

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Schedule 3: Amendments of remaining provisions of the Companies Act 1985 relating to offences

Part 37: Companies: Supplementary Provisions

Sections 1134 and 1135: Company records

1454. These sections replace sections 722(1) and 723(1) and (2) of the 1985 Act and enable a company to use electronic storage or paper for its records provided that there can be paper printouts of electronic records. Section 1135(1) also enables the contents to be arranged as the directors see fit provided that it is adequately recorded. Section 1138 (duty to take precautions against falsification) also applies if the records are not kept in bound books.

Section 1136: Regulations about where certain company records to be kept available for inspection

1455. This section is a new provision. It provides power for the Secretary of State to make regulations to provide an alternative to the company's registered office as the location for inspection of specified records. The regulations are subject to negative resolution procedure.

Section 1137: Regulations about inspection of records and provision of copies

1456. This section replaces section 723A of the 1985 Act. It allows the Secretary of State to make regulations about the inspection and provision of copies of company records.

Section 1138: Duty to take precautions against falsification

1457. This section replaces section 722(2) and (3) of the 1985 Act. It makes it an offence not to take measures that protect records from falsification or help trace any falsification. This provision applies to records that are not kept in bound books, whether or not they are kept electronically, but does not apply either to companies' copies of the directors' service contracts or to copies of any qualifying third party indemnity provisions benefiting a director.

Section 1139: Service of documents on company

1458. This section replaces section 725 of the 1985 Act. It ensures that there is a place at which a document may be served on companies registered under the Act. It also applies to overseas companies registered in accordance with regulations made under section 1046. Subsection (4) enables court service on a company registered in Scotland or Northern Ireland at the company's principal place of business in England and Wales. (Since this is a provision about court service, the rules on companies registered in England and Wales carrying on business elsewhere in the UK will be found in the relevant legislation

in those parts of the UK.) Subsection (5) makes clear that this section is supplemented by the “company communications provisions” referenced by section 1143.

Section 1140: Service of documents on directors, secretaries and others

1459. This section is a new provision. It ensures that the address on the public record for any director or secretary is effective for the service of documents on that person. Subsection (3) provides that the address is effective even if the document has no bearing on the person’s responsibilities as director or secretary. This provision also applies to the address on the public record of various other persons for whom the Act requires an address on the public record. Subsection (7) similarly makes clear that this section is supplemented by the “company communications provisions” referenced by section 1143.

Section 1141: Service addresses

1460. This section defines “service address” for the purposes of the Companies Acts as an address at which documents may be effectively served and provides a power for regulations to specify conditions with which a service address must comply.

Section 1142: Requirement to give service address

1461. This section is a new provision. It qualifies requirements elsewhere to give an "address". Unless the requirement is for a particular kind of address (say, the usual residential address), the section makes clear that a service address (as defined in the previous Section) is what is required.

Section 1143: The company communications provisions

1462. Section 1143 introduces sections 1144 to 1148 and Schedules 4 and 5. These make new provision for communications with or from companies, typically with their members but also with debenture-holders and others.
1463. The Companies Act 1985 (Electronic Communications) Order 2000 facilitated the use of electronic and website communications in certain contexts, but there has been uncertainty as to whether other provisions under the 1985 Act for information to be communicated ‘in writing’ required the use of paper or could be satisfied by electronic communications. The Act makes new general provision about communications, including electronic and website communications for the Companies Acts as a whole.
1464. The general principle behind the company communications provisions is that companies should be able to use hard copy or electronic communications in all cases. However, these provisions are subject to anything in or under any other enactment, and, as regards communications between companies and Companies House, they are also subject to the provisions of Part 35 of the Act.

Section 1144: Sending or supplying documents or information

1465. This section introduces two Schedules, which apply irrespective of the company’s articles:
- Schedule 4 deals with documents and information sent or supplied to a company;
 - Schedule 5 deals with communications by a company and between companies
1466. Sections 1146 (requirement of authentication), 1148 (interpretation of company communications provisions) and 1168 (hard copy and electronic form and related expressions) contain provisions necessary for the interpretation of Schedules 4 and 5.