



Government response to the consultation

'Working with Companies House – A consultation document on the registrar's rules and related provisions which will apply under the Companies Act 2006'

BERR | Department for Business
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The Companies Act 2006 ("the Act") changes the way in which the registrar of companies will operate in future. Rather than set out certain requirements in secondary legislation, the Act provides the registrar with a power to make rules. This approach offers greater flexibility and a less administratively complex procedure when future changes are required.

On 20 July 2007, Companies House published a consultation document which sought views on the proposed application of the registrar's rules under the Act. The consultation invited respondents to comment on questions concerning such matters as:

- Authentication of paper and electronic documents
- The layout of forms
- The application of rules to other company types
- Transitional arrangements for forms
- The delivery of documents to the registrar
- Companies House Protected On-line Filing system (PROOF)

The consultation period closed on 12 October 2007. Companies House received 26 responses from various stakeholders including practitioners, companies, software providers and representative bodies:

Ward Hadaway	Nockels Hornsey Chartered Accountants
Chettleburgh's Ltd	The Law Society
Abell Morliss	CIFAS
Travis Perkins Plc	The Institute of Credit Management
Barclays	The Company Centre Limited
Rothschild	The Institute of Chartered Accountants of Scotland
Prudential	The Association of Chartered Certified Accountants
UK Plc	Shell International Limited
Jordans	Dudley Miles Company Service Limited
ICSA Software	Waterlow Legal and Company Services
Dun and Bradstreet	Capita Company Secretarial Services
Iris	Data-care
ICC	The Institute of Chartered Secretaries and Administrators

A summary of the responses to questions, and an explanation of how Companies House will proceed in light of these responses, is outlined below.

Question 1

In developing the new rules, we are keeping closely in mind certain key principles, including:

Simplicity. It is vital that all users can easily understand the rules including in particular smaller firms and individuals who may not have easy access to legal advice. This principle will inform not just the substance and content of the rules, but the way we set them out, how we make them available, and (where necessary) any guidance that we provide on them.

Continuity. Current arrangements, including the principle of using paper forms and electronic formats, are generally working well, and we will not change them unless there is good reason. We will take advantage of new flexibilities allowed by the Companies Act 2006 to simplify processing.

Facilitating the use of e-communications. We have underway a major programme to upgrade our IT capabilities, and many users are enthusiastically adopting the new communications possibilities. This trend will continue, in line with efforts across Government more generally to encourage e-communication, and needs to be reflected in the new arrangements. We will continue to promote our E-filing services given the numerous benefits it offers, including speed, efficiency, security and cost savings.

Do you agree that the above principles are key factors in developing the rules?

AND

Question 2

Can you suggest any other principles that we should take into account?

All respondents encouraged the principles outlined in the consultation document, placing particular importance on 'Facilitating the use of e-communication'. A few respondents expressed concern about over-simplifying the rules, or the potential risk of unnecessarily long rules or detail being lost when simplifying a complex area.

A number of other key principles were suggested including security, simplicity, accessibility, brevity, transparency, consistency and flexibility.

Action: Companies House will take these comments and suggestions on board when developing the rules and is developing a list of key factors to be taken into account in forms design.

Question 3

Do you agree that the current system of company and personal authentication codes work satisfactorily? If not please could you provide comments or suggestions?

Generally, respondents were supportive of the current system of company and personal authentication codes, recognising the importance of its role in maintaining the security of information and the prevention of fraud.

A few respondents commented on the difficulties for practitioners who need to maintain numerous codes if they file on behalf of a number of clients. It is already possible to harmonise company authentication codes once they have been issued. However, we accept that a move towards the Government Gateway will offer a superior service as it will specifically provide for agents/practitioner authentication.

A number of suggestions were made concerning the composition of authentication codes and personal information as well as the procedure for issuing such codes.

Action: Companies House will review these comments in line with the authentication requirements for the Government Gateway.

Question 4

Do you agree that authentication of electronic documents is an important part of helping to ensure the authenticity of the documents?

OR

Question 5

Do you think that we should no longer insist on authentication of electronic documents?

Respondents overwhelmingly supported the retention of authentication for electronic documents as it aids security and the prevention of fraud.

Action: The Registrar will continue to require authentication for electronic documents.

Question 6

Do you agree that the system of “functional descriptors” for forms and electronic transactions would be preferable to the current, section number based system?

Question 7

If not, what alternative system would you suggest?

Whilst some users generally accepted that the functional descriptors would be useful for newcomers, most did not favour their use as the only identifier on forms. Many respondents felt that the existing system of section based numbering was invaluable as it enabled users to quickly determine the correct form and relevant section of the Act. Some suggested that users will ultimately fall back on a “short code” in any event, preferring that the section number be included on all forms and in a more prominent position than currently shown on the specimen forms provided in the consultation document. It was also felt that the use of section numbers would aid familiarity with the Companies Act 2006.

Action: Companies House accepts that an identifying code is necessary in order to help customers to access documents and to aid the development of their systems. This will be taken forward as part of the work on developing new Companies Act forms.

Question 8

Do you have any other comments on the layout of the forms?

Many useful comments were received concerning the layout of the specimen forms provided. Respondents requested that the forms are simple, user-friendly, consistent and logical.

Action: Companies House will embrace these philosophies when designing the forms and will consult with advisory user groups as they are developed.

One respondent requested that an “authorised signatory” should also be added to the list of people capable of signing the form.

Action: Companies House is currently considering how best to apply the treatment of authorised signatories under section 270/274 to its forms.

Question 9

Are there any other qualities or requirements that should be applied to paper forms?

A few respondents requested clarification surrounding legibility requirements for paper filings i.e. the production of glossy accounts and styles of binding. Companies House will continue to offer its current guidance on this issue, namely that:

- If you are producing colour printed glossy accounts, please save them for your shareholders who will appreciate them;
- Companies House need black on white with a matt finish;
- A typed, unbound version of a printer's proof is ideal, provided it has the necessary signatures.

Other users sought clarity surrounding the use of blue ink for signatures on forms. All text on the form, including the signature should be in black ink.

Action: This point has been taken on board and Companies House will endeavour to make this clearer on the forms.

Companies House was also asked to consider accepting North American letter size paper rather than just A4. The existing requirements are based on the capabilities and settings of the current scanning technology.

Action: Companies House will consider other paper sizes as and when there is any advancement in the scanning equipment.

Question 10

Do you agree with the proposals on where the document should be sent? If not, please tell us why.

There was a mixed reaction to the proposal that documents should be sent to the Companies House office where the company is registered. Some thought that this approach lacked flexibility as users find it helpful to file at any Companies House office, particularly when subject to tight deadlines or handling affairs for groups of companies across jurisdictions from a single head office.

The original intention behind the proposal that delivery needed to be at the correct office was to ensure that documents are received and processed in a timely manner. At present, documents for a Scottish company delivered to the London office are forwarded on the Edinburgh office for processing. However we agree that we need to be flexible on this.

Action: We find the argument for retaining the existing approach persuasive.

Therefore, we have changed our policy and will proceed on the basis that documents can be sent to any office. This will ensure that users obtain a receipt date based on delivery at any office, but this does not denote acceptance for registration until received and examined by the correct office. Consequently, it still remains in the best interests of the filer to deliver to the correct office in order to secure receipt and acceptance sooner, particularly in the case of time critical documents, such as mortgages and accounts.

Question 11

Do you agree with the proposals on how documents should be delivered to the registrar? If not, please tell us why.

Again opinions were divided. Some respondents expressed concerns that the rules surrounding delivery could be too prescriptive and compromise flexibility if and when other service providers are recognised. Users considered that other handlers such as TNT and DHL should be accepted as alternatives to Royal Mail.

Action: In the light of these comments, Companies House will consider whether there is a suitable way to draft the rules in order to cover all service providers and methods of delivery.

Question 12

Are there any other methods of delivery that we have not included?

A few respondents asked Companies House to consider accepting PDF documents via email and documents by facsimile.

Companies House does not favour PDF filing as it does not offer the benefits and efficiencies of electronic filing. Unencrypted email is also less secure than the web service option Companies House will be moving towards software filing. Furthermore, PDF filing would not enable Companies House to hold data which it could potentially provide to search customers in the future. Delivery by facsimile has been considered previously but the logistical problems and cost of operating and maintaining banks of fax machines does not make it a feasible option. In addition the quality of facsimile documents is not sufficiently good to scan for images.

Question 13

Do you agree that signatures on paper documents are an important part of helping ensure authenticity of the documents?

OR

Question 14

Do you think we should no longer insist on signatures on paper documents?

Overall, respondents felt that signatures impose an important discipline on those signing, although it was recognised that signatures pose an identity fraud risk. Some felt that a document would not be treated seriously unless it was signed and it would be difficult to obtain a conviction for forgery without a signature. A few users supported a move towards optical character recognition software, whereby the signature could be hidden from the public record but maintained for the purposes of investigating fraudulent activity.

Action: There was unanimous support to retain the signature requirements on paper forms and Companies House will proceed on this basis.

Question 15

Do you agree that it would be helpful to provide standardised formats for resolutions?

Respondents were generally supportive of the proposal to provide standard resolution formats, recognising that this would facilitate certainty, consistency and efficiency. However, the majority preferred that Companies House simply provide specimens or optional templates and guidance on filing resolutions rather than prescribing a compulsory form.

Action: There is no intention to create an obligatory form for resolutions. Instead, Companies House will set out specific requirements to be included on copies of resolutions sent to the registrar, such as requirements to:

- meet presentational requirements e.g. paper used, font size and colour;
- include the company name and company number in a prominent position at the start of the resolution;
- include the signature and designation of the person signing it at the end of the resolution.

Question 16

Do you agree that the same rules should apply to other company types?

Whilst a few respondents identified the possible need for modification in particular instances, it was widely held that the same rules should apply.

Action: In the interests of consistency and simplicity, Companies House will proceed with this approach.

Question 17

Do you think there should be transitional arrangements to allow "old" forms to be filed for a set period after implementation of the New Act?

OR

Question 18

Do you think it would be better to implement all new Act forms at the beginning and not make transitional provisions for old forms?

The responses to these questions were mixed. Around half of the respondents were against the idea of creating transitional arrangements for old forms, feeling that this approach could be complex and create confusion. The remaining respondents either:

- opted for the provision of transitional arrangements ranging from 6-12 months in length;
- felt that old forms should only be acceptable post implementation if the change related to a date before 1st October 2008; or
- thought there was the potential for a mixture of transitional arrangements and the straight forward introduction of new 2006 Act forms, depending upon whether the information contained in the old form appropriately satisfies the filing requirement under the 2006 Act.

Action: Following further analysis, the reality is that different permutations will be necessary depending on the legal requirement for each form. This will result in a mixture of the following arrangements:

- transitional acceptance of 1985 Act forms for a specified period if the content of that form has not changed e.g. possibly form 287 (Change of registered office address);
- indefinite acceptance of some 1985 Act forms e.g. Annual returns up to period ending 30/09/09; and
- immediate cessation of some 1985 Act forms e.g. incorporation forms.

Question 19

Have you any comments on the proposals in Annex B to use Registrar's rules?

There was a limited response to this question. One user emphasised the potential need to review the rules following implementation and practical application. Another respondent stressed the importance of the rules following a transparent and rigorous process, taking account of stakeholders' views.

Action: As the rules are set administratively, rather than being subject to the Parliamentary process, they can be varied if necessary. Companies House will consider whether it is necessary to review the rules 6-12 months after implementation.

Three respondents expressed disappointment that Companies House did not plan to use the informal correction route for dealing with documents that were not properly delivered.

Action: This is one area that will be complex to introduce and for that reason it has been decided to wait until after the 2009 implementation date. We will then review how treatment of improperly delivered documents is working.

Question 20

Do you agree that, in order to ensure the quality of the register, the registrar should normally reject documents that are not properly delivered so that the company/presenter can correct them accurately themselves?

The majority of respondents supported the proposal to reject documents that are not properly delivered. It was pointed out that there needs to be consistency between the reasons for rejection and the mechanism for rectifying the filing to comply with "proper delivery".

Action: Companies House intends to apply the rejection criteria as consistently and logically as possible across all forms.

Question 21

Do you consider that any other documents should be included in the PROOF system?

Most of those who responded to this question felt that the PROOF scheme should involve as many forms as possible. Others requested the specific inclusion of:

- Change of name resolutions
- Re-registration resolutions
- Accounts
- Form 225 (change of accounting reference date)
- Form 405(1) (Notice of appointment of receiver or manager)
- Form 600 (Notice of appointment of liquidator voluntary winding up (members or creditors))
- Form 4.31 (Notice of appointment of liquidator in winding up by the court)
- Form 652a (Application for strike off)

It is important to remember that the PROOF scheme was created specifically to address company hi-jacking and the particular forms used as a vehicle to commit fraud.

Action: Companies House will consider whether the scope of the new PROOF scheme needs to be widened when the forms suggested above become electronically enabled and are sufficiently established. However, there are no plans to extend the range of electronic transaction types significantly before implementation of the Companies Act.

Question 22

Do you think that, as at present, all directors should consent to a company signing up to PROOF, or that the authentication need only be given by one director on behalf of the company?

The majority of respondents were against the requirement that all directors must consent to the scheme as it is onerous and time consuming. However, a proportion of these respondents (accepting the importance of all directors agreeing to join PROOF) felt that one signature might weaken the integrity of the scheme. Consequently, a couple of respondents suggested that although the signature of one director should suffice, this should be accompanied by a copy of a board resolution confirming that that director was empowered to give such authorisation.

Action: Companies House is keen to promote and extend PROOF to enable more companies to take advantage of protected filing. Companies House is reviewing the PROOF process in line with the statutory provisions of the new Act (in that it is the company that makes the agreement for electronic filing). It is likely that only one director will need to sign the agreement.