

Summary: Intervention & Options

Department /Agency: Business, Enterprise & Regulatory Reform	Title: Impact Assessment of the Companies Act 2006 (Annual Return and Service Addresses) Regulations	
Stage: final	Version:	Date: 17 November 2008
Related Publications: The Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008		

Available to view or download at:

http://www.opsi.gov.uk/si/si2008/uksi_20081659_en_1

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What is the problem under consideration? Why is government intervention necessary?
How to ensure that the safeguards for registers of members provided by the Companies Act 2006 are not undermined by the requirements for Annual Returns in the Companies Act 2006.
What should be the restrictions, if any, on what can be used as a service address by a director or company secretary.

What are the policy objectives and the intended effects?
To avoid unnecessary changes to companies' annual returns.
To balance the needs of those providing service addresses and of those wishing to serve documents upon them.

What policy options have been considered? Please justify any preferred option.
The only option considered for Annual Returns was to amend the 2006 Act in the same way as the 1985 Act has been amended by the Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008.
For service addresses, consideration was given to requiring them to be in the EEA and that they not be PO boxes.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? From 2011, as part of the Companies Act 2006 evaluation

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Ian Pearson

Date: 18th November 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'				
	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">One-off (Transition)</td> <td style="width: 30%;">Yrs</td> </tr> <tr> <td>£</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£	
	One-off (Transition)		Yrs			
	£					
<table border="1" style="width: 100%;"> <tr> <td>Average Annual Cost (excluding one-off)</td> </tr> <tr> <td>£</td> </tr> </table>	Average Annual Cost (excluding one-off)	£				
Average Annual Cost (excluding one-off)						
£						
Total Cost (PV)		£				
<p>Other key non-monetised costs by 'main affected groups' Credit reference agencies and others wanting to conduct anti-money laundering or know-your-client checks or otherwise wanting the addresses of all members of a company will not be able to get the information from Companies House. This will increase their costs (see para 15).</p>						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'				
	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">One-off</td> <td style="width: 30%;">Yrs</td> </tr> <tr> <td>£</td> <td></td> </tr> </table>		One-off	Yrs	£	
	One-off		Yrs			
	£					
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Average Annual Benefit (excluding one-off)						
£						
Total Benefit (PV)		£				
<p>Other key non-monetised benefits by 'main affected groups' Companies House will no longer be a source of information for those operating share-selling scams and others wishing to contact company members for improper purposes (see para 4).</p>						

Key Assumptions/Sensitivities/Risks The prescribed fees for copies of entries in registers cover the cost of companies in meeting such requests.

Price Base	Time Period	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
Year	Years	£	£

What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	1/10/09
Which organisation(s) will enforce the policy?	
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease £	Net Impact	£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

ANNUAL RETURN

Background

1. When a company is incorporated, its key data are put on the public record to be readily available for inspection by third parties, including enforcement bodies. The Annual Return ensures that any elements of the key data which may change over time are updated at least once a year.
2. For Annual Returns made up to dates before 1 October 2008, the data required includes the names and addresses of all the members of all companies limited by share capital. The requirements for Annual Returns were amended by the Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008. Under the 1985 Act as amended, no company is required to provide the addresses of all its members in Annual Returns made up to dates after 30 September 2008. Private companies limited by share capital and public companies whose shares are not traded on regulated markets are currently required to provide the names and details of shareholdings of all their members; public companies whose shares are traded on a regulated market are currently required:
 - to indicate that their shares were traded on a regulated market at any time during the period covered by the return; and
 - to provide the names, addresses and details of shareholdings of those members who held 5 per cent or more the issued shares of any class of the company during the period covered by the return.

Annual Returns made up to dates after 30 September 2009 will be subject to the Companies Act 2006 ('the 2006 Act'). The requirements under the 2006 Act are currently the same as those under the 1985 Act before that Act was amended by the Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008. The Companies Act 2006 (Annual Return and Service Addresses) Regulations will make the 2006 Act's requirements the same as those that will apply until 30 September 2009.

3. Company law also requires every company to permit anyone to inspect and to be provided with copies of its register of members. This is essential so that those who own a company can be traced and also can be contacted by those who wish to influence their decisions relating to the company. The information available from companies themselves should be up-to-date. However, noting that the size of shareholdings is generally more volatile than the identity of shareholders, having the information available from Companies House is generally more convenient and also means the company neither has to respond to the request nor is alerted to the interest.
4. The availability of members' names and addresses from Companies House has been abused, particularly by those seeking to intimidate the shareholders of sensitive companies and those using high pressure tactics to sell worthless shares ("boiler room operations"). The Financial Services Authority is quoted as estimating total annual losses to boiler rooms at £200m.
5. Sections 116-119 of the 2006 Act introduce safeguards against abuse of the public right of access to a company's register of members direct from the company. Those seeking the information must give their reason; a court may relieve a company from the obligation to provide the information if it is not satisfied that the information is sought for a proper purpose. These safeguards would be undermined if the company were to be required subsequently to file the information on the public register at Companies House.
6. During the Parliamentary passage of the 2006 Act, Margaret Hodge, Minister for Industry and the Regions, advised the Commons Committee:

"We propose to deal with information on the register of members that applies to Companies House in the regulations covering companies' Annual Returns. We will consult on these issues, but, as hon. Members know, we intend to exempt private companies from the obligation to supply their members' addresses and

to exempt public companies from the obligation to supply any details of those who hold less than 5 per cent of a company's shares." (Hansard, Standing Committee D, 27 June 2006, col.220).

7. Sections 116-119 of the 2006 Act were brought into force on 1 October 2007 by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (SI 2007/2194). They were subject to a transitional provision so that they applied only if the company was not obliged to deliver an Annual Return made up to a date before 1 October 2008, by which date the Government intended that the remaining provisions of the 2006 Act would have been brought into force. Following the change in timetable for the commencement of 2006 Act, the requirements for the Annual Return in the Companies Act 1985 (the "1985 Act") were amended with effect from 1 October 2008 (see paragraph 2 above).

Policy objectives and intended effects

8. The objective is that the safeguards for names and addresses of company members under the 2006 Act, which came into force on 1 October 2007, continue to be effective after 30 September 2009 when Annual Returns will be subject to the requirements of the 2006 Act.

9. Noting that it would be onerous for companies for there to be changes to the Annual Return requirements in two consecutive years, consideration has not been given to any option other than to make the requirements for information about members in Annual Returns made up to dates after 30 September 2009 the same as for returns made up to dates in the previous year.

10. The Regulations will benefit all individuals who own shares in companies that are not traded on regulated markets and all but the very largest shareholders in other companies. Companies House will no longer be a useful source of mailing lists for those wishing to target the members of companies limited by share capital. The public record will still hold Annual Returns made up to dates before 1 October 2008 but information about members' addresses will become increasingly out-of-date.

Consultation

11. In February 2007, the consultation document *Implementation of the Companies Act 2006* sought views on changes to the Annual Return so that:

- private companies and those public companies whose shares are not traded on a regulated market at any point during the period covered by the return would not be subject to the requirement to supply their members' addresses; and
- public companies whose shares are traded on a regulated market at any point during the period covered by the return be required to provide the names and addresses of those who held 5% or more of any class of shares.

This approach was generally welcomed, although there was concern on the impact into investigations into the ownership of private companies and relationships between them. Some respondents suggested that companies traded on AIM should also be required to provide the names and addresses of those who held 5 per cent of more of any class of shares during the period in question.

12. In her Written Parliamentary Statement of 26 June 2007, Margaret Hodge, Minister for Industry and the Regions, said:

The 2006 Act retained the requirements in the Companies Act 1985 Act for the Annual Return of companies with a share capital to include the addresses of all their shareholders. In the light of the responses, we have decided that this requirement should apply only to public companies that are traded on EU regulated markets in respect of shareholders who hold 5 per cent or more of any class of shares at any time during the year in question. For other companies, the requirement will be changed so they no longer have to provide the addresses of any shareholders.

Draft Regulations on this basis were put on the Department's website in July 2007. Only 3 bodies commented on this draft: a credit reference agency was critical of the reduction in information about members; the Association of Investment Companies argued for a 10% threshold for the notification of members' names and addresses by public companies whose shares are traded on a regulated market; and the Law Society made drafting points. Following the subsequent change in the timetable for implementation of the Companies Act 2006, these draft Regulations were recast so that the Annual Return requirements in the 1985 Act would be amended from 1 October 2008 and those in the 2006 Act from 1 October 2009.

The Regulations

13. These Regulations require the same information about shareholders as required by the Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008. Private companies limited by share capital and public companies whose shares are not traded on regulated markets will be required to provide the names and details of shareholdings of all their members; public companies whose shares are traded on a regulated market will be required:

- to indicate that their shares were traded on a regulated market at any time during the period covered by the return; and
- to provide the names, addresses and details of shareholdings of those members who held 5 per cent or more the issued shares of any class of the company during the period covered by the return.

Impact of the Regulations

14. A draft Impact Assessment was published on the BERR website in July 2007 (<http://www.berr.gov.uk/whatwedo/businesslaw/co-act-2006/draft/page40411.html>). The final Impact Assessment for The Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008 (SI 2008/1659) is attached to their Explanatory Memorandum which is available at http://www.opsi.gov.uk/si/si2008/em/uksiem_20081659_en.pdf.

15. Subsequently there has been further analysis of the costs of conducting checks of small and medium-sized private companies in order to comply with the Money Laundering Regulations 2003 (SI 2003/3175) following the ending of the requirement for these companies' Annual Returns to include their shareholders' addresses. Estimates vary widely. The actual costs will depend on how credit reference agencies and their clients adapt to the change. The 2006 Act requires a company within 5 working days of a request for a copy of its register of members either to meet the request or to apply to a court for relief from the obligation. The Department is confident that a court would consider a request to be for a proper purpose if it is in order to comply with anti-money laundering and "know your customer" requirements – in which case, the court will not relieve the company of the obligation to meet the request. The Companies (Company Records) Regulations (coming into force 1 October 2009) provide that a request for an electronic copy must be met if the company keeps the information electronically, otherwise a hard copy must be provided. The Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 set the fees that companies may charge for copies of entries in their registers of members. (The fee for each of the first 5 entries of a register is £1 and £30 for the next 95 entries; 95 per cent of private companies have 5 or fewer members.) These fees are intended to cover the costs of the company in meeting requests which means that only the costs, including the prescribed fee, for those making the checks need to be considered. One estimate is that there are nearly 9 million checks a year and that the cost of conducting a single request will be £30 (excluding the prescribed fee). There may be significant economies of scale for any person making large numbers of requests. The total prescribed fees for a copy of the register of members of every private company is estimated to be less than £10 million (noting that there are estimated to be 2.2 million companies with fewer than four shareholders and only 104,993 companies with more than four shareholders). Furthermore the names and addresses of subscribers for all companies will continue to be available from Companies House as well as, as part of the Annual Return, the name and shareholding of every member for all private companies limited by share capital and for those public companies not traded on regulated markets. For many companies, the subscribers and the members are largely the same.

Implementation of the Regulations

16. Companies House do not put on the public record an Annual Return made up to a date after 30 September 2008 that includes the names and addresses of all the company's members. So as to minimise problems for companies, it is not possible to complete an Annual Return electronically that does not comply with the correct requirements. The paper forms are also designed so that companies do not provide information that is not required; a return is rejected if it is on the earlier version of the form (ie that which required all the shareholder addresses). In view of these measures to be adopted by Companies House, no costs are envisaged for companies.

SERVICE ADDRESSES

Background

17. The 2006 Act requires a company to enter a service address for each of its directors in its register of directors and to include this address in the director's particulars that it files with Companies House. There is similar provision for company secretaries. The 2006 Act ensures that a document may be effectively served on these company officers at the service address filed under the Act. These are new provisions; under the 1985 Act, the address on the public record for these officers was their usual residential address.

Policy objectives and intended effects

18. The objective is to ensure that, on the one hand, third parties do not suffer from no longer being able to discover a director or company secretary's usual residential address and, on the other hand, to minimise the costs for those who are required to have a service address.

Consultation

19. The February 2007 consultation (see paragraph 11 above) also sought views on the proposal that the only restriction on a director's service address be that it is a physical location. Three-quarters of respondents agreed with the proposal. Two were concerned at the requirement that the service address be a physical location as in some jurisdictions a PO Box may be needed to ensure a safe delivery. Another two considered there should be a geographical restriction to the UK or, as under the current Confidentiality Order Regulations, the EEA.

The Regulations

20. These Regulations require the service address to be a place where service of documents can be effected by physical delivery and where an acknowledgement of the delivery can be provided.

Implementation of the regulations

21. The new requirement will affect appointments notified to Companies House on or after 1 October 2009. Directors' residential addresses filed before that date will be treated as if they are service addresses until a different service address is filed.

SPECIFIC IMPACT TESTS

22. We have considered the three mandatory impact tests (gender, race, disability) and consider that the proposed Regulations are unlikely to have any discriminatory effects. The other tests are not applicable. With regard to human rights, it should be noted that there is no requirement for a member's address to be an individual's residential address.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

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

Annexes