

**EXPLANATORY MEMORANDUM TO
THE COMPANIES (TRADING DISCLOSURES) REGULATIONS 2008**

2008 No. 495

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 deal with trading disclosures to be made by companies registered in any part of the United Kingdom. These disclosures have to be made at certain locations, in company documentation and on company websites. The Regulations also require companies to respond to enquiries about where their company records are kept available for inspection.

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

3.1 None

4. Legislative Background

4.1 These Regulations replace requirements in sections 305, 348, 349 and 351 of the Companies Act 1985 (c.6) and the requirements of section 4 of the Business Names Act 1985 (c.7) insofar as they apply to companies – and also the corresponding provisions in the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) and the Business Names (Northern Ireland Order) 1986 (S.I. 1986/1033 (N.I.7)). The requirement on a company to respond to enquiries about where its records are kept available for inspection is new.

4.2 These Regulations also implement Directive 2003/58/EC of the European Parliament and of the Council amending the Council Directive 68/151/EEC as regards disclosure requirements in respect of certain types of companies. A transposition note is provided at Annex A.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Stephen Timms, Minister for Competitiveness, has made the following statement regarding Human Rights:

In my view the provisions of the Companies (Trading Disclosures) Regulations 2008 are compatible with the Convention rights

7. Policy background

7.1 There are nearly 2.5 million companies incorporated in the UK. The policy objective is that the legal identity of every company should be revealed to all who have, or may wish to have, dealings with it. This is so that they are warned of its limited liability status and can discover information which the company is required to reveal about itself whether by filing at Companies House or by providing for inspection of its company records. The principal requirement is for the company's name to be included in specified documents, websites, and on signs at premises.

7.2 As regards signs at premises, the need to identify the company has to be balanced against any risk to those on the premises occasioned by such identification. Hence the exemption for locations which are used primarily for living purposes. The practicality of the requirement has also to be considered where several companies share premises (for example, a firm of lawyers may be the registered office for many of its clients). This is why where 6 or more companies share a location, provision is made to allow a changing electronic/scrolling notice-board provided that the company name can be read for at least a certain length of time.

7.3 A subsidiary objective is that a company should not cherry-pick the directors whose names are included in its business letters. Where the name of a director appears in the letter otherwise in the text or as a signatory, the names of all directors should be included in that letter. A company must also respond to enquiries about where it keeps its records available for inspection.

7.4 In addition, to ensure compliance with Directive 2003/58/EC, amending Directive 68/151/EEC, a company must include its address and other specified details in business letters, order forms and on its websites.

7.5 In February 2007, the Department of Trade and Industry sought views on proposals for regulations to replace the current requirements relating to trading disclosures in the consultation document, Implementation of Companies Act 2006 (Chapter 2, Section D). As a result of these responses, draft regulations were prepared.

7.6 In July 2007, the Department for Business, Enterprise and Regulatory Reform placed a draft of these and other Regulations to be made under the Companies Act 2006 on its website together with draft Impact Assessments and summaries of the responses to the consultation together with the Government's response. An email alert was sent to over 700 individuals and organisations who had asked to be kept informed of Companies Act 2006 developments. Comments on these draft Regulations received from the

Institute of Chartered Accountants in England and Wales (ICAEW), the Institute of Chartered Secretaries and Administrators (ICSA) and the Law Society were mostly technical. In addition, the ICAEW sought a significantly greater dispensation for multiple occupants of premises. The subsequent revision to the Regulations balanced the convenience for companies with the needs of anyone wishing to check the legal identity of the premises' occupants, in particular those wishing to inspect company records at the premises.

7.7 The Regulations were also revised in the light of ICAEW's and ICSA's views that companies need more than the initially proposed 2 days in which to respond to a written request for information as to where the companies' records may be inspected. The period was increased to 5 days, noting that a period that was any longer would make it easy for a company to prevent quick access to records when time is crucial, e.g. immediately prior to a general or class meeting.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is low. Enforcement agencies, primarily Companies House and Local Authorities, will need to be aware of the changes.

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 for
Business, Enterprise
and Regulatory Reform

Impact Assessment of the draft
Companies (Trading Disclosures)
Regulations 2008

Stage Final

Version: 2

Date: 05/12/2007

Related Publications: Implementation of Companies Act 2006 Consultative Document February 2007 <http://www.dti.gov.uk/consultations/page37980.html>

Available to view or download at: www.berr.gov.uk/bbg/co-act-2006/

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

How to ensure the public can find the information which companies are required to make public by filing with the Registrar of Companies and, in particular, how those who contract with or have complaints against companies can discover the legal identity of a company. This is important as some companies are reluctant to provide such information or are obstructive about doing so.

What are the policy objectives and the intended effects?

That everyone can know a company's legal identity and can easily find information about it on the public record at Companies House including being able to discover where they can inspect the records that a company is statutorily required to make available for inspection.

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

- A. The minimum to comply with EU requirements;
- B. Replicate all the existing requirements; or
- C. Provide a single set of requirements (the preferred option – see paragraph 11).

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

2012

Ministerial Sign-off:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:
Stephen Timms

Date: 17th December 2007

SUMMARY: ANALYSIS & EVIDENCE

Summary: Analysis & Evidence

Policy Option A		Minimum to comply with EU requirements			
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'		
	One-off (transition) Yrs				
	£0				
	Average Annual Cost (excluding one-off)				
£0		Total Cost (PV)		£0	
Other key non-monetised costs by 'main affected groups'					
It would be difficult to check the identity of any company that does not include its name in company documents. The fact that a company occupies any particular premises would no longer be public knowledge.					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised costs by 'main affected groups'		
	One-off (transition) Yrs				
	£0				
	Average Annual Benefit (excluding one-off)				
£ million		Total Cost (PV)		£	
Other key non-monetised benefits by 'main affected groups'					
Key Assumptions/Sensitivities/Risks					
Most companies will continue to include their name in business documentation but not to display signs at their premises.					
Price Base Year	Time Period Years	Net Benefit Range (NPV)		Net Benefit (NPV Best estimate)	
		£		£	
What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			1 October 2008		
Which organisations(s) will enforce the policy?			Companies House & Local authorities		
What is the total annual cost of enforcement for these organisations?			£		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£		
What is the value of changes in greenhouse gas emissions?			£		
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 £		Decrease of £		Net Impact £	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option B		Replicate all the existing requirements				
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'			
	One-off (transition) Yrs	£0				
	Average Annual Cost (excluding one-off)					
	£0		Total Cost (PV) £0			
	Other key non-monetised costs by 'main affected groups'					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised costs by 'main affected groups'			
	One-off (transition) Yrs	£0				
	Average Annual Benefit (excluding one-off)					
	£0		Total Cost (PV) £0			
	Other key non-monetised benefits by 'main affected groups'					
Key Assumptions/Sensitivities/Risks Full compliance with current requirements						
Price Base Year	Time Period Years	Net Benefit Range (NPV) £0		Net Benefit (NPV Best estimate) £0		
What is the geographic coverage of the policy/option?				UK		
On what date will the policy be implemented?				1 October 2008		
Which organisations(s) will enforce the policy?				Companies House & Local authorities		
What is the total annual cost of enforcement for these organisations?				£		
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?				£		
What is the value of changes in greenhouse gas emissions?				£		
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 of £0		Net Impact £0		
Key: Annual costs and benefits: Constant Prices (Net) Present Value						

Summary: Analysis & Evidence

Policy Option C		Provide a single set of requirements				
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'			
	One-off (transition)	Yrs				
	£0		Total Cost (PV) £0			
	Average Annual Cost (excluding one-off)					
	£0		Other key non-monetised costs by 'main affected groups'			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised costs by 'main affected groups' Main beneficiaries will be new companies and existing companies opening new premises			
	One-off (transition)	Yrs				
	£0		Total Cost (PV) £24 million			
	Average Annual Benefit (excluding one-off)					
	£2.8 million		Other key non-monetised benefits by 'main affected groups' exemption from sign requirement for some premises will reduce costs of company formation agents and personal risk for some individuals.			
Key Assumptions/Sensitivities/Risks Full compliance with current requirements						
Price Base Year 2005	Time Period Years 10	Net Benefit Range (NPV) £24m		Net Benefit (NPV Best estimate) £24m		
What is the geographic coverage of the policy/option?				UK		
On what date will the policy be implemented?				1 October 2008		
Which organisations(s) will enforce the policy?				Companies House & Local authorities		
What is the total annual cost of enforcement for these organisations?				£		
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?				£		
What is the value of changes in greenhouse gas emissions?				£		
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 of £24 million		Net Impact £-24million		
Key: Annual costs and benefits: Constant Prices (Net) Present Value						

Evidence Base for Summary Sheets

Background

1. Incorporation means that a company has a separate legal identity to its members. This fundamental benefit is available on condition that key information about the company is placed on the public record on incorporation and subsequently updated. The name alone is sufficient to ensure that anyone can find the public information about a company registered in the United Kingdom at Companies House. The name is also needed by anyone who wishes to bring proceedings against a company. For these reasons, company law has always included requirements for companies to disclose their registered names.

2. The current requirements are for every company's name to appear legibly in:

- (a) all its business letters,
- (b) all its notices and other official publications,
- (c) on all its websites,
- (d) all bills of exchange, promissory notes, endorsements, cheques, orders for money or goods purporting to be signed by or on behalf of the company, and
- (e) all bills of parcels, invoices, receipts, letters of credit.

All these requirements apply whether the document is in hard copy or electronic or any other form. Furthermore, if a business letter includes any director's name (other than in the text or as a signatory), then it must include the names of all the company's directors. In addition, every company must display a sign with its name in easily legible letters outside every office and place of business. The Companies (Northern Ireland) Order 1986 (SI 1986/1032 (N.I. 6)) imposes the same requirements on companies incorporated in Northern Ireland.

3. Company law ensures that every UK company's name is unique amongst UK companies. However, UK company law cannot ensure that there is no other body in the world with the same name; full registration details are needed in order to identify a company. The First Company Law Directive requires all companies to include their registration details, (ie the company's place of registration, the number with which it is registered, and the address of its registered office) in business letters, order forms and on their company websites; the requirement relating to documents applies whether they are in hard copy or electronic or any other form. The Companies Act 1985, as amended by the Companies Act 2006 Registrar, Languages & Trading Disclosures Regulations 2006 (SI 2006/3429), implements this requirement. The Limited Liability Partnerships Regulations 2001 (SI 2001/1090) apply these requirements to LLPs.

4. There are additional requirements, under the Business Names Act 1985, and its Northern Ireland equivalent the Business Names (Northern Ireland Order) 1986 (SI1986/1033 (N.I.7)), that apply only if a company carries on business under a name in the UK under a name that is not its registered name; these apply even if the only difference between the business name and the registered name is "Ltd" or "plc". The information required is the company's registered name and an address in Great Britain (or Northern Ireland as the case may be) at which the service of any document relating in any way to the business will be effective; the requirement for a service address is satisfied for any company by its registered office. The company must include this information:

- in all business letters, written orders for goods or services to be supplied to the business, invoices and receipts issued in the course of business and written demands for payments ;
- in a notice in a prominent position so that it may easily be read by customers and suppliers in any premises to which they have access and in which the business is carried on; and
- in a written notice provided immediately to any person with whom anything is done or discussed in the course of the business and who asks for it.

These requirements also apply to unincorporated businesses excepting only those trading under either the individual's or partners' surnames (with or without forename or initials).

5. From 1 October 2008, all these provisions that apply to companies will be replaced by a single set of Regulations. In the consultation document, *Implementation of the Companies Act 2006*, views were sought on requirements that would consolidate those that currently apply. Appendix A has the questions relating to trading disclosures together with a summary of the responses and the Government's response.

Option A

6. The minimum would be only to require a company to include its place of registration, registration number and address of its registered office - but not its name - in business letters, order forms and on their company websites. This means that there would not be a requirement that a company's identity be immediately apparent from any of its stationery or from signs at its premises. While most companies would continue to include their names, if a company did not, then it would only be possible to discover its legal identity by checking the registration details provided in business letters, order forms and websites with Companies House as to the identity of the company. It is likely that many companies would remove signs from their premises: this would create problems for not only for those wishing to serve documents on a company or to exercise their right to inspect certain records but also for members of the public wishing to identify the company that occupies certain premises. This option would not provide the conditions for business success.

Option B

7. It would be possible to replicate the existing requirements. There are several problems with this approach.

8. First, any company that carries on businesses under a name other than its registered name would continue to be subject to two sets of overlapping but not identical requirements. This is particularly onerous as regards signs at premises.

- Under the Companies Act 1985 (and its Northern Ireland equivalent), a sign with the company's registered name must be in a conspicuous place on the outside of every office or place in which its business is carried on;
- Under the Business Names Act 1985 (and its Northern Ireland equivalent), a sign with the corporate name (ie the registered name for UK companies) and an address in Great Britain for the service of any document relating to the business must be in a prominent position in any premises where the business is carried on and to which the company's customers or suppliers have access.

The Business Names Act 1985 (and its Northern Ireland equivalent) also requires an immediate written response to anyone who in the course of business asks for the company's name and an address in Great Britain (or Northern Ireland as the case may be) at which for service of any document relating in any way to the business will be effective.

9. Second, there would continue to be difficulties with the requirements for signs in the following circumstances:

- if premises are used by many companies, for example where a holding company's offices is the registered office for several subsidiaries or professional adviser provides a registered office for many clients or a commercial registrar keeps registers for many clients;
- if a company formation agent is the first registered office for companies that it incorporates for clients and/or sells off-the-shelf. This means that the formation agent may be the registered office for an ever-changing group of companies none of which have ever traded; or
- if a company operates from domestic premises, eg a director's home; or
- if there is a serious risk that a company's directors will be subjected to violence or intimidation as a result of its activities. Under the Companies (Usual Residential Addresses) Regulations, these companies will be able to apply for special protection for the residential addresses of their directors. In these cases, there is likely also to be a risk to the company's employees.

Also, it is not immediately clear where the sign must be placed or that the requirements apply to places, such as the registered office, where the administrative affairs of the company are carried out. Furthermore neither Act (or Order in Northern Ireland) requires the registered name to be included in applications for licenses: this could confuse anyone wishing to check a licence and, indeed, raises questions as to the legal person to whom the license was granted.

10. A further problem is the need to ensure that the public can discover where a company keeps any records available for inspection at a place other than its registered office. Table A shows the options under the Companies Act 1985. In all cases, if the record has not always been kept at the registered office, the company must notify Companies House of the location within 14 days of the change. The 2006 Act provides power for regulations to specify the alternative to the registered office for records that it requires to be kept available for inspection there - this provision will be brought into force on 1 October 2009. It would be possible for a company to abuse the notice period to deter inspection of its records.

TABLE A: Companies Act 1985 - location of company records

record	location
Registers of directors and secretaries	Registered Office only
Records of resolutions and meetings	
Instruments creating charges and Registers of charges	
copy of contract for purchase of own shares and related documents	
Report of investigation into shares	
Register of members and its index	Registered Office or elsewhere in its jurisdiction where maintained
Register of debenture holders and its index	Registered Office or elsewhere in its jurisdiction where maintained
Register of directors interests	Registered Office or with register of members
register of interests disclosed and its index	with register of directors interests,
Directors' service contracts and copy of any qualifying third party indemnity provision	Registered Office or with register of members or at Principal Office (if in RO jurisdiction)

Option C

11. Provide a single set of requirements which:

- follows the more user-friendly where there are differences between the two current sets of requirements; and
- avoids the problems with the current requirements (see Option B).

The draft Companies (Trading Disclosures) Regulations 2008 follow this approach. In particular:

- the requirement for signs:
 - requires only the registered name;
 - requires the sign to be in a prominent position so that it may be easily read by any visitor;
 - does not apply if the company has never traded;
 - has an exemption for domestic locations provided the premises is not the company's registered office or a location for inspection of its records.

The intention is that, when the provisions in the Companies Act 2006 relating to directors' home addresses are fully implemented, there will also be an exemption for companies whose activities put their directors at serious risk as regards premises which are not the company's registered office or a location for inspection of its records.

- makes special provision for premises that are used by six or more companies.
- the requirement for the names applies to all forms of business correspondence and documentation including, for the first time:
 - applications for licences to carry on a trade or activity;
 - written orders for goods or services; and
 - written demands for payment.
- there is no requirement to provide information immediately to those who ask;
- there is a new requirement for a company to respond to any written request relating to the location of its records. This response must be within 5 working days.

12. The provisions repealing the Business Names Act 1985 will not come into force until 1 October 2009. A transitional provision provides that this Act does not apply to companies from 1 October 2008.

COSTS AND BENEFITS

13. The Government's Administration Burdens Exercise (the "Exercise") assessed that the cost of the requirement that every company include its place of registration, registration number and address of its registered office - but not its name - in business letters, order forms and on their company websites to be £56 million a year. Option A would continue only with this requirement.

14. The Exercise considered that the cost of requiring all companies to include the names of either all or none of their directors increases costs £0.8 million a year and that 95 per cent of the cost of all the other requirements under the Companies Act would be incurred in any event. It did not extend to the Business Names Act 1985.

15. Under Option C, there will be a significant reduction in the requirements relating to signs for all those companies that carry on business under names other than their registered names. As there has not been a register of business names since 1981, it is impossible to estimate the numbers affected but it appears that most retailers use names other than registered names either in addition to or instead of their registered names; such companies have many premises. However it is unlikely that companies will change their existing signs simply to reflect the lesser requirement. Those likely to benefit are new companies and those opening new premises. The BERR simplification plan assumes savings of around 5 per cent of administrative burdens will arise as a result of the simplification of the law, ie an annual saving of £2.8 million.

16. There will be significant benefits to some companies under Option C from the exemptions from the requirement to display signs at some premises to company formation agents, companies trading from domestic premises and, from October 2009, companies whose activities place their directors at risk. The exemptions are likely to be of significant benefit, but the number affected is probably small. The likely reduction in administrative burdens from these exemptions has not been estimated.

Specific Impact Tests

17. The regulations apply to all companies and the Business Names Act 1985 (to be replaced from 1 October 2009 by Part 41 of the Companies Act 2006) applies similar requirements to unincorporated businesses. Therefore these regulations are unlikely to have an impact on competition. Nor are they likely to have consequences for gender, race or disability equality.

SUMMARY

18. The proposed Regulations under Option C are clearer than the present requirements. In particular, there is a single set of requirements that apply whether or not the company carries on business under a name that is not its registered name. These avoid the current problems relating to signage, ensuring that the requirements are proportionate. The proposed Regulations will continue to ensure that the legal identity of every UK company is made public in all its dealings and that the full registration details are available where most important. This is essential to the transparency that must accompany incorporation for the protection of the public.

Specific Impact Tests - Checklist

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

Annexes

Annex A

2007 Consultation on Companies Act 2006 Implementation - Trading Disclosures - Summary of Responses and Government Response

D. Trading Disclosures	
2. 1	<p>Do you agree that every UK company and every company doing business in the UK should be required to include its registered name on all forms of company documentation, in whatever form, except:</p> <p>(a) those that include both its registration details and its trading name where that trading name differs from its registered name only in the omission of the statutory indicator of its legal status;</p> <p>(b) in communications that follow from an agreement made in the previous 12 months between the company and the recipient?</p>
	<p>(a) The majority of respondents disagreed with this proposed exception.</p> <p>(b) Respondents were evenly split between those that agreed and those that disagreed with this proposed exception. However several of the former were concerned with its practicality.</p> <p>The Government will not proceed with these proposals. In the light of other comments made, "applications for licences" will be added to the list of documents requiring the company's registered name.</p>
2. 2	<p>Do you agree that if a business letter includes any director's name (other than in the text or as a signator), then it must include the names of all the company's directors?</p>
	<p>All respondents agreed with this proposal. The Government will proceed on this basis.</p>
2. 3	<p>Do you agree that:</p> <p>(a) every company should be required to display its name, either with or without the statutory indicator of its legal status, in a prominent position so that it may be easily read by its customers, suppliers and other visitors to any of its UK premises;</p> <p>(b) where a single premises is shared by several companies, the requirement should be satisfied provided that the name of each company can be easily read at least once every 5 minutes;</p> <p>(c) companies using a business name should no longer be required to include in the display an address for service of documents on the</p>

business?	
(a)	Several respondents considered that the statutory indicator of legal status should always be required. Several other respondents were concerned about the consequences of signs at the trading premises of sensitive companies. The Government will proceed on the basis of always requiring the registered name in signs. There will be an exemption for premises of companies particularly at risk; this exemption will not extend to their registered offices or an alternative location for inspecting a company's records.
(b)	No respondent disagreed with the proposal for shared premises. However one raised the problem of formation agents with a high turnover of shelf companies. The Government will proceed with this proposal, making special provision for companies that have never traded.
(c)	Respondents were evenly split as to whether companies should be no longer required to include an address in signs at premises where they carry on business under names other than their registered names. However those opposed did not explain why this requirement should only apply in these particular circumstances. The Government will proceed as proposed in the consultation document.
2. 4	Do you agree that breaches of the disclosure requirements should continue to be an offence and that there should be a daily default fine in all cases?
All respondents were supportive; one considered there should not be a daily default fine; another considered the offence should apply only if there are serious and intentional breaches with the aim of misleading/confusing the public. The Government will proceed as proposed in the consultation document.	
2. 5	Do you agree that as regards offences relating to trading disclosures, a shadow director should be treated as a director?
All respondents agreed but two were concerned about a shadow director who is unaware of having that status. However the offence only applies to those in default. The Government will proceed as proposed in the consultation document.	
2. 6	Do you agree that any overseas company that is not incorporated in a Member State should be required to disclose its name and registration details in its business letters and order forms whether the document is in hard copy or electronic or any other form and also in any UK websites? And that the civil and criminal consequences of breaches should be the same as for a UK company?
All respondents agreed. The Government will proceed as proposed in the consultation document.	

THE COMPANIES (TRADING DISCLOSURES) REGULATIONS 2008

TRANSPOSITION NOTE

Directive 2003/58/EC of the European Parliament and of the Council amending Article 4 of Council Directive 68/151/EEC as regards disclosure requirements in respect of certain types of companies

This instrument implements Article 4 of Directive 68/151/EEC (O.J. L 65, 14.3.1968, p.8) as amended by Directive 2003/58/EEC (O.J. L 221, 4.9.2003, p.13) relating to company information to be disclosed and where that information should be disclosed. This instrument does not implement the part of Article 4 which deals with the fact that a company is being wound up.

These Directives were previously implemented by regulations 6 & 7 and the Schedules to the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429). S.I. 2006/3429 amended sections 349 and 351 of the Companies Act 1985 (c.46) and Articles 357 and 359 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)); these sections and articles will be repealed on 1 October 2008 by the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007.

Regulation 6 of and the Schedules to S.I. 2006/3429 are revoked by this instrument by using the power in section 1294 of the Companies Act 2006 (c.46). Regulation 7 of S.I. 2006/3429, which implements the references in Article 4 to a company being wound up, is not affected by this instrument.

The following table sets out the requirements of Article 4 of the amended Directive (except references to a company being wound up) and the provisions in this instrument that implement them.

Article	Objective	Implementation
4.	<p>Requires letters and order forms, whether in paper form or any other medium to bear the information set out in paragraphs (a) and (b) of this Article and where applicable the reference to share capital.</p> <p>Websites should contain at the least the information referred to in paragraphs (a) and (b) of this Article and where applicable the reference to share capital.</p>	<p>Regulation 1(2)(d) and (e), and regulation 7</p>