

**EXPLANATORY MEMORANDUM TO
THE COMPANIES ACT 1985 (ANNUAL RETURN) AND COMPANIES (PRINCIPAL
BUSINESS ACTIVITIES) (AMENDMENT) REGULATIONS 2008**

2008 No. 1659

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend the requirements for a company's annual return under the Companies Act 1985 ("the 1985 Act"). These Regulations ensure that no company is subject to the requirement to provide the names and addresses of all its members in an annual return made up to a date after 30 September 2008.

2.2 The starting point is that every company is required to disclose whether its shares were traded on a regulated market at any point during the period covered by the annual return.

- For a company whose shares were not traded on a regulated market at any point during that period, the requirement is that the company should provide the names of all its members;
- For a company whose shares were traded on a regulated market at any point during that period, the requirement is to provide the names and addresses of those members who hold or held 5% or more of the issued shares of any class of the company's shares.

2.3 The Regulations also provide for two additional codes to identify the company's principal business activities. These are for non-trading companies and dormant companies.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These Regulations amend primary legislation contained in the 1985 Act (Part 11, Chapter 3). This legislation requires a company with a share capital to file at Companies House specified information about its members as part of its annual return.

4.2 The names and addresses of every member of a company can be obtained from a company's register of members which can be inspected by any person. This register is subject to sections 116-119 of the Companies Act 2006 ("the 2006 Act"), which came into force on 1 October 2007. Section 116 of the 2006 Act requires a person seeking access to the register of members to provide the company with information regarding his identity and the purpose for which information is to be used. Section 117 of the 2006 Act provides that the company must either comply with the request or apply to the court. The court will relieve the company from the obligation to allow access to its register of members, if the court is satisfied that the access is not sought for a proper purpose.

4.3 There is a transitional provision for sections 116-119 of the 2006 Act so that they apply only if the company is not obliged to deliver an annual return under the 1985 Act or Article 371 of the Companies (Northern Ireland) Order 1986. This was in the expectation that Part 24 of the 2006 Act, which relates to annual returns, would have come into force on 1 October 2008, together with Regulations that would change the requirements as described in paragraph 2.2 above. However due to changes in the implementation timetable, Part 24 will now not come into force until 1 October 2009. Without these Regulations, any person who was refused access by the court to names and addresses contained in the register of members under section 117 of the 2006 Act could then obtain the required information from the company's annual return at Companies House. Therefore these Regulations introduce reduced name and address requirements so that the protection offered by sections 116-119 of the Act is not thwarted.

4.4 Companies whose shares are traded on regulated markets are subject to the Financial Services and Markets Act 2006. This Act was amended by the 2006 Act in order to implement the Transparency Obligations Directive (Directive 2004/109/EC). These companies are required to notify the Financial Services Authority when certain percentages (starting at 5%) of the total voting rights of any class of its shares are held by a member. These companies are all public companies as a private limited company with a share capital is prohibited from making offers to the public of any shares or debentures in the company.

4.5 The 85 Act provides that information on companies' principal business activities may be given by reference to any prescribed system. The Companies (Forms Amendment No. 2 and Company's Type and Principal Business Activities Regulations 1990 (SI 1990/1766, amended by SI 1996/1105 and S.I. 2002/3081) prescribe the Standard Industrial Classification of Economic Activities 2003 with the addition of a code for a residents' property management company. The amendments will insert codes for to be used for non-trading companies and dormant companies.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain (i.e. to companies incorporated in England and Wales, Wales or Scotland).

6. European Convention on Human Rights

6.1 Gareth Thomas, Minister for Competitiveness, has made the following statement regarding Human Rights:

“In my view the provisions of the Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008 are compatible with the Convention rights.”

7. Policy background

7.1 The independent Company Law Review (CLR) in their 2000 consultation document “Modern Company Law: Developing the Framework” doubted whether any useful purpose is served by Companies House holding an annually updated register of all members for companies limited by shares while also considering there is a public interest in the public record holding details of those with a strategic interest in public companies. The CLR considered exempting private companies from the requirement to provide either the names or addresses of their members but rejected this option as such a requirement would ensure that the public, including a company’s members, can easily check a company’s ownership without alerting the company to their interest. Following its consultation, in 2001 the CLR recommended that:

“use of information in a company’s register of members be restricted to purposes relevant to either the holding of interests recorded in the register, or the exercise of rights attached to them, and to other purposes approved by the company”

“public companies be required to file annually the details of only those shareholders with a notifiable interest in the company” (The Companies Act 2006 does not retain the requirement in Part 6 of the 1985 Act for those with a “notifiable interest” in a public company to provide it with information on their holdings. But public companies whose shares are traded on regulated markets are subject to the shareholdings disclosure regime of the Transparency Obligations Directive.)

“it is in the public interest to retain the present obligation [ie the names and addresses of all members] on private companies limited by shares” (paragraphs 11.45 and 11.46, Final Report).”

7.2 Since the CLR Report, there has been an increase in scams targeted at shareholders using details taken from companies’ registers of members. In addition, shareholders of sensitive companies have been sent threatening letters. During the Parliamentary passage of the Companies Act 2006, Margaret Hodge, Minister of State for Industry and the Regions, advised the Commons Committee:

“We propose to deal with information on the register of members that applies to Companies House in the regulations covering companies’ annual returns. We will consult on these issues, but, as hon. Members know, we intend to exempt private companies from the obligation to supply their members’ addresses and to exempt public companies from the obligation to supply any details of those who

hold less than 5 per cent of a company's shares." (Hansard, Standing Committee D, 27 June 2006, col.220).

7.3 The Government considers that the public interest in the precise identity of those who have a strategic interest relates primarily to these public companies. For other companies, the public interest is in the breakdown of the company's ownership and in this information being available without direct recourse to the company. Accordingly, in February 2007, the consultation document *Implementation of the Companies Act 2006* sought views on changes to the annual return so that:

- private companies and those public companies whose shares are not traded on a regulated market at any point during the period covered by the return would not be subject to the requirement to supply their members' addresses; and
- public companies whose shares are traded on a regulated market at any point during the period covered by the return be required to provide the names and addresses of those who held 5% or more of any class of shares.

This approach was generally welcomed. Some respondents suggested that companies traded on AIM should also be required to provide the names and addresses of those who held 5 per cent or more of any class of shares during the period in question. This suggestion was not adopted as these companies are not subject to the Transparency Obligations Directive which means the requirement would impose a significant regulatory burden on them.

7.4 Draft Regulations on this basis were put on the Department's website in July 2007; this draft also included the codes additional to the Standard Industrial Classification for residents' property management company, non-trading company and dormant company. Only 3 bodies commented on this draft: a credit reference agency was critical of the reduction in information about members; the Association of Investment Companies argued for a 10% threshold for the notification of members' names and addresses by public companies whose shares are traded on a regulated market; and the Law Society made constructive drafting points.

7.5 The majority of companies complete their annual returns electronically. To make the introduction of the new requirement as easy as possible for companies, it will not be possible to complete electronically an annual return made up to date after 30 September 2008 that does not comply with the new correct requirements. As regards paper returns, the existing forms should only be used for annual returns made up to earlier dates.

7.6 Companies House will not put on the public record an annual return made up to a date after 30 September 2008 that includes the names and addresses of all the company's members. If any company were to submit such an annual return made up to a date after 30 September 2008 that includes the names and addresses of all its members, Companies House would return it to the company for the excess information to be removed. To minimise the risk of this, Companies House will prescribe new forms for annual returns made up to dates after 30 September 2008 so that:

- companies are required to indicate whether their shares were traded on a regulated market at any point during the period covered by the return
- for companies who do **not** indicate that their shares were traded on a regulated market during the period covered by the return, there will not be space to give details of their shareholders addresses;

- companies who do indicate that their shares were traded on a regulated market during the period covered by the return, will be required to provide the names, addresses and details of shareholdings of any person who held 5% or more of the issued shares of any class of share during the period. The guidance note will make it clear that such companies must give names and addresses only for these shareholders.

In addition, Companies House will:

- implement strict examination policies to ensure that if a company (which was at all times during the return period either a private company or public company not traded on a regulated market) filed the earlier version of the annual return form with shareholder addresses on it, then Companies House would reject the form.
- make the new requirements clear in all their published guidance notes and via all other normal channels.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is that Companies House will amend its electronic systems and internal procedures to ensure as far as possible that companies only file the information that the legislation requires (see paragraph 7.5). Currently 80% of the annual returns filed at Companies House are done electronically. This means the system can be amended so that only information appropriate for the type of company is filed.

Companies House will also re-prescribe the annual return form (Form 363a) to reflect the change in the legislation. This means that the form will indicate that companies should not give information not required by the legislation.

8.3 Companies House will implement new internal procedures for staff processing the incoming annual returns to ensure that companies only file the reduced requirements. Staff will query any extra statutory information filed with the person who filed the annual return.

8.4 The Regulations will also affect those organisations that use the information on companies' members, such as law enforcement agencies. The availability from Companies House of the names and addresses of all the members of all companies limited by share capital makes it possible to identify the beneficial owners of companies and trace links between companies through shared ownership or control. Checking such information with Companies House is a routine part of any financial investigation.

While this information will always be available from the companies if sought for proper purposes, it will no longer be possible to check this information without the knowledge of the company. The Serious Organised Crime Agency and other law enforcement agencies will be affected in their ability to undertake financial investigations.

9. Contact

Anne Scrope at the Department for Business, Enterprise and Regulatory Reform, tel: 0207 215 2194 or e-mail: anne.scrope@berr.gsi.gov.uk, can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Business, Enterprise & Regulatory Reform	Title: Impact Assessment of The Companies Act 1985 (Annual Return) and Companies (Principal Business Activities)(Amendment) Regulations 2008	
Stage: Final	Version: 1	Date: 24 June 2008
Related Publications: draft The Companies Act 1985 (Annual Return) Regulations & draft Companies Act 2006 (Annual Return and Service Addresses) Regulations and related Impact Assessment		

Available to view or download at:

<http://www.berr.gov.uk/bbf/co-act-2006/draft/>

Contact for enquiries: Anne Scrope

Telephone: 0207-215 2194

What is the problem under consideration? Why is government intervention necessary?

A company having a share capital is required to include the names and addresses of all its members in its annual returns to Companies House under provisions of the Companies Act 1985 that remain in force until 30 September 2009. From 1 October 2008, this requirement will undermine the safeguards for this information provided by provisions of the Companies Act 2006 that are already in force. (See paragraphs 5-9.)

What are the policy objectives and the intended effects?

The objective is that the safeguards for the names and addresses of companies' members provided by the Companies Act 2006 should not be undermined from 1 October 2008. The intended effect is that no company be required to file both the names and addresses of all its members as part of its annual return made up to a date between 1 October 2008 and 30 September 2009. (See paragraphs 10-12.)

What policy options have been considered? Please justify any preferred option.

No alternative was considered. (See paragraph 12.)

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

No review is planned (see paragraph 16.)

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Gareth Thomas

.....Date: 24th June 2008

Summary: Analysis & Evidence

Policy Option:	Description: Making the Regulations
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
<p>Other key non-monetised costs by 'main affected groups' Law enforcement agencies, credit reference agencies and others wanting the names and addresses of all members of a company limited by share capital will not be able to get the information from Companies House (See paragraph 18.)</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
<p>Other key non-monetised benefits by 'main affected groups' It will reduce the information available to those operating share-selling scams and others wishing to contact company members for improper purposes. (See paragraphs 3&17.)</p>			

Key Assumptions/Sensitivities/Risks The Regulations will only apply to annual returns made up to dates between 1 October 2008 and 30 September 2009. (See paragraph 23.)

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	1/10/08
Which organisation(s) will enforce the policy?	Companies House
What is the total annual cost of enforcement for these organisations?	£ fee recovery
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes
What is the value of the proposed offsetting measure per year?	£ n/a
What is the value of changes in greenhouse gas emissions?	£ n/a
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 0	Decrease £ 0	Net Impact	£ 0

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

BACKGROUND

1. When a company is incorporated, its key data are put on the public record to be readily available for inspection by third parties, including enforcement bodies. The annual return ensures that any elements of the key data which may change over time are updated at least once a year. For all companies, the key data includes its principal business activity. For companies with share capital, the key data includes the names and addresses of all its members. (There is no requirement for the address provided for any member to be a residential address).

2. Company law also requires every such company to permit anyone to inspect and to be provided with copies of its register of members. This is essential so that those who own a company can be traced and also can be contacted by those who wish to influence their decisions relating to the company. The information available from companies themselves should be up-to-date. However, noting that the size of shareholdings is generally much more volatile than the identity of shareholders, the information being available from Companies House is generally more convenient and also means the company neither has to respond to the request nor is alerted to the interest.

3. The availability of members' names and addresses from Companies House may have been abused, particularly by those seeking to intimidate the shareholders of sensitive companies and those using high pressure tactics to sell worthless shares ("boiler room operations"). The Financial Services Authority is quoted as estimating total annual losses to boiler rooms at £200m. During the Parliamentary passage of the Companies Act 2006, the Minister advised the Commons Committee:

"We propose to deal with information on the register of members that applies to Companies House in the regulations covering companies' annual returns. We will consult on these issues, but, as hon. Members know, we intend to exempt private companies from the obligation to supply their members' addresses and to exempt public companies from the obligation to supply any details of those who hold less than 5 per cent of a company's shares." (Hansard, Standing Committee D, 27 June 2006, col.220).

4. Companies whose shares are traded on regulated markets are subject to the Financial Services and Markets Act 2006. With effect from 8 November 2006, this Act was amended by the Companies Act 2006 so as to implement the Transparency Obligations Directive (Directive 2004/109/EC). Under this Act, companies are required to notify the Financial Services Authority when certain proportions, starting at 5 per cent, of the total voting rights of any class of its shares is held by a member.

THE PROBLEM UNDER CONSIDERATION

5. Sections 116-119 of the Companies Act 2006 introduces safeguards against abuse of the public right of access to a company's register of members direct from the company. Those seeking the information must give their reason and a court may relieve a company from the obligation to provide the information if it is not satisfied that the information is sought for a proper purpose. These safeguards would be undermined if the company were to be required subsequently to file the information on the public register at Companies House.

6. Sections 116-119 were brought into force on 1 October 2007 by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (SI 2007/2194) came into force. They were subject to a transitional provision so that they applied only if the company was not obliged to deliver an annual return made up to a date before 1 October 2008, by which date the Government intended that the remaining provisions of the Companies Act 2006 would be brought into force.

7. Under the revised timetable for implementation of the Companies Act 2006, from 1 October 2009, Chapter 3 of Part 11 of the Companies Act 1985 will be replaced by Part 24 of the Companies Act 2006. However the Government intends that on the same day that Part 24 will be revised by the Companies Act 2006 (Annual Return and Service Address) Regulations 2008. The intention is that these 2006 Regulations will replace the requirement for every company limited by share capital to provide the names and addresses of all its members. Private companies limited by share capital and public companies whose shares are not traded on regulated markets will not be required to provide the addresses of any of their members. Such companies will only be required to provide the names and details of shareholdings of their members. Public companies whose shares are traded on a regulated market will be required:

- to indicate that their shares were traded on a regulated market at any time during the period covered by the return
- to provide the names, addresses and details of shareholdings of those members who held 5 per cent or more the issued shares of any class of the company during the period covered by the return.

8. A company indicates its principal business activity on the annual return by reference to the codes set out in the Standard Industrial Classification of Economic Activities with an added code for Residents' Property Management Companies. There is currently no prescribed code for non-trading companies or dormant companies. However it is believed that there are about 150,000 live non-trading companies and about 450,000 dormant companies. These Regulations prescribe a code to be used for non-trading companies and another code for dormant companies so that this can be recorded on the annual return.

9. The revised timetable means that annual returns made up to dates between 1 October 2008 and 30 September 2009 will still be subject to the requirements in Chapter 3, Part 11 of the Companies Act 1985. Companies with share capital will still be required to include the names and addresses of all members in their annual returns.

POLICY OBJECTIVES AND INTENDED EFFECTS

10. The objective is that the safeguards for names and addresses of company members under the Companies Act 2006, that came into force on 1 October 2007, continue to be effective after 30 September 2008.

11. The Companies Act 1985 (Annual Return) and Companies (Principal Business Activities)(Amendment) Regulations 2008 will amend the requirements for the information that must be included in the annual return made up to a date on or after 1 October 2008 so that no company is required to provide the names and addresses of all its members. The change will only affect companies that have share capital. The information relating to their members that they will have to provide will be the same as the Government intends to be required from 1 October 2009 (see paragraph 7).

12. It would be extremely onerous for companies if the requirements for information about members in annual returns made up to dates 1 October 2009 and 30 September 2009 were different to both the previous and the subsequent requirements. Therefore consideration has not been given to any option other than to make the requirements for information about members in annual returns made up to dates between 1 October 2009 and 30 September 2009 the same as the Government intends to introduce for annual returns made up to subsequent dates.

THE REGULATIONS

Impact of the Regulations

13. A draft Impact Assessment for the Companies Act 2006 (Annual Return and Service Address) Regulations 2008, which also make other changes to the requirements for the Annual Return, was published on the BERR website in July 2007. It is the basis for this Impact Assessment for the Companies Act 1985 (Annual Return) and Companies (Principal Business Activities)(Amendment) Regulations 2008.

14. The Regulations will affect all companies limited by share capital. On 27 April 2008, there were 2,715,844 companies on the register at Companies House, of which 12,131 were public companies. Fewer than 5,000 companies' shares are traded on regulated markets.

15. All companies limited by share capital will be required to provide less information in their annual return for periods ending between 1 October 2008 and 30 September 2009 than in previous annual returns. No company has indicated that they expect the change in the requirement to change the cost of filing an annual return. In view of the measures being adopted by Companies House, the change is not expected to affect the costs of those companies no longer required to include the addresses of members. The register of members of the remaining companies, ie those whose shares are traded on regulated markets, are kept electronically together with other information about those members, usually by a commercial registrar. The change in the requirement is not expected to increase their costs.

16. Companies are required to submit annual returns made up to a date not later than the anniversary of their previous return (or, in the case of newly-incorporated companies, the anniversary of the date of incorporation). Occasionally a company will choose to submit 2 annual returns in a single year – for example, if it wishes to synchronise with another company. Annual returns made up to dates after 30 September 2009 will be subject to the requirements in the Companies Act 2006 (see paragraph 7). Thus very few companies will be affected more than once by these Regulations. Therefore these Regulations will not be reviewed.

17. The Regulations will benefit all individuals who own shares. From 1 October 2008, the only shareholders whose addresses will be put on public record at Companies House will be those who have held more than 5 per cent of the voting rights of a class of share of a company whose shares are traded on a regulated market. This means that Companies House will no longer be a useful source of mailing lists for those wishing to target the members of companies limited by share capital. Annual returns made up to dates before 1 October 2008 will still hold this information but it will become increasingly out-of-date.

18. The availability from Companies House of the names and addresses of all the members of all companies limited by share capital has facilitated searches for the beneficial owners of companies and tracing links between companies through shared ownership or control. Checking such information with Companies House is a routine part of any financial investigation. While this information will always be available from the companies if sought for proper purposes, it will no longer be possible to check this information without the knowledge of the company. Therefore the Regulations will affect those who use the information on companies' members, such as credit reference and law enforcement agencies, as well as those who use the information for less proper purposes (see paragraph 3).

Implementation of the regulations

19. Every company with share capital incorporated before 1 October 2008 will have to file an annual return made up to date between 1 October 2008 and 30 September 2009 with the information about its members prescribed by the Companies Act 1985 (Annual Return) and Companies (Principal Business Activities)(Amendment) Regulations 2008.

20. So as to minimise any problems for companies, it will not be possible to complete an annual return electronically that does not comply with the correct requirements. To minimise the risk of a company submitting a paper annual return made up to a date after 30 September 2008 that includes the

names and addresses of all its members, Companies House will prescribe new forms for annual returns made up to dates after 30 September 2008 so that:

- for private companies, there is no space to give details of their shareholders addresses;
- public companies whose shares are traded on a regulated market are asked to indicate this on the form (in addition, the guidance note will make it clear that they must give addresses only for those shareholders who hold more than 5% of the issued shares of any class of share);
- For public companies who do **not** indicate that their shares are traded on a regulated market, there will be no space for details of shareholders' addresses (ie the same as for private companies).

Companies House will not put on the public record an annual return made up to a date after 30 September 2008 that includes the names and addresses of all the company's members. In addition, Companies House will:

- implement strict examination policies to ensure that if a private company, or public company not traded on a regulated market, filed the earlier version of the form with shareholder addresses on it, then Companies House would reject the form.
- make the new requirements clear in all their published guidance notes and via all other normal channels

In view of these measures to be adopted by Companies House, no costs are envisaged for companies.

21. Companies House will handle the introduction of the Regulations as part of its Companies Act Programme and the cost will be accounted for within that budget noting that these changes will also be required for implementation of the Companies Act 2006. Companies House fees are set on a cost recovery basis in accordance with HM Treasury's publication "Managing Public Money".

22. We have considered the three mandatory impact tests (gender, race, disability) and consider that the proposed Regulations are unlikely to have any discriminatory effects. The other tests are not applicable. With regard to human rights, it should be noted that there is no requirement for a member's address to be an individual's residential address.

Review

23. No review is planned for these Regulations as they will apply only to annual returns made up to dates between 1 October 2008 and 30 September 2009 inclusive.

Specific Impact Tests: Checklist

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes