

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Chapter 8: Directors' Residential Addresses: Protection from Disclosure

446. Under the 1985 Act (and previous Companies Acts), the usual residential address of every director must be entered on the public record held by:

- the registrar; and
- each company of which he is a director in its register of directors.

Access to the public record held by the registrar is made in a variety of ways, including daily bulk downloading by some subscribers. There is also a public right to inspect companies' registers of directors.

447. There is an exception for directors at serious risk of violence or intimidation, e.g. from political activists and terrorists. Under sections 723B – 723E of the 1985 Act, introduced by the Criminal Justice and Police Act 2001, they may apply for a “confidentiality order”. A director with a confidentiality order provides a single service address in addition to his usual residential address. The service address is entered on the public record; the usual residential address is kept on a secure register to which access is restricted to specified enforcement authorities. The historic record is not affected by the confidentiality order. By October 2006, nearly 11,000 Confidentiality Orders had been issued of which, it is estimated that nearly 7,000 were to directors (certain other individuals, eg partners in Limited Liability Partnerships, are also eligible).

448. The CLR considered it essential that directors' residential addresses be filed with the central register, so that enforcement and regulatory bodies as well as liquidators and, in some circumstances, creditors and shareholders can discover the individual's residential address. However they were concerned that unrestricted public access to directors' residential addresses had been abused. They considered that there should not be any discretion as to whether particular addresses should or should not be placed on the public record. Therefore, while welcoming the introduction of the confidentiality order regime, they recommended **all** directors be given the option of:

- either, as now, providing their residential address for the public record;
- or, providing both a service address and their residential address, with the service address being on the public record and the residential address being on a separate secure register to which access would be restricted. Access to the restricted register would be available to certain public authorities. Other parties, such as members and creditors, should have a right to apply to the court for access to a director's residential address. (Final Report, paragraph 11.46)

449. This Chapter of the Act, together with the provisions on the register of directors' residential addresses in Chapter 1 of this Part, is based on this recommendation. These provisions, which are all new, replace the confidentiality order regime.

Section 240: Protected information

450. This section sets out the information about directors' usual residential addresses, recorded under Chapter 1 of this Part, that will be protected under the new provisions.

Section 241: Protected information: restriction on use or disclosure by company

451. This section provides for the protection that a company must give to the information covered by section 240. It prohibits the company from using or disclosing an individual director's home address without his consent except for communicating with him, or to comply with an obligation to send information to the registrar or when required by a court.

Section 242: Protected information: restriction on use or disclosure by the registrar

452. This section provides for protection by the registrar of information that is covered by section 240. The registrar need only protect information where it is submitted on a form where directors' usual residential addresses are required and entered in the appropriate place. The registrar is not obliged to check all documents submitted to her to ensure that an address has not been inadvertently disclosed. The protection is not retrospective: it does not apply to information on the public record when these provisions come into force. The Act makes separate provision, in section 1088, for removal of addresses from the register in circumstances specified by regulations.

Section 243: Permitted use or disclosure by the registrar

453. This section provides for certain kinds of permitted use or disclosure of protected information, ie directors' home addresses and whether a service address is a home address. *Subsection (1)* provides that the registrar may use the protected information for communicating with the director in question. *Subsection (2)* provides that the registrar may disclose protected information to a public authority or credit reference agency (the definition of the latter is drawn from the Consumer Credit Act 1974) but this should be read with *subsections (3) and (4)*. *Subsection (3)* confers power on the Secretary of State to make regulations specifying conditions that must be met before the registrar may disclose protected information. The regulations may also provide for fees to be paid by the authority or agency seeking the address. *Subsection (4)* provides power to make regulations specifying the circumstances in which an application can be made for a director's address not to be revealed to a credit reference agency.

Section 244: Disclosure under court order

454. This section provides for two circumstances in which the court may require the company to disclose protected information. The first circumstance is that the service address is not effective; the second is that the home address is needed for the enforcement of an order or decree of the court. If the company cannot provide the address, the court may require the registrar to reveal it. *Subsection (3)* provides that the application for the order may be made not only by a liquidator, creditor or member of the company but also by anyone with sufficient interest.

Section 245: Circumstances in which registrar may put address on the public record.

455. This section provides that if a service address is not effective, then the home address can be put on the public record. It provides for the registrar to send a warning notice, with a specified period for representations before the intended action, both to the director and to every company of which he is a director. The registrar must take account of any representations made within the specified period in deciding whether to proceed as provided by the next section.

Section 246: Putting the address on the public record

456. This section provides that, if the registrar is putting a director's home address on the public record under the previous section, then the registrar updates the public record as if she had been notified that the service address is the director's home address. She must also notify both the director and every company of which he/she is a director. The companies must each put the director's home address on its register of directors as his/her service address. And for the next five years, the director may not register a service address other than his usual residential address.