

2009 No. 214

COMPANIES

The Companies (Disclosure of Address) Regulations 2009

Made - - - - *1st February 2009*

Coming into force - - *1st October 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 243(2), (3), (4), (5) and (6), 1088(1), (2), (3) and (5), and 1292(1) and (4) of the Companies Act 2006(a).

In accordance with sections 1088(6), 1290 and 1292(4) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Disclosure of Address) Regulations 2009 and come into force on 1st October 2009.

(2) In these Regulations—

“the Act” means the Companies Act 2006 and, unless the context otherwise requires, any reference to a numbered section is to a section so numbered in that Act;

“the 1985 Act” means the Companies Act 1985(b);

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(c);

“confidentiality order” means an order under section 723B of the 1985 Act(d) (confidentiality orders);

“former name” means a name by which an individual was formerly known and which has been notified to the registrar under section 10 (documents to be sent to the registrar) or section 288 (register of directors and secretaries) of the 1985 Act, or Article 21 or 296 of the 1986 Order, or section 12 (statement of proposed officers) or section 167 (duty to notify registrar of changes) of the Act;

(a) 2006 c.46. Section 1292(4) of the Companies Act 2006 provides that any provision which may be made by regulations under that Act subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

(b) 1985 c.6.

(c) S.I. 1986/1032 (N.I. 6).

(d) Section 723B was inserted by section 45 of the Criminal Justice and Police Act 2001 (c.16).

“limited liability partnership” means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000(a) or Limited Liability Partnerships Act (Northern Ireland) 2002(b);

“name” means a person’s Christian name (or other forename) and surname, except that in the case of—

(a) a peer; or

(b) an individual usually known by a title,

the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them;

“permanent representative” means an individual who was a permanent representative for the purposes of sections 723B and 723C (effect of confidentiality orders) of the 1985 Act(c);

“police force” means a police force within the meaning of section 101(1) of the Police Act 1996(d) (interpretation), section 50 of the Police (Scotland) Act 1967(e) (meaning of police area, etc) or section 1 of the Police (Northern Ireland) Act 2000(f) (name of the police in Northern Ireland);

“relevant body” means any police force and any other person whom the registrar considers may be able to assist in answering a question referred to that person by the registrar under these Regulations;

“relevant organisation” means the Government Communications Headquarters, the Secret Intelligence Service, the Security Service or a police force;

“section 243 applicant” means an individual by whom or in respect of whom a section 243 application has been made but in respect of which application the registrar either has not made a determination, or has made a determination, not being a section 243 decision, and any appeal to the court in respect of that application under regulation 14 has not been determined by the court;

“section 243 application” means an application under section 243(4) (permitted use or disclosure by the registrar) for the purpose of requiring the registrar to refrain from disclosing protected information relating to a director to a credit reference agency;

“section 243 beneficiary” means—

(a) an individual who has made a section 243 application in respect of which a section 243 decision has been made; or

(b) an individual on whose behalf a company or a subscriber to a memorandum of association has made a section 243 application in respect of which a section 243 decision has been made; or

(c) an individual in relation to whom a confidentiality order was in force immediately before 1st October 2009 and who, by paragraph 37 of Schedule 2 to the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008(g) is treated as having made a section 243 application in respect of which a section 243 decision has been made;

“section 243 decision” means a determination by the registrar on a section 243 application in favour of the applicant;

“section 1088 application” means an application under section 1088 (application to registrar to make address unavailable for public inspection) for the purpose of requiring the registrar to make an address on the register unavailable for public inspection;

(a) 2000 c.12.

(b) 2002 c.12 (N.I.).

(c) Sections 723B and 723C were inserted by section 45 of the Criminal Justice and Police Act 2001.

(d) 1996 c.16.

(e) 1967 c.77.

(f) 2000 c.32.

(g) S.I. 2008//2860 (C. 126).

“section 1088 beneficiary” means a person who has made a section 1088 application in respect of which a section 1088 decision has been made;

“section 1088 decision” means a determination by the registrar on a section 1088 application in favour of the applicant;

“specified public authority” means any public authority specified in Schedule 1 to these Regulations; and

“working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971(a) in England and Wales.

PART 2

DISCLOSURE OF PROTECTED INFORMATION

Permitted disclosure by the registrar to specified public authorities

2.—(1) The registrar may disclose protected information to a specified public authority where the conditions specified in paragraphs 2 and 3 of Schedule 2 are satisfied.

(2) A specified public authority shall deliver to the registrar such information or evidence as he may direct for the purpose of enabling him to determine in accordance with these Regulations whether to disclose protected information.

(3) The registrar may require such information or evidence to be verified in such manner as he may direct.

(4) The specified public authority must inform the registrar immediately of any change in respect of any statement delivered to the registrar pursuant to Schedule 2 or information or evidence provided for the purpose of enabling the registrar to determine whether to disclose protected information.

(5) The public authorities specified for the purposes of section 243(2) are set out in Schedule 1 to these Regulations.

Permitted disclosure by the registrar to credit reference agencies

3.—(1) Subject to regulation 4, the registrar may disclose protected information to a credit reference agency where the conditions specified in paragraphs 6 to 10 of Schedule 2 are satisfied.

(2) The registrar may rely on a statement delivered to him by a credit reference agency under paragraph 10 of Schedule 2 as sufficient evidence of the matters stated in it.

(3) Notwithstanding paragraph (2), a credit reference agency shall deliver to the registrar such information or evidence in addition to the statement required by paragraph 10 of Schedule 2 as he may direct for the purpose of enabling him to determine in accordance with these Regulations whether to disclose protected information.

(4) The registrar may require such information or evidence to be verified in such manner as he may direct.

(5) The credit reference agency must inform the registrar immediately of any change in respect of any statement delivered to the registrar pursuant to Schedule 2 or information or evidence provided for the purpose of enabling the registrar to determine whether to disclose protected information.

(a) 1971 c.80.

Registrar to refrain from disclosure of protected information

4. The registrar shall refrain from disclosing protected information to a credit reference agency if such information relates to a section 243 beneficiary or a section 243 applicant.

Application under section 243 by an individual

5.—(1) A section 243 application may be made to the registrar by an individual who is, or proposes to become, a director.

(2) The grounds on which an application under paragraph (1) may be made are that the individual making the application—

- (a) considers that there is a serious risk that he, or a person who lives with him, will be subjected to violence or intimidation as a result of the activities of at least one of—
 - (i) the companies of which he is, or proposes to become, a director;
 - (ii) the companies of which he was a director;
 - (iii) the overseas companies of which he is or has been a director, secretary or permanent representative; or,
 - (iv) the limited liability partnerships of which he is or has been a member; or
- (b) is or has been employed by a relevant organisation.

(3) The application shall—

- (a) contain—
 - (i) a statement of the grounds on which the application is made;
 - (ii) the name and any former name of the applicant;
 - (iii) the date of birth of the applicant;
 - (iv) the usual residential address of the applicant;
 - (v) where the registrar has allocated a unique identifier to the applicant, that unique identifier;
 - (vi) the name and registered number of each company of which the applicant is, or proposes to become, a director;
 - (vii) where the grounds of the application are those described in paragraph (2)(a)(ii), (iii) or (iv), the name and registered number of the company, overseas company or limited liability partnership; and
- (b) be accompanied by evidence which—
 - (i) where the grounds of the application are those described in paragraph (2)(a) supports the applicant's statement of the grounds of the application; or,
 - (ii) where the grounds of the application are those described in paragraph (2)(b), establishes that the applicant is or has been employed by a relevant organisation.

(4) The registrar may refer to a relevant body any question relating to an assessment of—

- (a) where the grounds of the application are those described in paragraph (2)(a), the nature and extent of any risk of violence or intimidation considered by the applicant to arise in relation to himself, or to a person who lives with him; or
- (b) where the grounds of the application are those described in paragraph (2)(b), whether the applicant is or has been employed by a relevant organisation.

(5) The registrar shall determine the application and send the applicant to his usual residential address, as stated in his application, notice of his determination on the section 243 application within five working days of that determination being made.

Application under section 243 by a company

6.—(1) A section 243 application may be made to the registrar by a company on behalf of any of its directors who are individuals.

(2) The grounds on which an application under paragraph (1) may be made are that the company making the application considers that there is a serious risk that the director on behalf of whom the application is made, or a person who lives with that director, will be subjected to violence or intimidation as a result of the activities of the company making the application.

(3) The application shall—

(a) contain—

- (i) a statement of the grounds on which the application is made;
- (ii) the name and registered number of the applicant;
- (iii) the name and any former name of each director on behalf of whom the application is made;
- (iv) the date of birth of each such director;
- (v) the usual residential address of each such director;
- (vi) where the registrar has allocated a unique identifier to any such director, that unique identifier;
- (vii) the name and registered number of each company of which each such director is a director; and

(b) be accompanied by evidence which supports the applicant's statement of the grounds of the application.

(4) The registrar may refer to a relevant body any question relating to an assessment of the nature and extent of any risk of violence or intimidation considered by the applicant to arise in relation to its directors on behalf of whom the application is made or to persons who live with those directors as a result of any of its activities.

(5) The registrar shall determine the application and send—

- (a) the applicant, to its registered office; and
- (b) each director on behalf of whom the application was made, to his usual residential address as stated in the application,

notice of his determination on the section 243 application within five working days of that determination being made.

Application under section 243 by a subscriber to a memorandum of association

7.—(1) A section 243 application may be made to the registrar by a subscriber to a memorandum of association on behalf of any of the proposed directors of a proposed company who are individuals.

(2) The grounds on which an application under paragraph (1) may be made are that the subscriber making the application considers that there is a serious risk that the proposed directors of the proposed company on behalf of whom the application is made, or persons who live with them, will be subjected to violence or intimidation as a result of the proposed activities of that proposed company.

(3) The application shall—

(a) contain—

- (i) a statement of the grounds on which the application is made;
- (ii) the name of the applicant;
- (iii) the address of the applicant;
- (iv) the name of the proposed company;

- (v) the name and any former name of each of the proposed directors on behalf of whom the application is made;
 - (vi) the date of birth of each such proposed director;
 - (vii) the usual residential address of each such proposed director;
 - (viii) the name and registered number of each company of which each such proposed director is a director; and
- (b) be accompanied by evidence which supports the applicant's statement of the grounds of the application.

(4) The registrar may refer to a relevant body any question relating to an assessment of the nature and extent of any risk of violence or intimidation considered by the applicant to arise in relation to its proposed directors on behalf of whom the application is made or to persons who live with those proposed directors as a result of any of the proposed activities of the proposed company.

(5) The registrar shall determine the application and send—

- (a) the applicant, to the address stated in the application, and
- (b) each of the proposed directors on behalf of whom the application was made, to their usual residential address as stated in the application,

notice of his determination on the section 243 application within five working days of that determination being made.

Matters relating to a section 243 application

8.—(1) For the purpose of regulations 5, 6 and 7 the registrar may direct that additional information or evidence should be delivered to him, what such information or evidence should be and how it should be verified.

(2) The registrar shall not make available for public inspection—

- (a) any section 243 application; or
- (b) any documents provided in support of that application.

(3) For the purpose of determining any section 243 application the registrar may accept any answer to a question referred in accordance with regulation 5(4), 6(4) or 7(4) as providing sufficient evidence of—

- (a) the nature and extent of any risk relevant to—
 - (i) where the grounds of the application are those described in regulation 5(2)(a), the applicant;
 - (ii) where the grounds of the application are those described in regulation 6(2), the directors on behalf of whom the application is made;
 - (iii) where the grounds of the application are those described in regulation 7(2), the proposed directors on behalf of whom the application is made, or to persons who live with any of the above individuals, or
- (b) whether an applicant is or has been employed by a relevant organisation.

PART 3

APPLICATION TO MAKE AN ADDRESS UNAVAILABLE FOR PUBLIC INSPECTION UNDER SECTION 1088

Application under section 1088 to make an address unavailable for public inspection by an individual

9.—(1) A section 1088 application may be made to the registrar by an individual whose usual residential address was placed on the register either—

- (a) under section 10 (documents to be sent to registrar)(a), 288 (register of directors and secretaries)(b), 363 (duty to deliver annual returns)(c), 691 (documents to be delivered to registrar)(d) or 692 (registration of altered particulars)(e) of or paragraph 2 of Schedule 21A(f) to the 1985 Act;
- (b) under Article 21, 296, 371, 641 or 642 of the 1986 Order(g); or
- (c) as a service address under section 12 (statement of proposed officers), 167 (duty to notify registrar of changes of director's particulars) or 855 (contents of annual return) of the Act,

in respect of that usual residential address where it was placed on the register on or after 1st January 2003.

(2) The grounds on which an application under paragraph (1) may be made are that the individual making the application—

- (a) considers that there is a serious risk that he, or a person who lives with him, will be subjected to violence or intimidation as a result of the activities of at least one of the companies of which—
 - (i) he is, or proposes to become, a director; or
 - (ii) he is not a director but of which he has been at any time a director, secretary or permanent representative;
- (b) he is or has been employed by a relevant organisation;
- (c) is a section 243 beneficiary.

(3) The application shall—

- (a) contain—
 - (i) a statement of the grounds on which the application is made;
 - (ii) the name and any former name of the applicant;
 - (iii) the usual residential address of the applicant that is to be made unavailable for public inspection;
 - (iv) an address for correspondence in respect of the application;
 - (v) the name and registered number of each company of which the applicant is or has been at any time since 1st January 2003 a director, secretary or permanent representative;
 - (vi) the service address which is to replace that usual residential address on the register;

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- (a) Section 10 was amended by the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912).
 - (b) Section 288 was amended by the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912).
 - (c) Section 363 was substituted by section 139(1) of the Companies Act 1989 (c.40).
 - (d) Section 691 was amended by the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912). Section 691(2), (3) and (4) was substituted by section 145 of the Companies Act 1989.
 - (e) Section 692 was amended by the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 (S.I. 2002/912).
 - (f) Schedule 21A was inserted by the Overseas Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992 (S.I. 1992/3179) and amended by S.I. 2002/912.
 - (g) Article 371 was substituted by Article 74 of, and Article 641 was amended by Article 78 of and paragraph 6 of Schedule 5 to, the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)).

- (vii) subject to paragraph (4)—
 - (aa) the date of birth of the applicant;
 - (bb) the name of each company of which the applicant proposes to become a director; and
 - (cc) where the registrar has allotted a unique identifier to the applicant, that unique identifier; and
 - (b) be accompanied by evidence which—
 - (i) where the grounds of the application are those described in paragraph (2)(a), supports the applicant’s assertion that his application falls within the grounds stated in his application;
 - (ii) where the grounds of the application are those described in paragraph (2)(b), establishes that the applicant is or has been employed by a relevant organisation;
 - (iii) where the grounds of the application are those described in paragraph (2)(c), establishes that he is a section 243 beneficiary.
- (4) The application need not contain the information described at paragraph (3)(a)(vii) where the application is delivered to the registrar on the same day as the applicant delivers a section 243 application.
- (5) The registrar may refer to a relevant body any question relating to an assessment of—
- (a) the nature and extent of any risk of violence or intimidation considered by the applicant to arise in relation to himself, or a person who lives with him, as a result of the activities of any company of which he is or proposes to become a director or has been at any time a director, secretary or permanent representative; or
 - (b) whether the applicant is or has been employed by a relevant organisation.
- (6) The registrar shall determine the application and send the applicant to the address for correspondence stated in his application, notice of his determination on the section 1088 application within five working days of that determination being made.

Application under section 1088 to make an address unavailable for public inspection by a company

- 10.—**(1) A section 1088 application may be made to the registrar by a company in respect of the addresses of—
- (a) all of its members and former members whose addresses were contained in—
 - (i) an annual return; or
 - (ii) a return of allotment of shares,
 delivered to the registrar on or after 1st January 2003; or
 - (b) the subscribers to its memorandum of association where that memorandum was delivered to the registrar on or after 1st January 2003.
- (2) The grounds on which an application under paragraph (1) may be made are that the company making the application considers that, as a result of its activities, the availability to members of the public of the addresses described in paragraph (1) creates a serious risk that its members or former members or subscribers, or persons who live at those addresses, will be subjected to violence or intimidation.
- (3) The application shall—
- (a) contain—
 - (i) the name of the applicant and its registered number; and
 - (ii) a statement of the grounds on which the application is made; and
 - (b) be accompanied by evidence—

- (i) which supports the applicant's assertion that its application falls within the grounds stated in its application; or
- (ii) where the court has made an order under section 117(3) (register of members: response to request for inspection or copy) directing the applicant not to comply with a request under section 116 (rights to inspect and require copies), a copy of that order.

(4) The registrar may refer to a relevant body any question relating to the assessment of the nature and extent of any risk of violence or intimidation considered by the applicant to arise in relation to any of its members or former members or subscribers, or persons who live at the addresses described in paragraph (1), as a result of its activities by virtue of the availability to members of the public of particulars of the addresses of such members or former members or subscribers.

(5) The registrar shall determine the application and send the applicant to its registered office notice of his determination on the section 1088 application within five working days of that determination being made.

Application under section 1088 to make an address unavailable for public inspection by a person who registers a charge

11.—(1) A section 1088 application may be made to the registrar by a person who—

- (a) (i) on or after 1st January 2003, registered a charge under Part 12 of the 1985 Act (registration of charges) or Part 13 of the 1986 Order; or
- (ii) has registered a charge under Part 25 of the Act (company charges); and

(b) is not the company which created the charge or acquired the property subject to a charge, in respect of his address delivered to the registrar for the purposes of that registration.

(2) The grounds on which an application under paragraph (1) may be made are that the person making the application considers that there is a serious risk that he, or if applicable his employees, or persons who live with him or his employees, will be subjected to violence or intimidation as a result of the activities of the company which is, or was, subject to the charge.

(3) The application shall—

- (a) contain—
 - (i) a statement of the grounds on which the application is made;
 - (ii) the name of the applicant, and where the applicant is a company, its registered number;
 - (iii) the address of the applicant that is to be made unavailable for public inspection;
 - (iv) the name and registered number of the company which is or was subject to the charge;
 - (v) an address for correspondence with the registrar in respect of the application;
 - (vi) where the applicant is the chargee, the service address which is to replace the address of the applicant on the register; and

(b) be accompanied by evidence which supports the applicant's assertion that there is a serious risk that he or, if applicable, his employees, or persons who live with him or his employees, will be subjected to violence or intimidation as a result of the activities of the company which is or was subject to the charge.

(4) The registrar may refer to a relevant body any question relating to the assessment of the nature and extent of any risk of violence or intimidation considered by the applicant to arise in relation to himself or, if applicable, his employees, or persons who live with him or his employees, as a result of the activities of the company which is or was subject to the charge.

(5) The registrar shall determine the application and send the applicant to the address stated in the application in accordance with paragraph (3)(a)(v) notice of his determination on the section 1088 application within five working days of that determination being made.

Matters relevant to section 1088 applications

12.—(1) For the purpose of regulations 9, 10 and 11 the registrar may direct that additional information or evidence should be delivered to him, what such information or evidence should be and how it should be verified.

(2) For the purpose of determining any section 1088 application the registrar may accept any answer to a question referred in accordance with regulation 9(5), 10(4) or 11(4) as providing sufficient evidence of—

- (a) the nature and extent of any risk relevant to—
 - (i) where the grounds of the application are those described in regulation 9(2)(a), the applicant;
 - (ii) where the grounds of the application are those described in regulation 10(2), the subscribers or members or former members of an applicant; or
 - (iii) where the grounds of the application are those described in regulation 11(2), where the applicant is an individual, the applicant, or any employees of an applicant, or to persons who live with any of the above individuals or, in the case of members, former members or subscribers, to persons who live at their addresses, or
- (b) whether an applicant is or has been employed by a relevant organisation.

Effect of a successful section 1088 application

13.—(1) Where a section 1088 application has been determined in favour of the applicant the registrar shall—

- (a) in the case of an application made under regulation 9(1) or 11(1) make the specified address unavailable for public inspection;
- (b) in the case of an application under regulation 10(1) make all of the members', former members' or subscribers' addresses unavailable for public inspection;
- (c) in the case of a person to whom paragraph 36 of Schedule 2 to the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 applies, make unavailable for public inspection the address referred to in sub-paragraph (1)(a) of that paragraph.

(2) In this regulation “specified address” means the address specified in the application as being the one to be made unavailable for public inspection.

PART 4

MATTERS RELATING TO APPLICATIONS UNDER SECTION 243 AND UNDER SECTION 1088

Appeals

14.—(1) An applicant who has received notice under regulation 5(5), 6(5), 7(5), 9(6), 10(5) or 11(5) that his application has been unsuccessful may appeal to the High Court or, in Scotland, the Court of Session on the grounds that the decision—

- (a) is unlawful;
- (b) is irrational or unreasonable;
- (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(2) No appeal under this regulation may be brought unless the leave of the court has been obtained.

(3) An applicant must bring an appeal within 21 days of the date of the notice or, with the court's permission, after the end of such period, but only if the court is satisfied—

- (a) where permission is sought before the end of that period, that there is good reason for the applicant being unable to bring the appeal in time; or
- (b) where permission is sought after that time, that there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission.

(4) The court determining an appeal may—

- (a) dismiss the appeal; or
- (b) quash the decision,

and where the court quashes a decision it may refer the matter to the registrar with a direction to reconsider it and make a determination in accordance with the findings of the court.

Duration of a section 243 decision or a section 1088 decision

15.—(1) A section 243 decision shall continue to have effect until—

- (a) either—
 - (i) the section 243 beneficiary, or
 - (ii) his personal representative,has notified the registrar in writing that he wishes the section 243 decision to cease to apply; or
- (b) the registrar has made a revocation decision in relation to that beneficiary,

whichever first occurs.

(2) A section 1088 decision shall continue to have effect until the registrar has made a revocation decision in relation to the section 1088 beneficiary.

(3) In this regulation—

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person; and

“revocation decision” in relation to a section 243 decision or a section 1088 decision means a determination by the registrar to revoke that decision in accordance with regulation 16.

Revocation of a section 243 decision or a section 1088 decision

16.—(1) The registrar may revoke a section 243 decision or a section 1088 decision at any time if he is satisfied that the section 243 beneficiary or section 1088 beneficiary, as the case may be, or any other person, in purported compliance with any provision of these Regulations, is found guilty of an offence under section 1112 (general false statement offence) (“a revocation decision”).

(2) If the registrar proposes to make a revocation decision he shall send the beneficiary notice of his intention.

(3) The notice must—

- (a) inform the beneficiary that he may, within the period of 28 days beginning with the date of the notice, deliver representations in writing to the registrar; and
- (b) state that if representations are not received by the registrar within that period, the revocation decision will be made at the expiry of that period.

(4) If within the period specified in paragraph (3) the beneficiary delivers representations as to why the revocation decision should not be made, the registrar shall have regard to the representations in determining whether to make the revocation decision, and shall, within five working days of making his decision, send notice of it to the beneficiary.

(5) Any communication by the registrar in respect of a revocation decision or proposed revocation decision shall be sent to the beneficiary—

- (a) in the case of an individual, to his usual residential address;
 - (b) in the case of a company, to its registered office; or
 - (c) in the case of a partnership, to the address specified in its section 1088 application.
- (6) In this regulation—
- “partnership” includes a limited liability partnership;
 - “section 243 beneficiary” includes where the section 243 decision was made following an application under regulation 6 or 7, the applicant.

1st February 2009

Ian Pearson
Economic and Business Minister,
Department for Business, Enterprise and Regulatory Reform

SCHEDULE 1

Regulation 2

SPECIFIED PUBLIC AUTHORITIES

The Secretary of State;
any Northern Ireland Department;
the Scottish Ministers;
the Welsh Ministers;
the Treasury;
the Commissioners for Her Majesty's Revenue and Customs;
the Bank of England;
the Director of Public Prosecutions;
the Director of Public Prosecutions for Northern Ireland;
the Serious Fraud Office;
the Secret Intelligence Service;
the Security Service;
the Government Communications Headquarters;
the Financial Services Authority;
the Competition Commission;
the Pensions Regulator;
the Panel on Takeovers and Mergers;
the Regulator of Community Interest Companies;
the Registrar of Credit Unions for Northern Ireland;
the Office of Fair Trading;
the Office of the Information Commissioner;
the Charity Commission;
the Charity Commission for Northern Ireland;
the Office of the Scottish Charity Regulator;
the Postal Services Commission;
the Gas and Electricity Markets Authority;
the Northern Ireland Authority for Utility Regulation;
the Gambling Commission;
the Serious Organised Crime Agency;
the Health and Safety Executive;

the Health and Safety Executive for Northern Ireland;

the Food Standards Agency;

the Gangmasters Licensing Authority;

the Security Industry Authority;

a local authority within the meaning of section 54(2) of the Act;

an official receiver appointed under section 399 of the Insolvency Act 1986(a) (appointment, etc, of official receivers);

the Official Receiver for Northern Ireland;

the Crown Office and Procurator Fiscal Services;

a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(b) (meaning of “act as an insolvency practitioner”) or Article 3 of the Insolvency (Northern Ireland) Order 1989(c) (“act as an insolvency practitioner”);

an inspector appointed under Part 14 of the 1985 Act (investigation of companies and their affairs: requisition of documents) or Part 15 of the 1986 Order or a person appointed under regulation 30 of the Open-Ended Investment Companies Regulations 2001(d) (power to investigate) or regulation 22 of the Open-Ended Investment Companies Regulations (Northern Ireland) 2004(e);

any person authorised to exercise powers under section 447 of the 1985 Act(f) (power to require documents and information), or section 84 of the Companies Act 1989(g) (exercise of powers by officers, etc) or Article 440 of the 1986 Order;

any person exercising functions conferred by Part 6 of the Financial Services and Markets Act 2000(h) (official listing) or the competent authority under that Part;

a person appointed to make a report under section 166 (reports by skilled persons) of the Financial Services and Markets Act 2000;

a person appointed to conduct an investigation under section 167 (appointment of persons to carry out general investigations) or 168(3) or (5) (appointment of persons to carry out investigations in particular cases) of the Financial Services and Markets Act 2000(i);

an inspector appointed under section 284 (power to investigate) of the Financial Services and Markets Act 2000;

an overseas regulatory authority within the meaning of section 82 of the Companies Act 1989(j) (request for assistance by overseas regulatory authority);

a police force.

(a) 1986 c.45. Section 399 was amended by section 269 of the Enterprise Act 2002 (c.40).

(b) Section 388 was amended by section 4 of the Insolvency Act 2000 (c.39) and the Insolvency Act (Amendment) (No. 2) Regulations 2002 (S.I. 2002/1240).

(c) S.I. 1989/2405 (N.I. 9).

(d) S.I. 2001/1228.

(e) S.R. (NI) 2004 No 335.

(f) Section 447 was substituted by section 21 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).

(g) 1989 c.40.

(h) 2000 c.8.

(i) Sections 167 and 168 were amended by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/176).

(j) Section 82 was amended by section 79 of the Criminal Justice Act 1993 (c.36), the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649) and the Prospectus Regulations 2005 (S.I. 2005/1433).

CONDITIONS FOR PERMITTED DISCLOSURE

PART 1

Disclosure to specified public authorities

1. Paragraphs 2 and 3 set out the conditions specified for the disclosure of protected information by the registrar to a specified public authority.

2. The specified public authority has delivered to the registrar a statement that it intends to use the protected information only for the purpose of facilitating the carrying out by that specified public authority of a public function (“the permitted purpose”).

3. Subject to paragraph 4, the specified public authority (“the authority”) has delivered to the registrar a statement that it will, where it supplies a copy of the protected information to a processor for the purpose of processing the information for use in respect of the permitted purpose—

- (a) ensure that the processor is one who carries on business in the European Economic Area;
- (b) require that the information is not transmitted outside the European Economic Area by the processor; and
- (c) require that the processor does not disclose the information except to the authority or an employee of the authority.

4. Paragraph 3 does not apply where the specified public authority is the Secret Intelligence Service, Security Service or Government Communications Headquarters.

PART 2

Disclosure to a credit reference agency

5. Paragraphs 6 to 10 set out the conditions specified for the disclosure of protected information by the registrar to a credit reference agency.

6. The credit reference agency—

- (a) is carrying on in the United Kingdom or in another EEA State a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose;
- (b) maintains appropriate procedures—
 - (i) to ensure that an independent person can investigate and audit the measures maintained by the agency for the purposes of ensuring the security of any protected information disclosed to that agency; and
 - (ii) for the purposes of ensuring that it complies with its obligations under the Data Protection Act 1998(a), or, where the agency carries on business in a EEA State other than the United Kingdom, with its obligations under legislation implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October

(a) 1998 c.29.

1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data(a);

- (c) has not been found guilty of an offence under—
 - (i) section 1112 (general false statement offence) of the Act or section 2 of the Fraud Act 2006(b) (fraud by false representation); or
 - (ii) section 47 (failure to comply with enforcement notice) of the Data Protection Act 1998 in circumstances where it has used the protected information for purposes other than those described in sub-paragraphs (a) to (e) of paragraph 7 below.

7. The credit reference agency has delivered to the registrar a statement that it intends to use the protected information only for the purposes of—

- (a) providing an assessment of the financial standing of a person;
- (b) meeting any obligations contained in the Money Laundering Regulations 2007(c) or any rules made pursuant to section 146 of the Financial Services and Markets Act 2000(d) (money laundering rules), or in any legislation of another EEA State implementing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing(e);
- (c) conducting conflict of interest checks required or made necessary by any enactment;
- (d) the provision of protected information to—
 - (i) a public authority specified in Schedule 1 which has satisfied the requirements of paragraphs 2 and 3 of this Schedule; or
 - (ii) a credit reference agency which has satisfied the requirements of this Part of this Schedule; or
- (e) conducting checks for the prevention and detection of crime and fraud.

8. The credit reference agency has delivered to the registrar a statement that it intends to take delivery of and to use the protected information only in the United Kingdom or in another EEA State.

9. The credit reference agency has delivered to the registrar a statement that it will, where it supplies a copy of the protected information to a processor for the purpose of processing the information for use in respect of the purposes referred to in paragraph 7—

- (a) ensure that the processor is one who carries on business in the European Economic Area;
- (b) require that the information is not transmitted outside the European Economic Area by the processor; and
- (c) require that the processor does not disclose the information except to the credit reference agency or an employee of the credit reference agency.

10. The credit reference agency has delivered to the registrar a statement that it meets the conditions in paragraph 6 above.

PART 3

Interpretation of this Schedule

11.—(1) In this Schedule—

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- (a) OJ L 81, 23.11.1995, p. 31.
 - (b) 2006 c.35.
 - (c) S.I. 2007/2157.
 - (d) Section 146 enables the making of rules by the Financial Services Authority in relation to the prevention and detection of money laundering in connection with the carrying on of regulated activities by authorised persons.
 - (e) OJ L 309, 25.11.2005, p. 15.

“processor” means any person who provides a service which consists of putting information into data form or processing information in data form and any reference to a processor includes a reference to his employees; and

“public function” includes—

- (a) any function conferred by or in accordance with any provision contained in any enactment;
- (b) any function conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
- (c) any similar function conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom; and
- (d) any function exercisable in relation to the investigation of any criminal offence or for the purpose of any criminal proceedings.

(2) In this Schedule any reference to—

- (a) an employee of any person who has access to protected information shall be deemed to include any person working or providing services for the purposes of that person or employed by or on behalf of, or working for, any person who is so working or who is supplying such a service; and
- (b) the disclosure for the purpose of facilitating the carrying out of a public function includes disclosure in relation to, and for the purpose of, any proceedings whether civil, criminal or disciplinary in which the specified public authority engages while carrying out its public functions.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the conditions for disclosure of directors' usual residential addresses to public authorities and credit reference agencies under section 243 of the Companies Act 2006 ("the Act"), make provision for applications to the registrar of companies under section 243 of the Act to refrain from disclosing a director's usual residential address to a credit reference agency, and make provision for applications to the registrar of companies under section 1088 of the Act for addresses on the register to be made unavailable for public inspection.

Part 2 of these Regulations applies to protected information as defined in section 240 of the Act.

Regulation 2 and Schedule 1 specify the public authorities to whom the registrar may disclose protected information in accordance with section 243 of the Act.

Regulations 2 and 3 and Schedule 2 specify the conditions for the disclosure of such information to a public authority or credit reference agency.

Regulation 4 provides for the registrar to refrain from disclosing protected information to a credit reference agency in respect of a beneficiary of a successful decision under section 243 or applicant for a section 243 decision.

Regulations 5, 6, 7 and 8—

- (a) make provision as to who may make an application to the registrar under section 243,
- (b) prescribe the grounds for making an application under section 243,
- (c) make provision for the manner of making an application,
- (d) make provision for the evidence to be delivered to the registrar in support of the application, and
- (e) empower the registrar to refer questions to other bodies for the purposes of deciding upon applications.

Part 3 of the Regulations makes provision for an application under section 1088 of the Act for the registrar to make an address on the register unavailable for public inspection.

Regulations 9, 10, 11, 12 and 13 make similar provision in relation to applications under section 1088 to that made in regulations 5 to 8 and make provision as to the effect of a successful application under section 1088.

Part 4 of the Regulations contains provisions relating to both applications and decisions under section 243 and under section 1088.

Regulation 14 provides for appeals to the court against the decision of the registrar rejecting an application.

Regulation 15 determines the duration for which a decision in favour of an applicant shall continue to have effect, and regulation 16 provides that the registrar may revoke a decision under section 243 or 1088 where an offence has been committed under section 1112 of the Act (general false statement offence).

An Impact Assessment in respect of these Regulations has been produced and copies are available from the Company Law and Governance Directorate, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London, SW1H 0ET or on www.berr.gov.uk/bbf/co-act-2006.

STATUTORY INSTRUMENTS

2009 No. 214

COMPANIES

The Companies (Disclosure of Address) Regulations 2009

£5.00