

# **SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 8: COMPANY FILING REQUIREMENTS**

##### **Annual return reform**

##### ***Section 92: Duty to deliver confirmation statement instead of annual return***

608. This section substitutes a new Part for Part 24 of the Companies Act 2006 (CA 2006). These changes remove the requirement for companies to deliver an annual return. The annual return is a document containing basic company information that was required to be delivered by companies to the registrar of companies on an annual basis.
609. New section 853A(1) introduces a new requirement on all companies to deliver to the registrar a confirmation statement stating that the company has delivered all the information required to be delivered to the register for the confirmation period. Subsection (2) states which duties to deliver information are the subject of the confirmation statement.
610. The confirmation period is the period covered by the confirmation statement. It starts from either the incorporation date of the company or the day after the date specified in the company's last confirmation statement. It ends with the date specified in the confirmation statement (subsection (3)).
611. The confirmation statement must be delivered to the registrar before the end of 14 days after the review period. The review period is the maximum period which can be covered by a confirmation statement. Subsection (5) defines the review period as the 12 month period following either the incorporation date of the company or the day after the end of the previous review period.
612. However, the company has the ability to submit a confirmation statement at any point in the review period. Subsection (6) provides that if the company delivers a confirmation statement before the end of the review period, the next review period of 12 months will be set from the day after the date of confirmation statement.
613. To allow a company to make a confirmation statement in good faith when it is delivering information at the same time, or has shortly before delivered information to the registrar, section 853A (7) allows the company to assume that any documents delivered to the registrar at the same time as, or during the 5 days prior to making the confirmation statement have been accepted by the registrar. A company may not make such an assumption if it has had notification that the information was not properly delivered (section 853A(8)).

614. Section 853B sets out the duties to notify the registrar of a relevant event which a company must confirm have been satisfied as part of the confirmation statement. These are:
- i. details of change of registered office;
  - ii. details of company registers relating to directors, company secretaries (if appropriate) and people with significant control (PSC);
  - iii. any obligations that arise as a result of a decision by a company to keep any of its registers on the central register; and
  - iv. details of where a company keeps company records if it uses a single alternative inspection location.
615. A company will be required to include in the confirmation statement any change in its principal business activities (section 853C).
616. For a company with a share capital, there are additional obligations to be included in the confirmation statement. Such a company must:
- i. deliver a statement of capital where there has been any change since the last statement was delivered to the registrar (section 853D);
  - ii. deliver a statement as to whether shares were admitted to trading and if the company is a DTR5 issuer (i.e. subject to chapter 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules) (section 853E); and
  - iii. in addition, non-traded and certain traded companies must deliver certain information about shareholders, which is set out in sections 853F and 853G respectively.
617. Section 853H requires a company that is not a DTR5 issuer and to which Part 21A CA 2006 does not apply to deliver a statement of this fact to the registrar. This is to enable the registrar and the searcher to see whether a company is required to keep a PSC register under the new Part 21A CA 2006 as inserted by the Act.
618. Section 853I requires a company to send the information in its PSC register (if subject to the provisions in Part 21A CA 2006) when it delivers a confirmation statement to the registrar, if there has been any change since the information was last delivered to the registrar. This information, together with the information as to shareholding, will allow the searcher of the register to build up a complete picture of the ownership and control of the company.
619. Section 853J is a power to make regulations relating to the duties to notify certain shareholder information, the trading status of a company's shares, whether a company is exempt from Part 21A and the PSC register. In particular, the regulations could require companies to file updates to their shareholders and to their register of persons with significant control at specified intervals, which might not necessarily coincide with the confirmation statement. The power also allows for regulations to provide for offences if a company does not provide the specified information. Any regulations made under this power are subject to the affirmative resolution procedure.
620. Section 853K gives the Secretary of State power to make regulations which amend or repeal the information required to be included in the confirmation statement, and may make provisions for exceptions. This section derives from what was section 857 CA 2006, which gave the same power to make regulations amending the requirements of the annual return. Any regulations made under this power are subject to the negative resolution procedure, unless the regulations add obligations to the confirmation statement, in which case the regulations will be subject to the affirmative resolution procedure.

621. If the company does not submit a confirmation statement prior to the end of the 12 month review period the company has 14 days following the end of the period to submit its confirmation statement (s853L(1)). If the company fails to do this, the company and any company officers in default will commit an offence (section 853L(2)). The offence continues until the confirmation statement is delivered (section 853L(3)). Section 853L(4) ensures that directors and secretaries are able to use a defence which proves that the individual took all reasonable steps to avoid the continuation of the offence.

***Section 93: Section 92: related amendments***

622. This section makes a number of consequential amendments which result from the changes made to the Companies Act 2006 in section 92.
623. Amendments to section 9 require companies to supply details of their principal activities at the time of incorporation, and provide that the prescribed classification system (as currently applies for the purposes of the annual return) should be used.
624. The amendment made to section 108 enables a private company to rely on the last statement of capital delivered to Companies House if no changes have been made rather than supplying a new statement of capital when re-registering as unlimited.
625. Subsections (5) and (6) remove specific references to the annual return and amend them to appropriate alternatives relevant to the new system for confirming that all information has been delivered to the registrar.