aim to modernise the system of registration to enable those presenting the charge to the Registrar of Companies to do so by electronic means.

The new provisions have been inserted as Chapter A1 of Part 25 and current Chapters 1 and 2 are repealed, with transitional provisions.

The main change upon which the Department consulted was the move from a mandatory filing regime enforced by criminal sanction (s.860/s.878 Companies Act 2006) and the sanction of invalidity (s.874/s.889 Companies Act 2006) to a regime in which registration

with the registrar was at the discretion of the company and the removal of the criminal sanction. However, the retention of the sanction of invalidity (section 859H) means that in fact this is not truly optional for a company or a lender in commercial terms and it is expected that the majority of charges which are currently registered will continue to be registered. What has been removed is the prospect of a criminal penalty for non-registration. As a result of the change in emphasis however, the drafting of the legal provisions has changed. Section.859A does not refer to a duty on the company or person interested in the charge or security (as in s.860/s.878 Companies Act 2006) but is expressed in terms of obligations on the registrar (s.859A(2) and throughout).

The period for delivery of the charge or security to the registrar remains at 21 days (s.859A(4)). In order to clarify when that period starts to run, section 859E sets out, for the purpose of Part 25 only, a table identifying the date of creation of charge or security.

A further significant change is that the draft assumes that all charges (for which there is an interpretation provision at section 859A(7)) other than those listed in section 859A(6) can be registered. This is a significant simplification of the former law on this matter.

The draft also gives effect to the Department's proposal to increase transparency and the quality of information in the public domain through creating a regime in which the full text of the charge instrument or document is available on the register at Companies House. The instrument or other document will be capable of redaction (s.859G) to take account of certain personal information.

The instrument will be accompanied by particulars, the content of which is set out in section 859D. The required particulars are intended to improve the ease of searching the register, including those lenders and credit agencies that would rely upon 'bulk downloads' from the Registrar. The particulars will also notify the searcher that the instrument contains charges over property which are also available on another relevant UK register e.g. the Land Register, so that the searcher can go to that register for more details if they wish. The current regulations on the particulars of charge are to be revoked (the Companies (Particulars of Company Charges) Regulations 2008 (S.I. 2008/2996) (see draft regulation 4).

Provision is made in section 859I for the registrar to allocate a unique reference code (URC) to the charge, which will enable those searching the register to track a charge more easily, including whether it has been fully or partially satisfied. The URC will also enable the registrar to link more effectively filings in respect of a registered charge. The registrar's certificate and its effects remain the same as at present (s.859I).

Provision is also made for a company which is holding property as a trustee to have this noted on the register (s.859J) and some minor changes are made to the registration of enforcement of security (s.859K) including (though not in Scotland) the registration of notice of ceasing to act as receiver or manager. Provision is made for the notification of addition to or amendment of a charge (s.859O).

In respect of companies' own registers and keeping of copies of instruments or documents of charge, the Department has taken the advice of stakeholders and has abolished the need for companies to keep a register of charges, however companies are still required to keep copies of the full instrument available for inspection (s.859P and 859Q). It is acceptable for these copies to be in the same form as presented to the registrar.

The Department does not intend to make any further amendment to the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 (SI 2009/1917) and overseas companies will continue to be required to maintain a register of charges.

Frequently Asked Questions (FAQS)

1. What if the information in the charge document(s) contains information that is commercially sensitive or relates to intellectual property?

Under current law, the charge documents are required to be available for inspection at the company's office. In moving to a system where documents are available on-line, we believe the level of transparency should be maintained. However, in recognition that these documents will be more accessible, we have made provisions to cover the exclusion of personal information, bank account numbers and signatures (section 859G). 'Personal information' is any information that can identify an individual i.e. address, date of birth etc. More information on personal information can be obtained from The Information Commissioners Office: <http://www.ico.gov.uk/> <<http://www.ico.gov.uk/>>

2. Will the registrar publish guidance on the practical steps needed to file a charge electronically at Companies House?

The registrar will provide full specification on the electronic system well in advance of the go live date, which will include not only the specification relating to the e filing system but also instructions on how to apply to register to access the system.

3. Will there be a size limit on files that can be submitted to Companies House?

There is likely to be a file size limit for the attachments. Companies House currently envisage plan this will be set at 10mb. Full details will be provided in guidance well in advance of commencement.

4. Will there be action taken to prevent those presenting the charge from cross-referencing other non-public documentation, thus providing insufficient information in the charge documents?

The onus is on the presenter to provide adequate information to satisfy the law. Companies House will check that the details provided in the deed match those provided

in the MR01 form, they would not have new powers to assess the completeness of the information provided. However, the Department may review practice in the future if necessary.

5. How will the access codes system work?

Presenters of charges will require access codes – this will be a one-off application to enable them to present all future charge documents for registration.

Where the presenter of the charge is not the creditor, the creditor will need to be satisfied that the charge has been registered, which will be possible via public information. If the creditor uses a third party to file information on its behalf there will probably be a contractual agreement between the two parties to provide this assurance.

6. What is the effect of the regulations on those taken to have constructive notice of registered charges?

The Department has taken the view that it is not necessary to make a provision on constructive notice in these regulations at the current time. Such a provision could have wider legal effects and would need further consultation and consideration.

7. Are charges created by operation of law registrable?

Only charges created by a company are registrable.

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