

# **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.

### **Additional information on the register**

#### ***Section 94: Option for companies to keep information on central register***

626. The Companies Act 2006 (“CA 2006”) requires companies to keep and maintain private registers containing the details of directors, directors’ residential addresses, members and secretaries. The Act also contains a new requirement to keep and maintain a register of people with significant control.
627. [Section 94](#) gives effect to Schedule 5 which amends the CA 2006 to give private companies the option of keeping the information on the registers of members, directors, directors’ residential addresses and secretaries on the register under section 1080 of the CA 2006 (“the public register”) instead, and no longer keeping and maintaining these private registers. Equivalent provisions in relation to the register of people with significant control are in Schedule 3.

#### ***Schedule 5: Option to keep information on central register***

628. [Schedule 5](#) inserts new provisions into the CA 2006 containing provisions to enable private companies to only keep certain information on the public register instead of in a private company register.

### **Part 1 – creation of the option**

#### **Register of members**

629. [Paragraph 3](#) inserts a new Chapter 2A into Part 8 of the CA 2006. The provisions in new Chapter 2A (new sections 128A to 128K) set out the rules which allow private companies to keep information on the public register instead of the register of members.
630. New section 128B provides that a private company may elect to keep its register of members on the public register. All members must assent to the election (subsection (2)). Notice of an election must be given to the registrar:

- i. On incorporation, with the documents required to be delivered on incorporation and any additional information that would otherwise be required to be entered in the register of members (subsection (4)); or
  - ii. Post-incorporation, with a statement that all members have assented to the election and, if the company had kept any overseas branch registers, that these have been discontinued.
631. The company must provide all the information that must be contained in the register of members at the date of the election that is current at that date, that is, particulars of the members as at the time of the notice (subsections (5) and (10)). It must provide any updated information in the event of any change in the details in the register of members between the time the election is delivered to the registrar and the time the election takes effect (subsection (6)). If the register of members is rectified, the company must update the public register as well (subsection (7)). It is an offence for a company not to comply with this duty (subsections (8) and (9)).
632. New section 128C provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).
633. New section 128D sets out the effects of an election on a company's obligations to maintain a register of members. During the period an election is in force, a company does not have to maintain a register of members (subsection (2)). A company must continue to keep the register that it was required to hold prior to the election ("the historic register"), but it need not update that register to reflect subsequent changes whilst the election is in force (subsection (3)). The current rights in the CA 2006 for a person to inspect and require copies of the register of members continue in respect of the historic register (subsection (5)). The company must place a note in the historic register that an election is in force and that up to date information about the members can be found on the public register (subsection (6)). A company that does not place such a note in the historic register commits an offence (subsection (7)).
634. New section 128E imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise be put onto the register of members (subsection (2)). However, subsection (3) provides that the company does not have to deliver information relating to the date a person becomes a member of the company where this date will be the date of registration by the registrar (under the amendments to section 1081 contained in paragraph 31). In this case, the company must indicate to the registrar that the date to be recorded is the date of registration (subsection (5)). It is an offence for a company not to comply with this duty (subsections (6) and (7)).
635. New section 128F provides a right for a person who has inspected or requested a copy of material on the public register that would otherwise be on the register of members to ask the company to confirm that all the information the company is required to deliver has in fact been delivered (subsection (1)). It is an offence for a company not to respond to this request (subsections (2) and (3)). This is the equivalent to the rights of a person to obtain information about the state of the register in section 120 of the CA 2006.
636. New section 128G provides a power to the court to order rectification of the material on the register. The court may act where a person has either been included, or not included, as a member of the company without sufficient cause; or where the company has failed, or has unreasonably delayed, in notifying the registrar that a person has become, or ceased to be, a member of the company (subsection (1)). This is equivalent to the power of the court to rectify the register of members in section 125 of the CA 2006.
637. New section 128H provides that the public register is *prima facie* evidence of material that would otherwise have been on register of members if an election had not been made

(subsection (1)). This is equivalent to section 127 of the CA 2006. Section 127 still applies to information sent in as part of the election (subsection (2)).

638. New section 128I sets out the time limit for claims against the company in relation to material that has, or has not been delivered to the registrar. This is equivalent to section 128 of the CA 2006.
639. New section 128J deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)). The withdrawal is effective on registration by the registrar (subsection (3)). On withdrawal, the obligations in Chapter 2 of the CA 2006 to maintain a register of members apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election, a company must enter in its register of members all the information relating to matters that are current that is required to be contained in the register. The company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a member during the election period). The company must note on the register of members that an election has been withdrawn and that information about members in the period when the election was in force can be found on the public register (subsection (6)).
640. New section 128K gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

### **Register of overseas members**

641. [Paragraph 4](#) provides that a company cannot keep information about its members on the public register if it is also keeping an overseas branch register.

### **Register of directors and register of directors' residential addresses**

642. [Paragraph 7](#) inserts new sections 167A to 167F into the CA 2006 setting out the rules which allow private companies to keep information on the public register instead of the register of directors and/or the register of directors' residential addresses.
643. New section 167A provides that a private company may elect to hold the register of directors and/or the register of directors' residential addresses on the public register.
644. New section 167B provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).
645. New section 167C provides that, during the period when an election is in force, a company does not have to keep a register of directors and/or the register of directors' residential addresses.
646. New section 167D imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise have to be notified to the registrar under section 167 (subsection (2)). It is an offence for a company not to comply with this duty (subsections (4) and (5)).
647. New section 167E deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)), which takes effect on registration by the registrar (subsection (3)). On withdrawal, the obligations in sections 162, 165 and 167 to maintain a register and notify the registrar of changes apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election a company must enter in its register all the information relating to matters that are current that is required to be contained in the register. However, a company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a director during the election period).

648. New section 167F gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

### **Register of secretaries**

649. [Paragraph 12](#) inserts new sections 279A to 279F into the CA 2006 setting out the rules which allow private companies to keep information on the public register instead of the register of secretaries.
650. New section 279A provides that a private company may elect to hold the register of secretaries on the public register.
651. New section 279B provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).
652. New section 279C provides that, during the period when an election is in force, a company does not have to keep a register of secretaries.
653. New section 279D imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise be notified to the registrar under section 276 (subsection (2)). It is an offence for a company not to comply with this duty (subsections (4) and (5)).
654. New section 279E deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)), which takes effect on registration by the registrar (subsection (3)). On withdrawal, the obligations in sections 275 and 276 to maintain a register of secretaries and notify the registrar of changes apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election a company must enter in its register all the information relating to matters that are current that is required to be contained in the register. However, a company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a secretary during the election period).
655. New section 279F gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

### **Part 2 – related amendments**

656. [Paragraphs 11 to 34](#) make a number of consequential amendments which result from the changes made to CA 2006 in Part 1 of the Schedule.
657. The amendment made to section 1068 enables the registrar to require a document delivered in or following an election to keep the register of members on the public register to be delivered electronically.
658. The amendment to section 1081 requires the registrar to annotate the public register to show the date of registration of the following information:
- i. the date a person is registered as a member;
  - ii. the date when membership of a limited company increases from one member; and
  - iii. the date a person ceases to become a member and the date when a company becomes a single member company (where this information is not provided by the company).

***Section 95: Recording of optional information on register***

651. This section inserts new section 1084A into the Companies Act 2006 to give a power to the Secretary of State to make regulations to enable companies voluntarily to deliver certain categories of information to the registrar of companies. This information, which will be additional to the information that companies are statutorily required to deliver to the registrar, will then be made publicly available by the registrar in accordance with section 1080 of the Companies Act 2006.
652. Regulations made under new section 1084A may include requirements on companies in relation to keeping this optional information up to date and the consequences if companies fail to do this. The regulations will be subject to the affirmative resolution procedure.

**Directors' dates of birth**

***Section 96: Protection of information about a person's date of birth***

653. This section amends section 1087 and inserts new complementary sections 1087A and 1087B in the Companies Act 2006. The section requires the registrar to omit the "day" of the date of birth of company directors and people with significant control over a company from the material on the register available for public inspection. The "month and year" will still be available for public inspection on the register.
654. Companies will still be required to send the registrar full details of the dates of birth of their directors and people with significant control. This information will remain available for inspection on the company's own register (unlike directors' usual residential addresses). The day element will be suppressed from public inspection on the register, except in certain situations (new section 1087A(4)):
- i. When a private company, or subscribers wishing to form a private company, make an election to hold the company's register of directors or register of people with significant control on the public register. In such instances the public register will contain the full date of birth that would otherwise be available on inspection of the company's own register; and
  - ii. Where the document containing the date of birth information was registered by the registrar before section 94 comes into force.
655. The registrar must not disclose date of birth information to third parties, other than as permitted by new section 1087B. New section 1087B allows the registrar to disclose the full date of birth information to public authorities specified under regulations made by the Secretary of State and credit reference agencies. Subsection (3) applies subsections 243(3) to (8) of the Companies Act 2006 ('Permitted use or disclosure by the registrar') for the purposes of subsection (2) which enables the Secretary of State to make further provision in relation to the discharge of a person's full date of birth in regulations, including specifying conditions for the disclosure.

**Statements of capital etc**

***Section 97: Contents of statements of capital***

656. The statement of capital is a written statement, required by the Companies Act 2006, which gives a snapshot of a company's share capital. Companies are required to produce a statement of capital at particular times, mainly where the share capital is altered. This section gives effect to the changes to the requirements for a company's statement of capital contained in Schedule 6.



***Schedule 6: Contents of statements of capital***

657. **Schedule 6** removes the requirement for the statement of capital to include the amount paid up and unpaid on each share. It also inserts a requirement for the statement of capital to include the aggregate amount unpaid on the total number of shares.

***Section 98: Public companies: information about aggregate amount paid up on shares***

658. This section amends the Companies Act 2006 to require companies to state the aggregate amount paid up on the shares of the company in certain circumstances.
659. Subsections (2) and (3) set out the circumstances where such a statement is required:
- i. on an application by a private company to re-register as a public company; and
  - ii. on an application by a public company for a trading certificate.
660. Subsection (4) provides that the statements provided as a result of subsections (2) and (3) must be published.

**Registered office disputes**

***Section 99: Address of company registered office***

661. The Companies Act 2006 (CA 2006) requires a company to have a registered office. The registered office is the company's address for service and is used by the registrar of companies for official communications.
662. Subsection (1) of this section inserts a new section 1097A into the CA 2006. The new section gives the Secretary of State a power to make regulations under which, following a successful application, the registrar of companies will be required to change the registered office address of a company, where the registrar is satisfied that the company is not authorised to use its current address.
663. Upon a successful application, the registrar must change the registered office to a "default address" of the registrar's choosing. Under subsection (3) of new section 1097A, the regulations may specify such issues as who may make an application, how an application may be made, in what time period and how an application may be determined (including the evidence the registrar may rely on).
664. Subsection (5) of new section 1097A sets out particular provisions, which may be included in the regulations, to deal with the operation of a default address. This includes suspension of the company's obligations relating to trading disclosures and the inspection of company records whilst its registered office address is the default address provided for by the registrar. Subsection (6) provides that either the applicant or the company may appeal the outcome of an application to the court; under subsection (7) the court must direct the registrar to register whatever address for the company the court considers appropriate.
665. Section 1087 of the CA 2006 specifies material which must not be made available by the Registrar for public inspection. Subsection (2) of this section amends section 1087, so that any application, or other document (apart from a court order or direction), delivered to the registrar in relation to a dispute about a registered office address will not be available for public inspection.



## **Director disputes**

### ***Section 100: Company filing requirements: consent to act as director or secretary***

- 666. Companies are required to notify the registrar of companies within 14 days of the appointment of a person as a director or company secretary. This notification must currently be accompanied by consent by the person to act in that capacity.
- 667. This section amends the Companies Act 2006 to replace the requirement for this consent to act with a requirement for the company or, in the case of the formation of a new company, the subscribers to the memorandum of association, to make a statement that the person has consented to act.
- 668. Subsection (2) applies this to proposed directors and secretaries on the formation of a company; subsection (3) applies this to proposed secretaries where a private company re-registers as a public company. Subsections (4) and (5) apply this to directors and secretaries appointed post formation.

### ***Section 101: Registrar's duty to inform new directors of entry in register***

- 669. This section inserts a new section 1079B into the Companies Act 2006. This imposes a duty on the registrar of companies to send a notice to newly appointed directors as soon as reasonably practicable after the appointment has been registered.
- 670. The contents of the notice are set out in subsection (3) of new section 1079B. The notice must state that the registrar has been notified of the director's appointment and must include such information about the role and duties of a director (or details of where this information can be found) as the registrar is directed to include by the Secretary of State.

### ***Section 102: Removal from register of material about directors***

- 671. This section amends section 1095 of the Companies Act 2006 to provide a new procedure for removing material about directors from the public register.
- 672. [Section 1095](#) currently provides a means of removing material from the public register. The [Registrar of Companies and Applications for Striking Off Regulations \(SI 2009/1803\)](#), made under section 1095, allow specified persons to make applications to the registrar to remove inaccurate information, or any information deriving from anything invalid or ineffective, from the register. If any valid objection to an application is made, the registrar must reject the application.
- 673. The new subsections 1095(4A) to (4D) replace the current section 1095 mechanism in relation to any person appearing on the public register as a director who wishes to be removed. The person, or someone acting on the person's behalf, must apply to the registrar, stating that the person did not consent to act as a director. If the company does not respond to the registrar within a specified timeframe stating, with the necessary evidence, that the person did consent to the appointment, the registrar will effect the removal.
- 674. An application may be made under the new subsection 1095(4A) by, or on behalf of, a director appointed on incorporation notwithstanding the fact that the director is deemed to have been appointed as from the date of incorporation under section 16(6) of the CA 2006.

## **Accelerated strike-off**

### ***Section 103: Reduction in notice periods etc for striking off companies***

- 675. This section amends Chapter 1 of Part 31 of the Companies Act 2006 (CA 2006). The section reduces the period after which the registrar may strike off (remove) a company from the register.

676. Under section 1000 of CA 2006 the registrar may only strike off a company if he has reasonable cause to believe it is not carrying on business or is not in operation. Before doing so, the registrar must communicate their intention to strike the company from the register and publish notice of proposed strike off in the Gazette. This entire process takes approximately 6 months and provides the opportunity for the company or third parties to object to the proposed strike off.
677. The amendments made to section 1000 CA 2006 by subsection (2) of this section reduces the time the registrar must wait before sending additional communications to the company from “1 month” to “14 days”, and also enables the registrar to strike off a company 2 months after publication of notice in the Gazette rather than the current 3 months. The combined effect of these changes will be to reduce the period it takes the registrar to strike off a company from approximately 6 to 4 months.
678. Subsection (3) and (4) also accelerate the timescales for striking off a company under sections 1001 CA 2006 (duty on registrar to act in case of company being wound up) and section 1003 CA 2006 (striking off on application by a company). In each of those sections, the registrar must cause notice to be published in the Gazette before striking the company off. The amendments to sections 1001 and 1003 CA 2006 reduce the notice period from 3 months to 2 months.
679. Subsections (6) to (8) ensure that the new timescales only apply to procedures initiated after the commencement of the section.