

*These notes refer to the Companies Act 2006 (c.46)  
which received Royal Assent on 8 November 2006*

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 35: the Registrar of Companies**

1365. This Part largely replaces Part 24 of the 1985 Act, and sets out the basic functions of the registrar of companies (these functions are currently carried out by Companies House for England and Wales and in Scotland and by the equivalent registry in Northern Ireland). The new sections implement a number of recommendations of the CLR.

#### ***Sections 1060 and 1061: The registrar and the registrar's functions***

1366. **Section 1060** carries forward the approach of section 704 of the 1985 Act as to the appointment and status of the registrar of companies but omits some of the more antiquated parts of that provision. It specifies that there shall continue to be a registrar for England and Wales, for Scotland and for Northern Ireland.

1367. **Section 1061** the registrar continues to have the functions conferred by the Companies Acts and in other legislation as specified in the section. The Secretary of State also has power to confer functions on the registrar, in relation to the registration of companies or other matters.

#### ***Section 1062: The registrar's official seal***

1368. This section, replacing section 704(4) of the 1985 Act, provides that the registrar must have an official seal for the authentication of documents.

#### ***Section 1063: Fees payable to the registrar***

1369. This section gives the Secretary of State a power to set fees by regulations in relation to any function of the registrar and in relation to the provision of services and facilities incidental to the registrar's functions. It replaces section 708 of the 1985 Act, but is more specific about the types of things for which fees may be charged, although this list is not exhaustive.

1370. As now, fees relating to the normal statutory obligations of companies under companies legislation are to be set by regulations made by the Secretary of State. It is also possible for fees to be charged for any *ad hoc* or bespoke services that Companies House provides. The 1985 Act (section 708(5)) provides that the registrar determines fees for services for which there is no direct legal obligation. *Subsection (6)* of this section replaces this with a more general power for the registrar to determine fees where no fee has been set in regulations by the Secretary of State. Such fees might relate for example to the introduction of new services (e.g. those made possible by new technologies) which could not have been anticipated when the Secretary of State last made fees regulations; or for services such as seminars and road shows which Companies House arranges.

### ***Section 1064 to 1065: Certificates of incorporation***

1371. **Section 1064** replaces section 711(1)(a) of the 1985 Act and provides for notice of the issue of certificates of incorporation to be published in the Gazette. The publication must include the company's registered number as well as its name. **Section 1065** replaces section 710 of that Act and allows any person to obtain a certificate of incorporation of a company. These sections cover all certificates of incorporation (including, for example, certificates of incorporation on change of name).

### ***Section 1066 and 1067: Registered numbers***

1372. **Section 1066** replaces section 705 of the 1985 Act on companies' registered numbers, without change of substance. **Section 1067** replaces the provisions of section 705A of that Act relating to registered numbers of branches of overseas companies.

## **Delivery of documents to the registrar**

### ***Section 1068: Registrar's requirements***

1373. This section gives the registrar power to make rules about form, authentication and manner of delivery of documents, including the physical form and means of communication, the format, and the address to which they are to be sent, and where appropriate, technical specification. The power conferred by this section does not authorise the registrar to require documents to be delivered in electronic form.

### ***Section 1069: Power to require delivery by electronic means***

1374. This section provides that the Secretary of State (not the registrar) has a new power to provide for electronic-only delivery of classes of document. The Secretary of State may only exercise this power in respect of classes of document which are authorised or required to be delivered and for which the registrar has published rules relating to electronic delivery (in other words where it is clear precisely what mechanism is to be used for the electronic communication).

### ***Section 1070: Agreement for delivery by electronic means***

1375. This section sets out the power of the registrar to make agreements with companies to deliver information only electronically. The agreements could cover all documents (to the extent that electronic means of filing are available) or just selected documents. It is envisaged that the agreements will be in a standard form and contain detailed provisions for communications between the registrar and the company (including possible use of codes and encryption). The agreements need not be available to be entered into by everyone in the same form or at all.

### ***Section 1071: Document not delivered until received***

1376. This section provides that "delivery" obligations go beyond an obligation simply to send or post information to the registrar, and that the registrar may make rules governing what it means for a document to be "received" (which might include, for example, setting out which offices of the registrar should receive a document).

## **Requirements for proper delivery**

### ***Section 1072: Requirements for proper delivery***

1377. This section provides that, in order for a document to be properly delivered to the registrar, various conditions (specified in *subsection (1)(a) to (g)*) must be met. Where those conditions are not satisfied, and the document is therefore not "properly" delivered, it is not to be treated as having been delivered for the purposes of the underlying provision which authorises or requires it.

***Section 1073: Power to accept documents not meeting requirements for proper delivery***

1378. The registrar may still accept (and register) a document that does not comply with the requirements for proper delivery, although such acceptance does not (*subsection (4)*) exempt the filer from any consequence attaching to failure to comply with the original requirements for delivery.

***Section 1074: Documents containing unnecessary material***

1379. Documents are sometimes delivered to the registrar which contain “unnecessary” material, i.e. material for which there was no legal requirement or authorisation. Where the unnecessary material cannot readily be separated from the necessary material, then the document as a whole is treated as not properly delivered. Where it is separable, the registrar has the option of either registering the entire document as delivered, or excising the unnecessary material and registering the remainder.

***Section 1075: Informal correction of document***

1380. This is a new provision, giving the registrar power to correct information in a document by informal means (for example, by taking revisions or supplementary information from the company over the telephone) but only in very limited circumstances. It can be used as an alternative to rejecting or removing information:

- on the grounds that it is incomplete (e.g. empty fields within the document);
- on the grounds that it is internally inconsistent (e.g. the company number does not correspond to the company name);

1381. This ability to make informal corrections only applies where companies have informed the registrar that it should apply. The registrar needs to initiate the correction and be satisfied that the person is authorised to give the information sought. In order to be satisfied as to the authority of the person she is telephoning, the registrar may provide for identification numbers or other checks on identity.

***Section 1076: Replacement of document not meeting requirements for proper delivery***

1382. This section sets out how the registrar may accept a replacement document that was not properly delivered in the first place. In essence, the registrar must be satisfied that the replacement document is delivered by the original filer, or by the company to which the original document relates, and that the replacement is “properly delivered” (as defined in section 1072)). It also allows the registrar to impose requirements to ensure that the replacement can clearly be associated with a particular original.

***Sections 1077 and 1078: Public notice of receipt of documents subject to Directive disclosure requirements***

1383. These sections replace section 711 of the 1985 Act, which provides that certain notices must be published in the Gazette, and lists the documents to which that requirement relates. This list derives from Community legislation, principally the First Company Law Directive (68/151/EEC) as amended by Directive 2003/58/EC.

1384. [Section 1077](#) provides that notice of receipt of these documents must be published either in the Gazette, or by some other means (as may be specified under section 1116). [Section 1078](#) lists the documents subject to Directive disclosure requirements.

***Section 1079: Effect of failure to give public notice***

1385. This section effectively replaces section 42 of the 1985 Act. It sets out how a company, in its dealings with third parties, may not rely on the consequences of certain events

(those which are set out in *subsection (2)*) unless notice of the event has duly appeared in the Gazette or been published in some other way provided for in section 1116.

## **The register**

### ***Section 1080: The register***

1386. This section imposes an obligation on the registrar to keep a record of the material received. It gives a discretion as to the form in which the record is kept. *Subsection (3)* provides that this discretion is subject to the terms of the amended First Company Law Directive (68/151/EEC), Article 3.2 of which requires any documents and particulars it covers which are delivered on after 1 January 2007 to be retained in electronic form. The documents covered by this obligation are those set out in section 1078.

### ***Section 1081: Annotation of the register***

1387. It is important that the register is as useful and transparent a source of information as possible for users. Hence, this section sets out certain circumstances in which the registrar is obliged to annotate the information on the register to gloss it or provide supplementary information. Annotations must for example be provided to show the date of delivery of information; and the fact that information has been replaced, corrected or removed. This section responds to a recommendation of the CLR (summarised in their Final Report at paragraph 11.48). *Subsection (5)* provides that the court can dispense with the need for annotation in certain circumstances.

1388. The Secretary of State has power to make provision by regulations extending the circumstances where the registrar can or should make annotations.

### ***Section 1082: Allocation of unique identifiers***

1389. This section is a new provision. It gives the Secretary of State a power to make regulations so that unique identifiers can be allocated to company officers such as directors. This provision supports those that provide for the home addresses of directors no longer to be kept on the public record. The unique identifier enables searchers to distinguish between different persons of the same name.

### ***Sections 1083 and 1084: Preservation of original documents and records relating to companies that have been dissolved etc***

1390. *Section 1083* replaces section 707A(2) of the 1985 Act. However, the obligation on the registrar to keep the originals of documents received now only applies for three years (as opposed to ten in the existing provision). This section also provides that the obligation to retain originals does not extend to an original document provided electronically (provided that the information itself has been placed on the register).

1391. *Section 1084* replaces sections 707(3) and (4) of the 1985 Act, and provides that records may be transferred to the Public Records Office two years after a company has been dissolved. It also makes equivalent provision for certain overseas companies which, for example, by ceasing to have any connection with the UK, are no longer caught by UK regulatory requirements.

## **Inspection etc of the register**

### ***Section 1085: Inspection of the register***

1392. This section provides that any person may inspect the register. Searchers however have a right to inspect the *original* of a hard copy document only where the registrar still retains it and where the public record kept by the registrar and derived from it is illegible or unavailable.

***Section 1086: Right to copy of material on the register***

1393. This section provides that any person is entitled to a copy of material on the register. Consistent with the provisions of the amended First Company Law Directive (68/151/EEC), *subsection (2)* provides that the fee for a copy may not exceed the administrative cost of providing the service.

***Section 1087: Material not available for public inspection***

1394. This section sets out a number of exceptions to the above rights to inspect and copy material on the register. These are listed in *subsection (1)(a) to (k)* and include, for example, “protected information”, i.e. information about directors’ home addresses. *Subsection (2)* provides that the fact that certain material (for example, an address), which has been placed on the register as a result of the filing of two or more different types of document, is confidential in one of those contexts, does not mean that it cannot be made public in its other context.

***Section 1088: Application to registrar to make address unavailable for public inspection***

1395. This section is a new provision. It confers power on the Secretary of State to make regulations providing for applications to remove addresses from the public record held by Companies House. The regulations may set out the details of who can apply and on what grounds and the procedure involved. They are subject to the affirmative resolution procedure.

***Sections 1089 to 1091: Provision of copies of material on the register***

1396. These sections enable the registrar to specify the form and manner in which applications for inspection of the register, or for copies of material on it, must be made, and to determine the form and manner in which copies are provided. They are subject to important exceptions, arising from the amended First Company Law Directive (68/151/EEC), in respect of the documents listed at section 1078.
1397. *Section 1089* provides that applications must be capable of being submitted in hard copy or in electronic form, as the applicant chooses. *Section 1090* similarly provides that the applicant is entitled to insist on receiving the copies themselves in hard copy or in electronic form (subject to an exception in respect of documents delivered before 1 January 2007).
1398. *Section 1091*, again responding to provisions of the amended First Company Law Directive (68/151/EEC), provides that, unless the applicant chooses otherwise, copies of information provided in hard copy must be certified as true copies but electronic copies must not be so certified. *Subsection (3)* provides for the evidential status of certified hard copies in legal proceedings. The Secretary of State has power to prescribe by regulations methods of certification for copies provided by electronic means.

***Section 1092: Issue of process for production of records kept by the registrar***

1399. This section restates section 709(5) of the 1985 Act and provides that no-one can take proceedings against the registrar for production of records without first obtaining the permission of the court.

**Correction or removal of material on the register**

***Section 1093: Registrar’s notice to resolve inconsistency on the register***

1400. This section enables the registrar to notify a company of an apparent inconsistency in the information on the register. An example might be where a document is received notifying the removal of a director where there is no record of his appointment. In such



circumstances, the registrar may give notice to the company requiring them to resolve the inconsistency within 14 days by providing additional or replacement documents. Failure to do so on the company's part is an offence (*subsection (3)*).

***Section 1094: Administrative removal of material from the register***

1401. The registrar has a power to remove from the register information that there was a power but no duty to enter. Under *subsection (4)*, the registrar will need to send a notice to the presenter of the information in question, or to the company to which the material relates, on or before removing the material.
1402. The registrar may not however remove information from the register where registration has had legal consequences for the company as regards certain key events, as set out in *subsection (3)*, including for example its formation or a change of registered office.

***Section 1095: Rectification of register on application to registrar***

1403. This section gives the Secretary of State a power to make regulations under which, following a successful application, the registrar may be required to remove certain kinds of material from the register. The procedure may only cover certain types of document. It may operate in respect of material that derives from something that is invalid or ineffective or from something that was done without the authority of the company (this would cover forms filed without authority); and material that is factually inaccurate or forged or derives from something that is factually inaccurate or forged.
1404. The registrar may only act as a result of an application, and regulations may provide for matters such as who may make the application and what information will need to be provided with it. Where the material removed is of a kind whose registration has had legal consequences, *subsection (5)* provides that interested parties have the right to go to court to obtain an order as to the material's legal effect.

***Section 1096: Rectification of the register under court order***

1405. The registrar is also required to remove material from the register where there is a court order to that effect. The court's rectification power operates in the same circumstances as the registrar's power following regulations made under section 1094. However, the court's power is of general application. For example, there is no limit on the types of document covered. The court may make an order to remove material from the register where its presence on the register has caused damage or may cause damage to the company and the company's interests in removing the material outweigh the interests of others in it continuing to be on the register. The court may make such consequential orders as appear just regarding the period that the information was on the register and the effect of the information being on the register during that period. The court's rectification power does not operate where the court has other rectification powers (e.g. in relation to accounts or charges).

***Section 1097: Powers of court on ordering removal of material from the register***

1406. This section provides that where a court decides that certain information should be removed from the public register, the court may also make directions as to annotations (removing notes that are already there or directing that now new notes appear as a result of its order – or that notes appear in a restricted form) and as to whether its own order should be available for public inspection.

***Section 1098: Public notice of removal of certain material from the register***

1407. [Section 1077](#) provides for the registrar to give public notice that she has received certain documents relating to a company in the Gazette or through some other form of publication. This section creates a corresponding obligation for her to give notice where she removes such material.

***Section 1099: The registrar's index of company names***

1408. This section replaces section 714 of the 1985 Act with changes. It provides for the registrar of companies to keep an index of the names not only of companies incorporated under Companies Acts but also of business entities formed under other legislation and of overseas companies with a UK branch.
1409. The section provides power for regulations to update the categories of business entities that are included in the index. This power is subject to negative resolution procedure.

***Section 1100: Right to inspect index***

1410. This section retains the public right to inspect the index. (It can be searched online, without charge, at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).) The index of company names is important not only as the means of access to the information on the public record of companies incorporated in the United Kingdom but also as the list of names with which a proposed new name is compared to ensure that a new entity is not registered in a name that is the same or similar to that of an existing entity.

***Section 1101: Power to amend enactments relating to bodies other than companies***

1411. This section provides power for the Secretary of State to amend the rules for the names that can be adopted by other business entities on the index of company names. This power is subject to affirmative resolution procedure.
1412. Each category of business entity is subject to its own rules which include various safeguards to minimise the risk of public confusion. These rules differ from those that apply to companies in particular as regards the adoption of a name the same or similar to one already on the index. This lack of reciprocity is a weakness of the existing system which this section provides power to address.

***Section 1102: Application of language requirements***

***Section 1103: Documents to be drawn up and delivered in English***

1413. These sections set out language requirements. Section 1103 sets out the general rule that all documents must be in English (subject to the exceptions in the following sections). Section 1102 provides that this general rule, and its exceptions, apply automatically to documents required under the Companies Acts and Insolvency Act 1986 (and its Northern Ireland equivalent).
1414. There are however a variety of other pieces of legislation which may require companies in certain circumstances to supply material to the registrar. Depending on the nature of the particular requirement and its origin (for example, whether it responds to European Community law), it may or may not be appropriate to apply the language provisions of this Act unchanged to such material. *Subsection (2)* of section 1102 therefore enables the Secretary of State to make regulations to apply specified requirements to documents filed under other legislation.

***Section 1104: Documents relating to Welsh companies***

1415. This section provides an exception to the general rule in section 1103: documents relating to Welsh companies may be drawn up and filed in Welsh (and sometimes only in Welsh). It replaces, without any substantive change, section 710B of the 1985 Act.

***Section 1105: Documents that may be drawn up and delivered in other languages***

1416. This section sets out the circumstances in which documents may be drawn up and filed in other languages, but requires them to be accompanied by a certified translation into English. These documents are listed in *subsection (2)*: agreements affecting the company's constitution, documents relating to group accounts for companies in a group,

and instruments relating to company charges. For some companies, documents of these sorts may well originate in languages other than English, and there may be an interest in ensuring that the original version is registered with the registrar. *Subsection (2)(d)* also allows the Secretary of State to extend the categories of documents to which this section applies.

***Section 1106: Voluntary filing of translations***

1417. The main purpose of this section is to implement aspects of the amended First Company Law Directive (68/151/EEC). It provides that companies may send the registrar certified translations of documents relating to the company. *Subsection (2)* enables the Secretary of State to set out in regulations the languages and documents in relation to which this facility is available. *Subsection (3)* provides that these regulations must as a minimum specify the official languages of the EU, and the documents covered by the amended First Company Law Directive (68/151/EEC) (see section 1078), to ensure compliance with that Directive. However, other languages (and categories of document) may be covered by the regulations.

***Section 1107: Certified translations***

1418. This section provides that a “certified translation” is one that has been certified in a manner prescribed by the registrar. It also provides that, where there is a discrepancy between an original and a translation, the company may not rely on the translation as against a third party, but the third party may rely on the translation (unless the company can show that the third party had knowledge of the original). This implements article 3a.4 of the amended First Company Law Directive (68/151/EEC).

***Section 1108: Transliteration of names and addresses: permitted characters***

1419. This section is a new provision. It deals with the possibility that the name and address of a director or of an overseas company may use a character set (for example, that of Urdu or Japanese) which is different from those with which the bulk of Companies House’s users are familiar. This section restricts the characters that are permitted for names and addresses in a document delivered to the registrar to those specified in regulations. The regulations, which are subject to negative resolution procedure, may also provide for names and addresses to be delivered in their original form.

***Section 1109: Transliteration of names and addresses: voluntary transliteration into Roman characters***

1420. This section is a new provision. It provides for the possibility that the Regulations made under section 1108 may permit letters and characters that are not drawn from the Roman alphabet, for example Greek letters. This section permits these names to be transliterated provided that certain requirements are met.

***Section 1110: Transliteration of names and addresses: certification***

1421. This section is a new provision. It confers power on the Secretary of State to make regulations relating to the certification of the transliteration of names and addresses. The regulations, which are subject to negative resolution procedure, may distinguish between compulsory transliteration under section 1108 and voluntary transliteration under section 1109.

***Section 1111: Registrar’s requirements as to certification or verification***

1422. Documents delivered to the registrar are sometimes required to be certified or verified in some way, for example to the effect that they are an accurate translation. This section allows the registrar to impose requirements as to who must provide the relevant certification or verification. *Subsection (2)* provides that the registrar’s general powers



to specify requirements in relation to documents submitted to her (section 1068) extends to the certification or verification as if it were a separate document.

### ***Section 1112: General false statement offence***

1423. This section provides a new offence of knowingly or recklessly delivering to the registrar information which is misleading, false or deceptive in a material particular. It responds to a recommendation of the CLR (Final Report, paragraph 11.48). This new general offence makes it unnecessary to reproduce specific offences covering false information or false statements in respect of specific legislative requirements that were a feature of the 1985 Act.

### ***Section 1113: Enforcement of company's filing obligations***

1424. This section, which restates section 713 of the 1985 Act, provides the mechanism for ensuring that companies can be compelled to comply with their obligations to file documents or give notices to the registrar. Where a company has defaulted on an obligation, the registrar herself, any member of the company, or any creditor, may serve a notice on the company requiring it to file. If the company continues the breach after 14 days, the applicant may apply to the court for an order requiring the company, or any specified officer of it, to make good the default. The court may order that the costs of the proceedings are borne by the company or its officers. *Subsection (5)* provides that this process does not affect any offence or civil penalty arising from the company's failure to comply with the original requirement.

### ***Section 1114: Application of provisions about documents and delivery***

1425. This section, which replaces section 715A of the 1985 Act, provides that "document" means information recorded in any form, and that "delivering" a document includes forwarding, lodging, registering, producing or submitting it, or giving a notice. It also provides that requirements relating to documents also apply (unless otherwise provided for) to information passed to the registrar in some other way. This caters for the possibility that information may not be in documentary form, for example when it is sent via a link to a website.

### ***Section 1115: Supplementary provisions relating to electronic communications***

1426. This section, which replaces section 710A of the 1985 Act, allows the registrar to require those who choose to file electronically to accept electronic communications from the registrar. It also provides that, where a document is required to be signed by the registrar, or authenticated by seal, she may determine by rules how it is to be authenticated when it is sent by electronic means.

### ***Section 1116: Alternative to publication in the Gazette***

1427. The registrar is required under the 1985 Act to publish certain statutory notices in the Gazette. The objective of that requirement is to ensure that such notices are well-publicised and made available to all those who might wish to take notice of them. The Gazette is a long-established and well-understood mechanism for ensuring such publicity. However, it is possible that developments, in particular in electronic publishing, will mean over time that alternative mechanisms are equally or more appropriate as ways of meeting the underlying policy objective. The CLR envisaged that the registrar should be able to make use of such mechanisms (Final Report, paragraph 11.48). This section therefore provides a power for the Secretary of State to specify alternative means which the registrar may then approve for use. To ensure that any such change is itself well-publicised in advance, *subsection (5)* provides that the change must itself be announced in the Gazette.

***Section 1117: Registrar's rules***

1428. Other provisions in this Part enable the registrar to impose requirements in relation to certain matters. For example, section 1068 enables the registrar to specify the form, authentication and manner of delivery of documents to her; and section 1075 similarly enables her to determine the form and manner of any company instructions as to informal correction of the register. This section provides that the registrar may set out these requirements in registrar's rules. The rules can make different provision for different cases, and may allow the registrar to modify or disapply the rules. The registrar must publicise any rules in a way designed to make sure that those who will need to know about them get to hear of them (which might in practice, for example, be by using the Companies House website); and must make copies of the rules publicly available.

***Section 1118: Payments into the Consolidated Fund***

1429. This section ensures that nothing in this or other companies legislation affects the continued operation in relation to the registrar of the Government Trading Funds Act 1973. (Companies House is and remains a Trading Fund.)

***Section 1119: Contracting out of registrar's functions***

1430. This section largely restates subsections (7) and (8) of section 704 of the 1985 Act. The Deregulation and Contracting Out Act 1994 envisages that some of the registrar's functions may be contracted out. This section provides for this possibility by saying that where a contractor is processing documents the registrar can provide for them to be sent directly to the contractor.

1431. The Deregulation and Contracting Out Act 1994 does not permit the function of making subordinate legislation to be delegated. *Subsection (3)* provides that registrar's rules are not regarded as subordinate legislation for this purpose, permitting the contractor to make rules about form and manner of delivery, for example.

***Section 1120: Application of Part to overseas companies***

1432. This section provides that, except where the context otherwise requires, the provisions of this Part of the Act apply equally to overseas companies.