

Changed to Companies at 1st October 2008

The following provisions of the Companies Act 2006 came into force on 1st October 2008:

- 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)

Other changes that came 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)
- Changes to the requirements of annual returns (1985 Act)
- Limited Liability Partnership changes to bring accounts content in line with the company regulations.

Objection to Company Names and the Company Names Tribunal – Sections 69 to 74

Will the rules of objection to similar names change in October 2008?

Yes. From October 2008 some new rules will apply under sections 69 to 74 of the Companies Act 2006. These will allow complaints to be made where a company has been registered with the intention of extracting money from the complainant or to prevent him from registering a name in which he has goodwill ("opportunistic registration"). More information about the Company Names Tribunal and the cost associated with this service is available at www.ipo.gov.uk/cna.

Who can object to a company name under these new rules?

Any person or company can object about a company name.

Can an objection to a company name on the grounds of opportunistic registration be sent to Companies House?

No. All objections about opportunistic registration must be sent to the new and independent Company Names Tribunal (also known as 'Adjudicator'), who will be based at the UK Intellectual Property Office. Companies House is only responsible for 'too like' and 'same as' objections.

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

Where must I disclose my company's name?

Every company must display its registered name:

- at its registered office and its 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 the 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 its 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 that 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 under-age directors – Sections 155 to 159

Corporate Directors

A company will be required to have at least one director who is a natural person - individual.

How will this new requirement affect corporate directors of existing companies?

From 1st October 2008 every company will have to 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 the day the Companies Act received Royal Assent, i.e. 8th November 2006.

Underage Directors

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

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

Existing under-age directorships will cease, with no notification to the Registrar required.

Is the company required to amend any company records?

Yes, the company will be required to amend the register of directors to reflect the fact that the appointment has ceased.

Will the under age directors' rules apply retrospectively?

Yes. When a person appointed as a director of a company before section 157 (minimum age for appointment as director) comes into force, has not attained the age of 16 by 1st October 2008, that person ceases to be a director.

What if as a consequence of the changes, the company is left without 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.

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.

Please note, for solvency statements made between 1st October 2008 and 30th September 2009, a memorandum of capital (as defined in The Companies Act 2006 (Commencement No. 7, Transitional Provisions and Savings) Order 2008 http://www.opsi.gov.uk/si/si2008/uksi_20081886_en_1), must be sent to Companies House. For solvency statements made on or after 1st October 2009, this memorandum must be replaced by a statement of capital as defined in section 644(2) of the Companies Act 2006.

What is the purpose of introducing the solvency statement route?

The solvency statement route provides a simpler and cheaper means for a company to reduce its share capital

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. http://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

http://www.opsi.gov.uk/si/si2008/uksi_20081915_en_1

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

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

Why is this requirement not coming into force with the rest of Part 17 of the Companies Act 2006 on 1st October 2009?

Business supports the solvency statement introduction at the earliest opportunity, as it's a procedure that will provide benefits in terms of ease and cost. Therefore these provisions will come into force on 1 October 2008, while the bulk of Part 17 will come into force on 1 October 2009.

In the absence of the court overview what safeguards exist against abuse of the solvency statement route?

If company directors make a solvency statement without having reasonable

grounds for the opinions expressed in it, and the statement is delivered to the Registrar, an offence is committed by every director who is in default. The offence is punishable by a fine or by a maximum period of imprisonment of two years or both.

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.

Please note that the 'memorandum of capital' that is required for filing at Companies House as part of this process (under the new 644(1)b) is a separate and distinct document from the memorandum of association of the company.

The seventh commencement order states what this memorandum of capital should contain:

"The memorandum must show with respect to the company's share capital as reduced by the resolution:

- (a) the amount of the share capital,
- (b) the number of shares into which it is to be divided, and the amount of each share, and
- (c) the amount (if any) at the date of the registration deemed to be paid up on each share."

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.

Other changes coming into force on 1st October 2008

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

As the bar will not be retained, the Government take the view it would be desirable to remove it without waiting for the commencement of Part 31 of the 2006 Act in October 2009. The relevant repeals are included in the Seventh Commencement Order, to take effect as from 1 October 2008. The Seventh Commencement Order will commence section 1295 of the 2006 Act, and Schedule 16 (repeals), so far as relating to the repeals of the second sentence of section 141(4) of the Companies Act 1989 and of the second sentence of Article 75(4) of the Companies (No.2) (Northern Ireland) Order 1990.

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. This may be relevant in particular to sufferers of so-called long-tail diseases, such as mesothelioma.

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 Return 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. [A copy of the Annual Return is available by clicking here \(PDF 479KB\).](#)

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 any of 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 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. We will reject any annual returns that contain shareholders addresses if the company is not a traded company.

Will it be possible for a company to take advantage of this before their next annual return is due?

Yes, a company may simply submit an annual return made up to a date on or after 1st October 2008 in order to take advantage of the reduced disclosure requirements. A company can make its annual return up to any date it chooses, as long as it isn't later than the anniversary of the previous annual return (or the date of incorporation in the case of a company's first annual return).

What if a company that submits an earlier annual return wants to restore its cycle by submitting another annual return on its original due date?

The company will be able to restore its cycle at anytime but any annual return made up to date before 1st October 2008 will be under the current requirements. This means that for a company with share capital, it will have to include the names and addresses of every member (or of all those ceasing to be or becoming members since the last return).

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.