

Registrars Powers

From 1st October 2009, Part 35 of the Companies Act 2006 gives the registrar of companies a range of powers. These include powers to decide on the form and manner in which companies must deliver documents, what is needed for a document to be properly delivered, provision of electronic delivery for certain documents, and amendments to the register.

The powers which relate to the delivery of information:

The form, authentication and manner of delivery of information.

Defines how the company information will look, how it can be authenticated and how it should be submitted.

The proper delivery of information.

This sets out the requirements companies must meet when sending documents, for example signatures, fees etc. If companies fail to meet these requirements the registrar will normally reject the document. However in some circumstances he may decide to accept a document even if it has not been properly delivered.

What happens if the registrar accepts a document which is not properly delivered.

Does the registration of a document cancel out the requirement to deliver the document properly?

No, the registrar may decide to take further action after registration, e.g. following a complaint by a third party. The registrar would send letters to the company asking them to file a document that complies with the proper delivery requirements. If they fail to respond, he may ultimately send a notice to the company giving 14 days to file a document that complies with the proper delivery requirements.

Powers to amend the register

Companies sometimes by mistake submit more information than they need, e.g. internal tax computations that do not form part of the statutory accounts. Depending on when we notice the extra information, and whether we can readily separate it from the original document, the registrar can deal with this in different ways.

If we cannot readily separate the unnecessary material from the original document the registrar will normally reject the document.

If the material is obvious and easy to separate, e.g. an extra page, we will normally remove the unnecessary material and register the document.

If the material is not noticed and registered, it can be dealt with in the future by the administrative removal procedure.

How do I replace a document which was originally not properly delivered or which contained unnecessary information?>

The registrar may accept a document to replace one previously delivered only if it;

- did not meet the requirements of proper delivery or,
- contained unnecessary material

Only the person or the company that delivered the original document can deliver the replacement document, which must be accompanied by a replacement document form (yet to be defined), required to link the replacement document with the original.

What happens to the original document?

The registrar can decide whether or not to remove the original document, and will judge each case on its individual merits.

What is annotation of the register?

The registrar has new powers to put notes on the register to inform searchers of changes. The annotation must record:

- the date a document was delivered
- the date of the replacement document and the fact it has been replaced
- the date material was removed, under what power and a description of the material.

What can the registrar do about inconsistency on the register?

Initially the registrar can write to the company inviting them to file a replacement or additional documents to correct the inconsistency. If the company does not comply, the registrar ultimately has the power to issue a formal inconsistency notice to the company requiring delivery of any replacement or additional documents. If the company fails to comply with the notice, the company and every officer is guilty of an offence and liable on conviction to a fine.

What can be removed from the register?

The registrar can administratively remove from the register:

- unnecessary material; or
- a document that has been replaced.

Before removing any material, the registrar must give notice to the person who delivered the material or the company that it relates to. The notice must be dated and state what material is to be, or has been, removed.

Does this cover all material?

No, material that cannot be removed includes:

- incorporation documents
- change of company name
- re-registration
- becoming or ceasing to be a Community Interest Company
- reduction of share capital
- change of registered office
- registration of a charge
- dissolution

This process does not cover requests for rectification of the register.

What is rectification of the register?

Rectification is a new process to remove material from the register in certain circumstances, i.e.

- material that's invalid or ineffective or that was produced without the authority of the company, or
- arose from something that was factually inaccurate or forged.

Rectification allows the registrar to deal with company hijacks and other false filings. There were no powers under the 1985 Act that enabled the registrar to remove documents, except via a court order.

What information is covered under the rectification process?

The appointment, removal and change of particulars of directors and secretaries and change of registered office address.

Other registrar's Powers

Agreement for delivery of company information by electronic means: the PROOF (PROtected On line Filing) process.

A company can enter into an agreement with the registrar that it will file specified documents electronically only. This allows companies to protect themselves against the risk of being hijacked or having false filings made against them.

Retention of company documents?

The registrar must keep paper documents for 3 years, after this time they can be destroyed as long as there is a copy of the information contained in them. Previously under the Companies Act 1985 this was 10 years.

What about dissolved companies?

Once a company has been dissolved for 2 years the Registrar may direct that the records relating to it may be removed to the Public Record Office who are then responsible for keeping the documents in accordance with their own rules.

Power to make information unavailable for public inspection.

The application can be made by an individual, a company or a person registering a charge.

A director or secretary may apply to the registrar to make their usual residential address unavailable for public inspection if the address was placed on the public record on or after 1 January 2003.

A company may apply to the registrar to make the usual residential address of all its members, former members and subscribers to the memorandum, unavailable for public inspection if their address was placed on the public record on or after 1 January 2003.

A person who registered a charge on or after 1 January 2003 may make an application to make the address he used when delivering the charge to the registrar unavailable for public inspection.

All applications must be on certain grounds as defined in the Registrars Powers guidance, available on this website from the end of July.

Form Changes

There are changes to all forms, where we have adopted a new numbering system. The old numbers aligned to the relevant section of the 1985 Companies Act, so are no longer applicable. We have instead used function-based descriptors for each form category. E.g. **appointment** of director is **AP01**, **incorporation** of a company is **IN01**, etc. Forms still contain a reference to the Section of the 2006 Act, but this will not be part of the number. View all 2006 Act forms

When will the form changes come into force?

Change to company forms will be introduced on 1st October 2009.

Will the new form types have the appropriate clause within the form?

The section number will appear on the form but not in the heading as currently.

Incorporation

To make it easier to set up and run a company there are a number of changes to the company incorporation process. The new system of incorporation will be preceded by a 'clearing period' to process any application made under the Companies Act 1985 that is received before 1st October 2009.

The new incorporation process will require an application to register a company (Form IN01) accompanied by a memorandum of association, the articles of association and the correct fee.

The memorandum of association is a much shorter document which will serve the limited purpose of providing evidence of the intention of each subscriber to form a company and become a member of that company. In the case of a company that is to have a share capital on formation, each member agrees to take at least one share. The form of memorandum is included in schedules 1 and 2 of The Companies (Registration) Regulations 2008 (SI 3014).

There will be 3 types of articles: model articles, model articles with amended provisions and bespoke articles. The articles will include the company's liability and assets and the objects. Model Articles are included in schedules 1-3 of The Companies (Model Articles) Regulations 2008.

Amendments to a company's articles must be notified to Companies House within 15 days, and failure to comply will be a criminal offence. The Companies Act 2006 introduces a new civil penalty of £200 for failure to comply in response to a notice from the registrar.

Authorised / nominal share capital will be discontinued on incorporation, which means that there will also no longer be a limit set out in the Memorandum on the number of shares that directors can issue. Currently a special resolution is required to increase the authorised capital if directors wish to issue shares above the limit in the memorandum. However shareholders can seek controls on the issue of shares by Directors in the Articles.

Finally, the need for a solicitor to make a statutory declaration of compliance will be replaced with a statutory statement of compliance from the company - also designed to make the company incorporation process simpler. The statement may be made in paper or electronic form and need not be witnessed. It will be an offence to make a false statement of compliance.

Change of Constitution

Articles of association may contain provisions for entrenchment establishing restrictions on the conditions to amend certain provisions of the articles. These can be introduced on and after formation by the company or by order of a court or other authority.

Companies will also be required to file a notice to notify the Register of:

- the presence and removal of such provisions of entrenchment,
- when the company amends its articles and these contain provisions for entrenchment, and
- when the company's constitution is amended by court order or by enactment.

Change of Company Names

Companies can change its name by 4 methods by:

- resolution,
- conditional resolution,
- resolution from directors,
- means provided in the company's articles.

Companies must notify the Registrar by completing a notice available for each method. This notice must be accompanied by the fee.

Change of name is a part file process. The change of name is only effective when the Registrar has processed *all* the documentation required. Names cannot be reserved so we strongly recommend you send the documents together.

From October 2008 a name can also be changed by the Company Names Tribunal as a result of a successful complaint for opportunistic registration. This process is not administered by Companies House. Any query or documentation should be addressed to the Patent Office. More information is available at www.ipo.gov.uk

Treatment of Company Name

The rules on 'same as' will be stricter. For example, we will disregard a number of matters if they appear at the end of the name and they are preceded by a full stop including "GB", "services", and "com".

You may register a name that is the same as another in the registrar's index if the company belongs or is to belong to the same group as the company already on the register and a written consent from the latter is sent to us.

You can find more details on the Company and Business Names (Miscellaneous Provisions) Regulations 2008 at www.berr.gov.uk

Directors Service Addresses

From 1st October 2009 every director must provide Companies House with both their usual residential address, and for each directorship they hold, a service address. The service address will be on the public record and will be public information but the residential address will be protected information. A director can choose any address as the service address including the registered office address of the company. The address must be where documents can be delivered and an acknowledgement or receipt can be provided if required. The address can not be a PO Box or a DX number. If the director chooses to use his residential address as the service address the fact that the two addresses are the same would not be apparent from the public record.

The residential address will only be available to prescribed regulatory authorities such as the police and HMRC, and it may also be made available to Credit Reference Agencies.

What does the introduction of service address mean for directors?

Directors will be able to file a service address for the public record. This address can be the same as the residential address, or the registered office address, or it can be somewhere different. This will be introduced from 1st October 2009.

Will directors still have to provide their residential address to Companies House?

Yes. Every director must provide both their usual residential address and, for each directorship, a service address. The service address will be on the public record; the residential address will be protected information. A director may choose to use his residential address as his service address; in which case the fact that the two addresses are the same will not be apparent from the public record.

Will a payment be required for directors who wish to file a service address?

No. When service addresses are introduced they will be free.

Who will be able to obtain a directors' residential address from Companies House and why?

The following will be able to obtain directors residential addresses:

- Specified Public Authorities for carrying out their public functions.
- Credit reference agencies for vetting applications for credit and associated work and to meet the obligations in the Money Laundering Regulations. Vulnerable directors will be able to apply to the Registrar for their addresses not to be provided to credit reference agencies.

Which directors' addresses will not be provided to credit reference agencies?

Credit Reference agencies will not be able to obtain the usual residential address of any director who is the beneficiary of a valid Confidentiality Order on 30 September 2009 or who has made a successful application to the Registrar on the grounds that he is:

- at serious risk of violence or intimidation as a result of the activities of a company of which he is a director;
- or has been, employed by the police or security services;
- providing, or has provided, goods or services to the police or security services.

Does the legislation relating to service addresses allow a ban of up to 5 years if the address was found to be ineffective?

Yes, if the service address is ineffective the Registrar does have the power to ban the use of this address and to place the usual residential address on the public register.

If a company is in default, will any letter addressed to the directors go to the Service Address or residential address?

Letters will be sent to the Service Address initially.

Will Companies House still register 'Confidentiality Orders' for directors under severe threat, as well as the service address option?

Confidentiality Orders will cease on implementation of the Act on 1st October 2009. Any Confidentiality Order application received on or before 30 September 2009 will be dealt with but any applications received after that date will be rejected for the new form.

As residential addresses are no longer required for the public record, will confidentiality orders need to be renewed?

Only directors whose confidentiality order expires before 1st October will need to renew their order. Those who have an unexpired confidentiality order on the 1 October 2009 will be treated as if they had made a successful application under 243.

From 1st October 2009 if a director is at risk of harm they will be able to apply under Section 243(5) for their usual residential address not to be disclosed to Credit Reference Agencies.

Administrative Restoration

Administrative Restoration is a new provision under the Companies Act 2006, which will be used to supplement the existing Court power to restore companies. The Court power will still exist for those cases where the Registrar cannot act.

Administrative Restoration can only be used where:

- the company was carrying on business / or in operation at the time of dissolution
- the company has been struck off under section 1000 or 1001 (power of registrar to strike off defunct company)
- the application is made within a period of 6 years after the date of dissolution
- the application is made by a former director or former secretary of the company
- the Crown has signified consent (bona vacantia issue)
- the company has delivered all the necessary documents to bring the company up to date, i.e. all outstanding documents at the time of dissolution and any that have fallen due during the period of dissolution.

Single Alternative Inspection Location (SAIL)

The Companies Act 2006 introduces changes to the arrangements for inspecting a company's registers. Depending on the nature and situation of the company it may be obliged to keep up to 13 possible registers. These registers must either be held at the Registered Office Address (ROA), or at a Single Alternative Inspection Location (SAIL).

Companies must notify Companies House when they initially set up a SAIL address or if the SAIL address is moved. Once the SAIL address is set up the company can move some or all registers to the SAIL address by notifying Companies House.

Voluntary Dissolution

From 1/10/2009 voluntary dissolution will be extended to public limited companies, they will be eligible to apply under Section 1003 of the Companies Act 2006.

Statement of Capital

The statement of capital is a "snapshot" of a limited company's issued share capital at a given time.

Companies incorporating as limited by shares (whether private or public) on or after 1st October 2009 must complete a statement of capital and initial shareholdings as part of the application to incorporate.

All companies limited by shares must complete a statement of capital as part of any annual return filing made up on or after 1st October 2009.

A statement of capital must also be completed with certain forms associated with notification of capital changes, namely:

- Allotment of shares
- Notice of consolidation, sub-division of shares or re-conversion of stock into shares or redemption of redeemable shares
- Redenomination of shares
- Reduction of capital as a result of redenomination
- Cancellation of re-purchased shares or, (for plcs), immediate cancellation of shares re-purchased into treasury
- Subsequent cancellation of shares held in treasury by a plc
- Cancellation of shares held by or for a plc in accordance with s662 of the CA 2006

In all the circumstances listed above, the statement of capital will be an integral part of the appropriate form

There will be certain circumstances where a company needs to file a 'standalone' statement of capital – accompanying a reduction of capital (either via the 'solvency statement' route or as confirmed by a court) and (in some circumstances) when re-registering from an unlimited to a limited company. A statement of capital form will be available for these purposes.

What is the content of the statement of capital?

The statement of capital must show with regards to the issued capital:

- the total number of shares of the company,
- the aggregate nominal value of those shares,
- for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares (these will be determined in regulations and indicated on the appropriate forms),
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

Do I have to complete a statement of capital each time I submit one of the relevant forms?

Yes.

What if the form details several transactions (e.g. an allotment of shares over a period of time)?

The statement of capital should reflect the issued capital following the 'latest' transaction.

How can I fill in the statement of capital (eg in my annual return) if I cannot identify the premium on individual shares?

The statement of capital requirement in the Companies Act 2006 is intended to provide a snapshot of a company's capital structure. A statement of capital is required each year in the annual return, and whenever a company changes its capital.

We are aware that one of the details required to be included in the statement of capital can cause problems for certain companies that have a complex history of allotting shares and managing their capital structure. In particular, we understand that in certain circumstances it may not be possible or meaningful for a company to identify the amount of premium paid up on each share.

The Department for Business Innovation & Skills is working with the Institute of Chartered Secretaries and Administrators (ICSA), who first drew this to our attention, and with other stakeholders to seek a resolution of this problem.

In the meantime, we hope that companies with complex capital histories will do what they can to provide numbers in their statements of capital that provide a pragmatic allocation of their share premium reserve between shares or classes of shares. ICSA has published guidance on this (read the guidance), explaining the problem and outlining a recommended approach.

When completing a statement of capital, in the annual return form or elsewhere, it is important that a company does not leave blank the field for the amount paid up on each share, or the form will be rejected by Companies House's system. Further FAQs on BIS website

Slavenburg Charges

From 1st October 2009 Companies House will no longer be accepting Slavenburg charges, **created on or after 1 October 2009**, as they relate to unregistered overseas companies. The Companies Act 2006 specifies that only overseas companies registered in the UK need to register a charge over UK property.

PLEASE REFER TO THE COMPANIES HOUSE WEBSITE FOR A FULL UPDATE OF THE COMPANIES ACT 2006 CHANGES – www.companieshouse.gov.uk