

Companies Act

October 2008

Frequently Asked Questions



BERR | Department for Business
Enterprise & Regulatory Reform

A BERR SERVICE



Companies House
— for the record —

On 1st October 2008, the following provisions of the Companies Act 2006 will come into force:

- **Objection to Company Names - Sections 69 to 74**
- **Trading Disclosures - Sections 82 to 85**
- **Corporate directors and under-age directors - Sections 155 to 159**
- **Provisions relating to the directors' 'conflicts of interest duties' - Part 10**
- **Share capital reduction through the solvency statement route - Sections 641 to 644**
- **Control of political donations and expenditure, provisions relating to an independent candidate - Sections 362 to 379**
- **Power of court to grant relief in certain cases - Section 1157**
- **Restoration for personal injury claims of companies dissolved prior to 16 November 1969 - Section 1295 of the 2006 Act, and Schedule 16 (repeals).**

Objection to Company Names Sections 69 to 74

October 2008 will see the appointment of the independent Company Names Tribunal (also known as 'Adjudicator') that will be based at the UK Intellectual Property Office. The Names Adjudicator will consider complaints about opportunistic registrations, where a company has been registered with the intention of extracting money from the complainant, or to prevent the registration of a name in which there is goodwill. Further information and the costs associated with this service is available at: www.ipo.gov.uk/cna.

Who can object to a company name?

Any person or company can object to a company name.

What will happen if the complaint for opportunistic registration is upheld?

The Company Names Tribunal may make an order to direct the company to change its name. If the company fails to comply the Tribunal may choose a new name for the company.

Can a company appeal to the Company Names Tribunal's decision?

Yes, a company can appeal to the High Court.

Will these new rules apply to companies registered before October 2008?

Yes. The rules of the Company Names Tribunal will be retrospective.

Further information is available at www.ipo.gov.uk/cna

Trading Disclosures - Sections 82 to 85

The requirements to include company details in certain company documents have been updated to include documents in electronic form and websites. A company must now include its name, registered number, place of registration and address on all business letters (including emails), order forms and on all websites.

Where must the company disclose the company name?

Every company must display its registered name:

- at the registered office and inspection place. However, dormant companies will be exempt from 1 October 2008.
- at any place where the company carries on business. But if that place is primarily used for living accommodation (for example the director's address) the company will be exempt.
- in the company business correspondence and documents. This includes documents in hard copy, electronic or any other form.

As a company how must the company name be disclosed?

The company name must be displayed continuously, but from October 2008, if you are one of six or more companies sharing the office or place of business you'll only be required to display the name for fifteen seconds every three minutes. You may want to use electronic displays for this purpose.

Does the published company name have to be exactly the same as the registered name?

From October 2008 minor variations in form of a name will be permitted including the case of the letters, the use of punctuation, accents, etc and formatting. However, the differences must not result in there being a risk of confusion.

What do I need to display in my business letters, orders and websites?

The company name, number, place of registration, and its registered office address.

Can I request company's information in writing?

Yes. From October 2008 a person may request in writing information from the company it deals with including; the address of the registered office, any inspection place and the type of company records kept at that office or place. The company must send a written response to that person within five working days of the receipt of the request.

What can happen if the company fails to comply with the trading disclosure requirements?

The company and every one of its officers in default will be committing an offence and they may be liable to a fine. However, from October 08 the personal civil liability will be removed. This means that for example, if the officer signed a cheque on behalf of the company he will no longer be personally liable to the holder of the cheque for any money.

Corporate directors and underage directors Sections 155 to 159

Corporate Directors

A company will be required to have at least one director who is a natural person / individual. A company can no longer have all corporate directorships.

How will this requirement affect corporate directors of existing companies?

From 1st October 2008 every company will have at least one director who is a natural person, but there will be a grace period until October 2010 for any company that only had corporate directors on 8th November 2006, the day the Companies Act received Royal Assent.

Underage Directors

The Act introduces a minimum age for a director of 16 years old, and this will come into force on 1st October 2008.

What will happen to existing directors under the age of 16 on 1st October 2008?

Existing underage directorships will cease with no notification to the Registrar required. However, the company will need to amend their register of directors to reflect the fact that the appointment has ceased.

Will the underage directors' rules apply retrospectively?

Yes. Where a person appointed director of a company before section 157 (minimum age for appointment as director) comes into force has not attained the age of 16 when that section comes into force, that person ceases to be a director.

What if, as a consequence of the changes, the company does not have an eligible director?

Companies without an eligible director will be in default and will need to appoint at least one director to remedy the position.

When the new restrictions on directors are introduced e.g. no sole corporate or underage directors, will this apply to dormant companies.

Yes

Provisions relating to the directors 'conflicts of interest duties' - Part 10

These changes cover the duty of directors to avoid conflicts of interest, not to accept benefits from third parties and duty to declare interest in proposed transactions or arrangements.

The following sections relate to directors conflicts of interests will be implemented in October 2008.

Section 175 - Duty to avoid conflicts of interest.

Section 176 - Duty not to accept benefits from third parties

Section 177 - Duty to declare interest in proposed transaction or arrangement

Section 180(1) to (3) and (4)(b) - Consent, approval or authorisation of members.

Section 181(2) and (3) Modification of certain provisions in relation to charitable companies.

Share capital reduction through the solvency statement route - Sections 641(1)(a) & (2)-(6), 642 to 644

As an alternative to passing a special resolution and obtaining court approval, private companies will have the option of reducing the amount of their share capital by special resolution supported by a solvency statement made by the directors. The resolution and solvency statement, a memorandum of capital, showing the alteration in the company's share capital and an additional directors statement will have to be submitted to Companies House.

How is the form and content of the solvency statement to be determined?

Companies House cannot give advice on the content of the solvency statement required by section 643 of the CA 2006. The statement must be produced by the company for its members and the content is governed by s643. www.opsi.gov.uk/acts/acts2006/ukpga_20060046_en.pdf

The form of the solvency statement is governed by regulations - The Companies (Reduction of Share Capital) Order 2008

www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110818368_en_1

Copies of the Companies Act and the regulations are available on the BERR website.

For registration purposes, the company name and number should be included on each of the documents sent to Companies House.

Is this new process also available to public companies?

No the solvency statement is only available to private companies, both private and public companies will continue to be able to reduce their share capital by special resolution confirmed by court order.

Control of political donations and expenditure, provisions relating to an independent candidate - Sections 362 to 379

Part 14 of the Act requires a company to be authorised by its members before it makes a political donation in excess of £5000 in one year to a political party, political organisation or an independent candidate (who is not a member of a political party but standing for election to public office).

A company must also be authorised by its members before it incurs expenditure in respect of political activities such as advertising, promotion or otherwise supporting a political party, political organisation or an independent candidate in an election.

The implementation is as follows:

In relation to political parties and other political and other political organisations the requirement for authorisation was implemented:

- In GB from 01/10/07
- In Northern Ireland from 01/11/07

However this did not apply to donations or expenditure relating to independent candidates. For independent candidates implementation is from 01/10/08 and applies to both NI and GB.

The 1st October 2008 implementation simply extends, to independent candidates, the control of political donations and expenditure by companies that already applied to political parties and organisations from last year.

Power of court to grant relief in certain cases - Section 1157

This section restates section 727 of the 1985 Act.

An officer of a company e.g. a director, or someone employed by the company such as an auditor, can apply to the court for relief from liability from negligence etc. The Court is able to grant relief in certain circumstances, if the person has acted honestly and reasonably.

Restoration for personal injury claims of companies dissolved prior to 16 November 1969 - Section 1295 of the 2006 Act, and Schedule 16 (repeals)

Restoration to the register under the 2006 Act is contained in Chapter 3 of Part 31, which will be commenced with effect from 1 October 2009. Applications under Section 1030 may be made at any time for the purpose of bringing proceedings against a company for damages for personal injury. The 2006 Act does not restate the current bar on restoration of companies dissolved prior to 1969 (or 1971 in Northern Ireland).

The current bar means that some ex-employees or their estates are unable to press claims for compensation in respect of personal injury or fatal accident, either against the employing company, its insurers or the Financial Services Compensation Scheme, simply because the company was dissolved prior to 1969 (or 1971 in Northern Ireland). Removing the bar may therefore enable such ex-employees or their estates to receive compensation which they are currently unable to obtain.

Other changes coming into force on 1st October 2008

Repeal of the restrictions on financial assistance for acquisition of shares in private companies - Sections 151 to 153 and 155 to 158 (1985 Act)

Are private companies to be prohibited from giving financial assistance for the acquisition of their own shares under the Companies Act 2006?

The Companies Act 2006 will not prohibit a private company from giving financial assistance for the acquisition of its own shares (although if it has a subsidiary which is a public company, the public company may not assist the acquisition of shares in the private holding company). The Companies Act 1985 prohibits private companies from giving financial assistance for the acquisition of their own shares unless certain conditions are satisfied. The prohibition will be repealed in October 2008: for assistance given on or after 1st October 2008, until then, the prohibition remains in place.

When will the rules change that govern the giving of financial assistance by private and public companies for acquisition of shares in themselves or their holding companies?

The rules will change for private companies on 1 October 2008. The rules will not change for public companies.

Why are the changes in the financial assistance provisions not coming into force with the rest of the share capital provisions in October 2009?

Although financial assistance is part of the share capital provisions of the Act it is a simple matter to abolish the prohibition for private companies, and 'whitewash', separately from those provisions, which is why that abolition is coming into force in October 08. Business welcomes the earlier commencement of these provisions.

How will the changes to the rules that govern financial assistance for acquisition of shares, brought in by Companies Act 2006, affect private and public companies?

The Companies Act 1985 prohibits a company from granting financial assistance (for example by means of a non-commercial loan) for the acquisition of shares in itself or its holding company: but one exception is that private companies may grant such assistance by going through a complex and expensive procedure, often referred to as 'whitewash'.

Under the Companies Act 2006, the prohibition on granting financial assistance will be wholly lifted for private companies but will remain in place for public companies.

Do these implementations have any effect on Companies House forms?

These changes mean that where financial assistance is given on or after 1st October 2008, companies will no longer need to file the following forms

- 155(6)a - Declaration in relation to assistance for the acquisition of shares
- 155(6)b - Declaration by directors of a holding company in relation to assistance for the acquisition of shares
- 157 - Notice of application made to the court for the cancellation of a special resolution regarding financial assistance (for the acquisition of shares)

Changes to the annual returns requirements (1985 Act)

For Annual Returns with a made up date on or after 1st October 2008

Sections 116-119 of the Companies Act 2006 were brought into force in October 2007 which allowed companies to restrict access to their register of members. To facilitate this, *annual returns made up to a date on or after 1st October 2008* will contain reduced information on the company's shareholders.

The information provided on the annual return will depend on whether or not the company has any of its shares admitted to trading on a regulated market (traded company). Private and non-traded public companies are only required to provide names of shareholders, not addresses. Traded public companies are required to provide names and addresses for those shareholders holding at least 5% or more of any share class.

Why is the annual return form changing?

The form has changed so only the appropriate shareholder details need to be completed depending on whether or not the company is a traded public company. This means that no company is required to include the addresses of all its shareholders.

Can I use the new annual return form if the made up date of my return is before 1 October 2008?

No the legislation only applies to annual returns to a made up date on or after 1 October 2008. You must continue to use the current versions of the annual return form for any annual return made up to a date prior to 1 October 2008 irrespective of when it is filed.

What is a traded public company?

A traded public company is one whose shares have been admitted to trading on a regulated market (AIM is not a regulated market see www.londonstockexchange.com). A private company would not have any shares admitted to trading on a regulated market unless the company was previously a traded public company.

Why do traded public companies have to make the extra disclosure?

Traded public companies are subject to the shareholding disclosure regime of the Transparency Obligations Directive (2004/109/EC). These companies are required to notify the Financial Services Authority when certain proportions, starting at 5%, of the total voting rights of any class of its shares is held by a shareholder. Further information can be found on the Financial Services Authority web site: www.fsa.gov.uk/pages/index.shtml

Are any traded public companies exempt from this disclosure?

Public companies that trade on AIM are not subject to the Transparency Obligations Directive so do not need to disclose their shareholder's addresses. They should complete the annual return as a non-traded public company showing their shareholder details in schedule A.

Does this only apply to public companies traded on a UK regulated market?

No. A regulated market means a market which appears on the list drawn up by an EEA State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

What happens if the public company has shares traded on a regulated market and shares that are not, do both annual return schedules have to be completed?

No only schedule B. If any shares are traded on a regulated market during the period of the annual return then the traded box must be ticked and schedule B completed for all share classes, whether or not that share class is traded.

What does a traded public company show for shareholders who hold less than 5%?

No details are required for shareholders that hold or continue to hold less than 5% of any issued share class.

What will happen if a private or non-traded public company enters shareholders addresses on the annual return?

Annual returns for these companies will be rejected for the extra information to be removed. However, our WebFiling system will not allow shareholder's addresses to be entered for private or non-traded public companies.

Why can I not choose to file the extra shareholder information?

The annual return is placed on the public record. This means that it must not include any information about shareholders that is not required by statute; otherwise the annual return would be in breach of the Data Protection Act.

Will members or shareholders' addresses still be available from Companies House?

Where addresses have been provided to Companies House as part of the annual return of a traded public company these will still be made available to the public.

Limited Liability Partnership changes to bring accounts content in line with the company regulations.

New Limited Liability Partnership regulations will be made applying parts 15, 16 and 42 of the Companies Act 2006. There will also be separate regulations on the form and content of accounts, in line with the Companies Act regulations. These will come into force for accounting periods starting on or after 1st October 2008.



Act one month earlier, when filing your accounts.

The Companies Act 2006 is here and it's designed to make running a business simpler. It's the new legal and regulatory framework that will help promote enterprise, growth and investment. But for now, we'd like you to get your accounts in one month earlier.

The filing dates for accounts will be reduced from 10 months to 9 months for private companies and from 7 months to 6 months for PLCs. This will come into effect if you have your accounting period beginning on or after 6th April 2008.

To find out more, visit www.companieshouse.gov.uk

Company accounting period start date	Company accounting reference date	Deadline for delivery of Annual Accounts to Companies House	
		Private Co.	Public Co.
Example for accounting period starting before 6 April 2008			
1 April 2008	31 March 2009	31 Jan 2010	31 Oct 2009
Example for accounting period starting on or after 6 April 2008			
6 April 2008	5 April 2009	5 Jan 2010	5 Oct 2009
1 May 2008	30 April 2009	31 Jan 2010	31 Oct 2009
1 March 2009	28 Feb 2010	30 Nov 2010	31 Aug 2010

Different rules may apply for your first accounts