Draft Regulations laid before Parliament under section 894(2) and 1290 of the Companies Act 2006 for the approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

COMPANIES

The Companies Act 2006 (Amendment of Part 25) Regulations 2013

Made - - - -	*2013*
Coming into force - -	*6th April 2013*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 894(1) and 1292(1) of the Companies Act 2006(**1**).

In accordance with sections 894(2) and 1290 of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Companies Act 2006 (Amendment of Part 25) Regulations 2013 and come into force on 6th April 2013.

Amendment to Part 25 of the Companies Act 2006

2. The Chapter set out in Schedule 1 is inserted as Chapter A1 at the beginning of Part 25 of the Companies Act 2006.

Repeals and revocations

3. Chapters 1 and 2 of Part 25 of the Companies Act 2006 are repealed.

4. The Companies (Particulars of Company Charges) Regulations 2008(**2**) are revoked.

Consequential provisions

5. The provisions set out in Schedule 2 are amended as set out in that Schedule.

(**1**) 2006 c.46.
(**2**) S.I. 2008/2996.

Application and transitional provisions

6.—(1) Subject to paragraph (3) the provisions amending the Companies Act 2006 set out in Schedule 1 and the consequential amendments set out in Schedule 2 apply to charges created on or after 6th April 2013.

(2) Subject to paragraph (3), the provisions of Part 25 of the Companies Act 2006 as they stood immediately before 6th April 2013 continue to apply to charges created before 6th April 2013.

(3) Sections 859K, 859L and 859O of the Companies Act 2006 also apply to charges created before 6th April 2013.

Name
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Date Department for Business, Innovation and Skills

SCHEDULE 1 Regulation 2

"CHAPTER A1

REGISTRATION OF COMPANY CHARGES

Company charges

Charges created by a company

859A.—(1) Subject to subsection (6), this section applies where a company creates a charge.

(2) The registrar must register the charge if, before the end of the period allowed for delivery, the company or any person interested in the charge delivers to the registrar for registration a section 859D statement of particulars.

(3) Where the charge is created or evidenced by an instrument, the registrar is required to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

(4) "The period allowed for delivery" is 21 days beginning with the day after the date of creation of the charge (see section 859E), unless an order allowing an extended period is made under section 859F(3).

(5) Where an order is made under section 859F(3) a copy of the order must be delivered to the registrar with the statement of particulars.

(6) This section does not apply to—

(a) a charge in favour of a landlord on a cash deposit given as a security in connection with the lease of land;

(b) a charge created by a member of Lloyd's (within the meaning of the Lloyd's Act 1982(**3**)) to secure its obligations in connection with its underwriting business at Lloyd's;

(c) a charge excluded from the application of this section by or under any other Act.

(7) In this Part—

"cash" includes foreign currency,

"charge" includes—

(a) a mortgage;

(b) a standard security, assignation in security, and any other right in security constituted under the law of Scotland, including any heritable security, but not including a pledge, and

"company" means a UK-registered company.

Charge in series of debentures

859B.—(1) This section applies where—

(a) a company creates a series of debentures containing a charge, or giving a charge by reference to another instrument, and

(b) debenture holders of that series are entitled to the benefit of the charge pari passu.

(**3**) 1982 c.14.

(2) The registrar must register the charge if, before the end of the period allowed for delivery, the company or any person interested in the charge delivers to the registrar for registration, a section 859D statement of particulars which also contains the following—

(a) either—

(i) the name of each of the trustees for the debenture holders, or

(ii) where there are more than four such persons, the names of any four persons listed in the charge instrument as trustees for the debenture holders, and a statement that there are other such persons;

(b) the dates of the resolutions authorising the issue of the series;

(c) the date of the covering instrument (if any) by which the series is created or defined.

(3) Where the charge is created or evidenced by an instrument, the registrar is required to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

(4) Where the charge is not created or evidenced by an instrument, the registrar is required to register it only if a certified copy of one of the debentures in the series is delivered to the registrar with the statement of particulars.

(5) For the purposes of this section a statement of particulars is taken to be a section 859D statement of particulars even if it does not contain the names of the debenture holders.

(6) "The period allowed for delivery" is—

(a) if there is a deed containing the charge, 21 days beginning with the day after the date on which the deed is executed;

(b) if there is no deed containing the charge, 21 days beginning with the day after the date on which the first debenture of the series is executed.

(7) Where an order is made under section 859F(3) a copy of the order must be delivered to the registrar with the statement of particulars.

(8) In this section "deed" means—

(a) a deed governed by the law of England and Wales or Northern Ireland, or

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

Charges existing on property or undertaking acquired

859C.—(1) This section applies where a company acquires property or undertaking 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 or undertaking, have been capable of being registered under section 859A.

(2) The registrar must register the charge if the company or any person interested in the charge delivers to the registrar for registration a section 859D statement of particulars.

(3) Where the charge is created or evidenced by an instrument, the registrar is required to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

Particulars to be delivered to registrar

859D.—(1) A statement of particulars relating to a charge created by a company is a "section 859D statement of particulars" if it contains the following particulars—

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

(b) the date of creation of the charge and (if the charge is one to which section 859C applies) the date of acquisition of the property or undertaking concerned;

(c) where the charge is created or evidenced by an instrument, the particulars listed in subsection (2);

(d) where the charge is not created or evidenced by an instrument, the particulars listed in subsection (3).

(2) The particulars referred to in subsection (1)(c) are—

(a) any of the following—

(i) the name of each of the persons in whose favour the charge has been created or of the security agents or trustees holding the charge for the benefit of one or more persons; or,

(ii) where there are more than four such persons, security agents or trustees, the names of any four such persons, security agents or trustees listed in the charge instrument, and a statement that there are other such persons, security agents or trustees;

(b) whether the instrument is expressed to contain a floating charge and, if so, whether it is expressed to cover all the property and undertaking of the company;

(c) whether any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge;

(d) whether (and if so, a short description of) any land, ship, aircraft or intellectual property that is registered or required to be registered in the United Kingdom, is subject to a charge (which is not a floating charge) or fixed security included in the instrument;

(e) whether the instrument includes a charge (which is not a floating charge) or fixed security over—

(i) any tangible or corporeal property, or

(ii) any intangible or incorporeal property,

not described in paragraph (d).

(3) The particulars referred to in subsection (1)(d) are—

(a) a statement that there is no instrument creating or evidencing the charge;

(b) the names of each of the persons in whose favour the charge has been created or the names of any security agents or trustees holding the charge for the benefit of one or more persons;

(c) the nature of the charge;

(d) a short description of the property or undertaking charged;

(e) the obligations secured by the charge.

(4) In this section "fixed security" has the meaning given in section 486(1) of the Companies Act 1985(**4**).

(5) In this section "intellectual property" includes—

(a) any patent, trade mark, registered design, copyright or design right;

(b) any licence under or in respect of any such right.

(**4**) 1985 c.6. Section 486 is repealed by section 46(1) of the Bankruptcy and Diligence etc (Scotland) Act 2007 (2007 asp 3) from a day to be appointed.