



COMPANIES ACT 2006

Implementation of Companies Act 2006

A CONSULTATIVE DOCUMENT

FEBRUARY 2007

IMPLEMENTATION OF COMPANIES ACT 2006

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Foreword

**Rt. Hon Margaret Hodge MP MBE,
Minister of State for Industry and the
Regions**

Our goal is to increase competitiveness. We are committed to ensuring that the legal and regulatory framework within which business operates promotes enterprise, growth and the right conditions for investment and employment. An effective company law framework is one of the essential ingredients to a successful, competitive economy.

We all recognise that we operate in an increasingly global market place, alongside ever changing technologies. Our company law framework must enable business to flourish in the 21st century where business and investment decisions are determined more and more by our global and faster-paced environment.

The Companies Act 2006 provides a coherent, flexible and simpler basis on which companies can set up and do business.

The Companies Act received Royal Assent on 8 November 2006. It is the result of extensive consultation with business, practitioners, and the professions. The Companies Act 2006 has four key objectives:

- enhancing shareholder engagement and a long-term investment culture;
- ensuring better regulation and a 'Think Small First' approach;
- making it easier to set up and run a company;
- providing flexibility for the future.

These objectives were the driving force behind the primary legislation, and remain the driving force when drafting secondary legislation under the 2006 Act. There are a number of pieces of secondary legislation that need to be made, of which the content is largely technical. For much of the 2006 Act no extra legislation is needed, with the substance being in the 2006 Act itself.

I am pleased to publish this document and welcome views on the issues set out in relation to implementation and secondary legislation. It is extremely important that we implement the 2006 Act in the most useful and flexible way for the businesses and practitioners that are going to use it.

Margaret Hodge

EXECUTIVE SUMMARY

The Companies Act 2006 (the 2006 Act), which received Royal Assent on 8 November 2006, will bring major benefits to business by modernising and simplifying company law.

Most of the provisions of the 2006 Act will be the subject of commencement orders, and the Government have announced its intention to commence all parts of the 2006 Act by October 2008. Annex A to this consultative document provides a full commencement timetable for the 2006 Act.

Many of the key areas of the 2006 Act - including, for example, the provisions on directors' general duties and resolutions and meetings - will not require the making of any secondary legislation. However, in some areas, regulations are needed to supplement detailed provisions of the 2006 Act; and, in a very few cases, regulations are needed to provide the substance of the law. In this consultative document:

- Chapter 2 sets out our proposed approach in areas where secondary legislation is necessary to implement the 2006 Act;
- Chapter 3 builds on the Department's earlier consultations on model articles of association by setting out revised proposals in this important area;
- Chapter 4 - which also builds on the earlier consultations - considers the extent to which express transitional or saving provisions are needed when the various provisions of the 2006 Act are commenced to ensure that it operates in a reasonable way for existing GB or Northern Irish companies.

How to respond

The Department of Trade and Industry invites comments on the issues set out in this consultative document. Please send comments on political donations and expenditure by Tuesday 1 May 2007; comments on all other issues by Thursday 31 May 2007.

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

You are invited to send comments, preferably by email to:

CompaniesAct2006-Consultation@dti.gsi.gov.uk

If by letter, then to:

Emma Smith
Companies Act Implementation Team
Department of Trade and Industry
5th floor
1 Victoria Street
London SW1H 0ET

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Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

Questions about the policy issues raised in the document can be addressed to:

Emma Smith

Companies Act Implementation Team

Department of Trade and Industry

5th Floor

Email: emma.smith@dti.gsi.gov.uk

A copy of the Code of Practice on Consultation is in Annex D.

Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment (RIA) was developed on the 2006 Act and a final version is available to view at www.dti.gov.uk/bbf/co-act-2006/clr-review/page22794.html.

As is outlined in this document, most of the substance of the legislation is already in the 2006 Act itself rather than in regulations. Furthermore, some of the content of the secondary legislation that is being made is already in existing regulations that may need to be simply redrafted to correspond with the redrafting of the primary legislation to make it simpler to understand.

The costs and benefits associated with the policy in the proposed secondary legislation have therefore largely been analysed in the RIA on the 2006 Act. Consultation on likely costs and benefits was held with sample public and private companies, representatives from small companies and other business representative bodies. The quantifications put forward in the RIA rely heavily on information provided by these consultees, which is often anecdotal or imprecise. You are invited to comment on the analysis, and/or provide further evidence to demonstrate potential costs or benefits of the proposals set out in this consultative document.

The Department will provide regulatory impact assessments for the draft regulations as and when they are published on the DTI website.

QUESTIONS

Chapter 2 – Secondary Legislation

- 2.1 Do you agree with the proposals for the prescribed form and authentication of the memorandum, ie that it contains
- a statement confirming that they, (the subscribers) wish to form a company under this Act and that they agree to become members of the company and, in the case of a company that is to have share capital, to take at least one share each
 - the name of each of the subscribers and their individual authentication.

See 2.18 – 2.24

- 2.2 Do you agree that the required information for incorporation should include the names of the subscribers and a physical address for each of them? **See 2.25 – 2.30**

- 2.3 Do you agree with the proposed contents of an application to re-register and accompanying document, ie a statement of the company's proposed name on re-registration, and the prescribed form of assent, authentication by or on behalf of the company and a copy of the company's articles as proposed to be amended? **See 2.34 – 2.35**

- 2.4 Do you agree that the choice of characters that may be used in a company's name should be restricted to:

- (a) letters and diacritical marks of the official languages of the European Union;
- (b) Arabic numerals;
- (c) basic punctuation marks, ie apostrophe, bracket, colon, comma, dash/hyphen, exclamation mark, full stop, mark, quotation mark, reverse solidus (or backslash), semi-colon, and solidus (or forward slash); and
- (d) &, + and, except in the first three characters of the company's name, the following symbols: *, =, #, %, and @?

See 2.37

- 2.5 Do you agree that the number of characters that may be used in a company's name should be restricted to 160? **See 2.38**

- 2.6 Do you agree that the rules for determining whether two names are the same should be expanded so that the following are also ignored:

- (a) anywhere in the name: any permitted symbols (eg "@");
- (b) at the end of a name: "s";

and that the following should be taken as the same:

- (c) "and", "&" and "+";

- (d) “£” and “pound”;
- (e) “€” and “euro”;
- (f) “\$” and “dollar”;
- (g) “¥” and “yen”; and “%” and “per cent”?

See 2.40 – 2.41

2. 7 Do you agree that all numbers in names, howsoever represented, should be compared to Arabic numerals?

Is there anything else that you consider should be included in or excluded from these rules? **See 2.40 - 2.41**

2. 8 Do you agree that a company should be registered in a name that differs from the name of a company whose name is already on the register only by:

- (a) at the beginning of the name, the inclusion of “www.”
- (b) anywhere in the name, the inclusion of “UK”, “GB”, and “exports”;
- (c) at the end of a name and including full stops, the inclusion of “.com”, “co.uk”, “org.uk”

if and only if the company whose name is already on the register gives its written consent. In these circumstances, despite any objection from a third party, the company should not be required to change its name as being “too like” the existing name. **See 2.44**

2. 9 Do you agree that the rules for the company names adjudicator should be based on the Registered Designs Rules 2006? **See 2.45**

2. 10 Do you agree that it should not be possible to register a company with a name that:

- includes one of the statutory indicators of legal status except, at the end of the name, the one appropriate to the company; or.
- Includes “not” or “un” immediately before “limited”?

See 2.46

2. 11 Do you agree that the power to exempt companies from the requirement for their names to end in “limited” in section 60 should be used to exempt only those companies whose primary purpose is to regulate persons in accordance with a statutory obligation? **See 2.47**

2. 12 Are there any deletions or additions that you consider should be made to the list of sensitive words and expressions? **See 2.48**

2. 13 Do you agree that the power to specify public bodies which for the rules relating to company names will be treated the same as HMG should be used only to protect the public? **See 2.49**

2. 14 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:
- (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;
 - (b) in communications that follow from an agreement made in the previous 12 months between the company and the recipient?

See 2.59

2. 15 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? **See 2.61**

2. 16 Do you agree that:

- (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;
- (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;
- (c) companies using a business name should no longer be required to include in the display an address for service of documents on the business?

See 2.63

2. 17 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? **See 2.64**

2. 18 Do you agree that as regards offences relating to trading disclosures, a shadow director should be treated as a director? **See 2.64**

2. 19 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? **See 2.65**

2. 20 Do you agree that the public authorities to whom protected information may be disclosed should be those contained in Appendix (a) to Chapter 2? Do you consider any public authority should be removed from or added to that list? **See 2.83**

2. 21 Do you agree that public authorities should be able to use protected information only for the purpose of facilitating the carrying on of a public function? **See 2.85**

2. 22 Do you agree that: credit reference agencies should be permitted to use protected information only:

(a) vet applications for credit or applications that can result in the giving of credit or the giving of any guarantee, indemnity or assurance in relation to the giving of credit; and

(b) to meet any obligations contained in the Money Laundering Regulations 1993, the Money Laundering Regulations 2001 or any rules made pursuant to section 146 of the Financial Services and Markets Act 2000?

See 2.86

2. 23 Do you agree that:

(a) only directors or prospective directors should be able to apply for extra protection with respect to credit reference agencies?

(b) applications for extra protection should be made to the Registrar?

See 2.91 – 2.93

2. 24 Do you agree that extra protection should be available to those who hold a Confidentiality Order and to those individuals whom the Secretary of State considers satisfy the following conditions:

(a) at least one of the companies of which the individual is, or will be, a director is likely to be subject to violence or intimidation; or

(b) that the director or prospective director is or has been employed or otherwise engaged to provide services to the security and intelligence agencies or the police?

See 2.95

2. 25 Do you agree that the proposed information should be required with an application for higher protection? The proposed information is:

(a) the applicant's full name and date of birth;

(b) the applicant's usual residential address, ie the information to be protected;

(c) if the Registrar of Companies has allocated the individual a unique identifier, that identifier.

(d) the name and number of every company in which an individual holds a directorship or is about to be so appointed;

(e) the service address for each directorship;

(f) relevant supporting evidence:

if the grounds on which the application is made are that a company is likely to be subject to violence or intimidation,

relevant supporting evidence must be provided, eg the Home Office designation certificate under the Animal Scientific Procedures Regulation 1986 or evidence of a link to a company so licensed; verification from the Inland Revenue that a tax-concession has been allowed because of the need to improve security; police incident numbers of any attacks; etc;

if the grounds on which the application is made are links with the security and intelligence agencies or police, evidence of the link; and

- (g) copies of pages from publicly available records showing the name and address of the individual, eg telephone directory, professional registers, etc.

See 2.96

- 2. 26 Do you agree that the application for extra protection should be determined in a manner similar to regulations 3 to 5 of COR 2002?

See 2.96

- 2. 27 Do you agree that

- (a) the extra protection should be effective unless the director or executors of his estate request that it be removed?
- (b) the Secretary of State should have the power to remove the extra protection if the application is found to contain false or misleading information?

See 2.98 – 2.99

- 2. 28 Do you agree that directors who are beneficiaries of confidentiality orders, at the point that COR 2002 is repealed, should be treated as having applied successfully for extra protection? **See 2.100**

- 2. 29 Do you agree that:

- (a) whether companies are exempt from the requirement to supply addresses of all shareholders should depend on whether they are traded on EU regulated markets?
- (b) companies that are traded on EU regulated markets should be required to provide addresses of shareholders who held 5 per cent or more of any class of shares at any time during the year in question.

See 2.105 – 2.107

- 2. 30 Do you agree that a director should be able to apply for addresses filed between 1 January 2003 and 1 October 2008 to be removed from the public record if the director has been granted extra protection?

See 2.111 – 2.113

2. 31 Do you agree that
- (a) companies likely to be subject to violence or intimidation should be able to apply for the addresses of their shareholders filed with their Annual Returns since 1 January 2003 to be removed from the public?
 - (b) service addresses should not be required in substitution for addresses of shareholders removed from the public record.
See 2.114
2. 32 Do you agree that there should not be any provision for the removal of a registered office from the public record? **See 2.115**
2. 33 Do you agree that where a company is likely to be subject to violence or intimidation, a secured lender who has registered a company charge should be able to apply for its address to be removed from the public record? **See 2.116**
2. 34 Do you agree that the only restriction on a director's service address should be that it is a physical location? **See 2.118**
2. 35 Do you have any comments on the Government's proposed approach to the statutory instruments on political donations? The proposed approach is to retain the existing requirements, while exempting companies that by the very nature of their business, will ordinarily prepare, publish and disseminate to the public material views or opinions relating to news and political affairs, such as any media or publishing related companies. Where the directors are liable to make good to the company the amount of the unauthorised donation or expenditure with interest, the proposed rate of interest is 5% per annum. **See 2.121 – 2.122**
2. 36 Do you agree with the proposal to set out a single set of regulations for small companies?
- If you agree with the proposal for a single set of accounting regulations for small companies, should it include the requirements for small companies that choose to prepare group accounts (the equivalent of Schedule 4A), or would it be easier for users if this was kept separate?
See 2.129
2. 37 Do you agree with the proposal to set out the requirements for other companies in a single set of regulations? **See 2.130 – 2.132**
2. 38 Alternatively, would you prefer a different approach to setting out the regulations for either small or other categories of company? Please explain your alternative approach and your reasons for preferring it.
See 2.130 – 2.132
2. 39 Do you agree that companies need to report more effectively on the way in which they take pay and employment conditions elsewhere in the group into account in deciding directors' remuneration? If so, how do you think this could be done? **See 2.135**

2. 40 Do you agree that the benefits of requiring small companies to disclose turnover in their abbreviated accounts would outweigh any additional burden? Please explain your reasons. **See 2.136 – 2.137**
2. 41 Do you agree that the benefits of requiring medium sized companies to disclose turnover in their abbreviated accounts would outweigh any additional burden? Please explain your reasons. **See 2.136 – 2.137**
2. 42 Do you agree with the proposal to retain the reporting requirements relating to employment of disabled persons and in respect of employee involvement in company matters of concern to them? Please explain your reasons. **See 2.139**
2. 43 Do you agree
- (a) with the approach set out to guidance relating to the new offences, and
 - (b) that the principal terms of limited liability agreements should be set out in notes to accounts?
- See 2.149**
2. 44 Do you agree that the information on rights attached to shares should be as in the current requirements with the addition of information relating to terms or conditions of redemption of redeemable shares? **See 2.152 – 2.157**
2. 45 Do you agree that there should not be a requirement for the names and addresses of the allottees in the return of allotments? **See 2.162**
2. 46 Do you agree that the return of allotment should not contain the names and addresses of the allottees? **See 2.163**
2. 47 With regard to a payment out of capital by a private company for the redemption or purchase of its own shares do you think that it is necessary or desirable for the directors' statement to include any information beyond that required by the Act itself? **See 2.181 – 2.183**
2. 48 Do you agree that the theoretical conversion of the company's share capital (or part of it) should be carried out by reference to an exchange rate prevailing on the dates specified above (i.e. the date that the court sanctions a reduction of capital under section 650; or the date that shares are forfeited, surrendered or acquired, as the case may be, under section 662 of the Act? **See 2.191**
2. 49 Do you agree that exchange rate fluctuations are irrelevant to the of whether a company continues to satisfy the authorised minimum in circumstances other than where a public company is proposing to reduce its share capital or is required to cancel shares under section 662? **See 2.191**

2. 50 Do you agree that where the court approves a reduction of capital, the court should be free to order that the reserve arising should be distributable under Part 23 or otherwise, to the extent the court thinks fit? **See 2.199 – 2.207**

2. 51 Do you agree that the use of a solvency statement in the way we have outlined above is a reasonable way to determine whether the amounts in may be distributable? **See 2.199 – 2.207**

2. 52 Do you agree that we should base overseas company registration on the existing concept of branch?

If you believe that “branch” is not an appropriate test for all overseas companies, what would you propose instead (mindful that we must apply the branch test to Community companies)? **See 2.209 – 2.213**

2. 53 Should different registration arrangements apply to third country companies who carry on business here? If so, what should be disclosed? **See 2.214**

2. 54 Do you agree that the registrable charges for overseas companies should be:

- (a) a floating charge if granted under English law or Scots law;
- (b) a charge over property for which there is a specialist register in the UK;
- (c) a charge over land, buildings or fixed plant located in the UK;
- (d) a charge over any other property located in the UK when the charge is created;
- (e) a charge over any property that was not in the UK when the charge was created but which subsequently has been in the UK for at least 60 days;
- (f) a charge over book debts entered into under English law or Scots law?

See 2.218

2. 55 Do you agree that the sanction of invalidity should apply to a registrable charge that has been created by an overseas company after it has registered at Companies House under section 1046? **See 2.219 – 2.222**

2. 56 Do you agree that:

- (a) in the case of an overseas company that has registered under section 1046, the requirement to register a charge should arise only once the property over which the charge was created has been brought into the UK, and has remained there for at least 60 days; and

- (b) failure to comply with the requirement should be a criminal offence punishable with a fine (the sanction of invalidity would not apply)?

See 2.219 – 2.222

2. 57 Do you agree that:

- (a) an overseas company when registering at Companies House under section 1046 should be required to include particulars of its *existing* registrable charges over property in the UK; and
- (b) failure to comply with the requirement should be a criminal offence punishable with a fine (the sanction of invalidity would not apply)?

See 2.219 – 2.222

2. 58 Do you agree that the annotations should extend to confusing and misleading material? **See 2.223 – 2.228**

2. 59 Do you agree with the overall proposals under rectification of the register? **See 2.229 – 2.34**

2. 60 Do you agree that 30 days is a reasonable period to make any objections to rectification to lodged? **See 2.232**

2. 61 What documents should be accepted in a foreign language? **See 2.240**

2. 62 Should we exercise the power to require translation of documents delivered under other enactments and, if so, to what extent? **See 2.235**

2. 63 Do you agree that we should not make provision at the present time for an alternative to the Gazette? **See 2.243 – 2.248**

2. 64 Do you agree that every company should be able to have somewhere other than its registered offices for public inspection of records for which there is a statutory public right of inspection its statutory records?

If so, do you also agree that every company should be required to provide details of the place other than its Registered Office where it enables inspection of any of its records for which there is a statutory right of inspection and also to provide details of which records can be inspected at that place:

- (a) in its Annual Return;
- (b) in its annual report and accounts;
- (c) on its website, if any; and
- (d) immediately, to anyone who asks for this information?

See 2.250 – 2.251

2. 65 Do you agree that
- (a) the existing requirement should be retained to make records available for inspection for not less than 2 hours during period between 9am and 5pm on each business day for all companies with an exemption for private companies.
 - (b) the requirement for private companies should be that:
 - (i) during the notice period for a general meeting and immediately following the circulation of a special resolution by the company, for at least two hours between 9 and 5pm on every business day; and
 - (ii) during all other periods, for at least two hours on a business day notified to a person seeking to exercise inspection rights where the notice must be given within 10 working days of receiving the request and the notified day must be within 20 days of that receipt.

See 2.250 – 2.251

2. 66 A company should not be required to enable inspection by more than one person at a time? **See 2.250 – 2.251**
2. 67 Those exercising their statutory right to inspect a company's record should be free to copy the record while the company should not be under any obligation to facilitate such copying? **See 2.250 – 2.251**

Chapter 3 – Model Articles of Association

3. 1 Do you have any specific drafting comments on any of the model articles? **See 3.20**
3. 2 Do you have any comments in particular on articles 79 to 81 of the model articles for public companies? (These articles supplement Part 9 of the 2006 Act which acquired its final shape at a relatively late stage in its passage through Parliament and we would welcome any comments.) **See 3.20**

Chapter 4 – Transitional issues for existing companies

4. 1 Do you think that it is acceptable to reduce the right to claim in connection with a shortcoming in the register from 20 to 10 years immediately on commencement, so that companies can safely dispose of old records straight away? **See 4.18**
4. 2 Do you believe that any transitional provisions are required in relation to acts done by a company secretary after a private company has decided not to have a secretary? **See 4.19**
4. 3 Do you think that there should be a grace period for existing company boards that do not contain a natural person? **See 4.20**

- 4.4 Do you think there should be a transitional provision for political donations to independent election candidates? **See 4.21**
- 4.5 Do you have any other views on what provisions might have effects on existing bargains or rights such that a transitional would be justified? **See 4.22**
- 4.6 Do you have any comments on the text of the draft saving on financial assistance? **See 4.23 to 4.25**
- 4.7 Do you have any comments on the passage on the financial assistance saving for the explanatory memorandum? **See 4.23 to 4.25**
- 4.8 Do you think we should make transitional provisions in relation to derivative claims? **See 4.26 to 4.28**
- 4.9 Views are invited on whether it would be helpful to make transitional provision in relation to private contracts for references to extraordinary resolutions or authorised share capital or other matters, or whether such matters should be left to the courts. **See 4.29 to 4.32**

Chapter 5 – Limited Liability Partnerships

- 5.1 Which approach do you prefer – Apply the 2006 Act for LLPs only as far as necessary or apply the changes made to company law under the 2006 Act as far as possible? Please explain your reasons. **See 5.5**
- 5.2 Are there specific changes to the provisions for companies under the 2006 Act which you believe either should or should not be extended to the law on LLPs? Please explain your reasons. **See 5.5 – 5.6**
- 5.3 Do you agree with the proposal to implement the 2006 Act for LLPs in October 2008? Please explain your reasons. Do you agree with the proposal to implement the changes in the filing date and the late filing penalties regime at the same time as for companies? (You will need to refer to the separate consultation by Companies House on the proposed changes to the late filing penalties regime.) Please explain your reasons. **See 5.7 – 5.12**
- 5.5 Do you believe it would cause difficulties for you if the rest of Parts 15 and 16 of the 2006 Act were not applied to LLPs at the same time as companies? Please explain your reasons. **See 5.7 – 5.12**
- 5.6 Do you see any reason why the amendments to the 1985 Act made by sections 21 to 24 of, and Part 3 of Schedule 2 to CAICE should not be applied to LLPs? Please explain your reasons. **See 5.13**

Chapter 6 – The European Picture – Meeting our Community Obligations

- 6.1 Do you agree that no further action should be taken to implement the Directive amending the Second Company Law Directive? If not, which elements of the Directive do you consider should be implemented and why? **See 6.26**

CHAPTER 1: INTRODUCTION AND OVERVIEW

1.1. The Companies Act 2006, which received Royal Assent on 8 November 2006, will bring major benefits to business by modernising and simplifying company law. The 2006 Act:

- introduces important reforms of company law in many areas, including decision taking and company communications;
- restates existing companies legislation - including the company law provisions of the Companies Act 1989 and the Companies (Audit, Investigations and Community Enterprise) Act 2004 - so as to bring companies legislation together in one place;
- codifies certain aspects of the case law to make the law clearer and more accessible.

It also provides a modern and enabling framework for our companies, which:

- facilitates enterprise by making it easy to set up and grow a business;
- enables investors to make sound investments by giving them more information and confidence
- promotes long-term company performance through shareholder engagement and effective dialogue between business and investors; and
- maintains the UK's position as one of the most attractive places in the world to set up and run a business.

Explanatory Notes to the 2006 Act have been published, and are available on the DTI website, www.dti.gov.uk/bbf/co-act-2006/.

Commencement timetable

1.2. The Government tabled a Written Statement on 28 February 2007 which sets out the commencement timetable for all parts of the 2006 Act. This is attached as **Annex A**. Implementation of the 2006 Act will be completed by 1 October 2008.

1.3. The commencement timetable has been set to minimise disruption, particularly for small business, by commencing provisions of the 2006 Act on either 6 April or 1 October, unless there are overriding reasons for commencing provisions on a different date (e.g. because of the need to implement an EU directive).

1.4. Most provisions of the 2006 Act will come into force on the dates prescribed by Commencement Orders.

Secondary legislation under the 2006 Act

1.5. Most of the substance of the legislation is already in the 2006 Act itself rather than in regulations (including, for example, the provisions about the use of written resolutions in Chapter 2 of Part 13 of the 2006 Act). There are two main areas, company and business names and overseas companies, where regulations will provide the substance of the law; in most other areas, the regulations will supplement detailed provisions in the 2006 Act.

1.6. In view of this, the most important regulations will be in the following areas:

Transitionals

1.7. We aim to make provision in the Commencement Orders for how the new law will apply to existing companies. The Government consulted in August 2006 on transitional issues affecting company constitutions, and published a summary of the responses and its conclusions in the light of those responses on 18 December 2006. These are available by a link from the "Companies Act 2006" page of the DTI website. The Government's main conclusion was that we should respect existing bargains (that is, decisions taken by the members and directors and agreements entered into by the company), rather than compelling existing companies to move to the default position under the 2006 Act.

1.8. Chapter 4 of this consultation paper considers further issues relating to transitional arrangements for existing companies.

Model articles of association

1.9. A company's articles are rules, chosen by the company's members, which govern a company's internal affairs. Sections 19 and 20 of the 2006 Act give the Secretary of State power to prescribe model articles, including "default" model articles, for different descriptions of companies formed under the 2006 Act.

1.10. The Government consulted on model articles for private and public companies limited by shares in 2006. Chapter 4 of this consultation paper considers further issues relating to model articles of association. This should be read in conjunction with the following revised draft model articles attached at Annex C:

- private companies limited by shares ;
- public companies;
- private companies limited by guarantee.

These will be the default articles for new companies incorporated on or after 1 October 2008.

Other regulations

1.11. As explained above, regulations will for the most part supplement detailed provisions in the 2006 Act. There are however some important issues in relation to the regulations on which we would welcome views. These and other issues relating to regulations are set out more fully in Chapter 2. The most significant regulations will cover the following areas:

Addresses of directors and members

1.12. Directors will automatically have the option of filing a service address on the public record (rather than their private home address). Regulations will cover issues such as extra protection for directors most at risk, and removal of addresses from the historic record. Regulations relating to the Annual Return by companies to Companies House will also address issues relating to addresses, including the addresses of shareholders.

Share capital

1.13. Regulations will address important issues including the application of reserves arising from a reduction of capital.

Accounting regulations

1.14. The 2006 Act enables the Secretary of State to replace the detailed accounting Schedules to Part 7 of the 1985 Act by regulations. This will give more flexibility to arrange the material currently in Schedules to make it easier to follow for different types of company. While we are not intending to make major changes to the substance of the accounting and reporting Schedules, we would welcome views on our proposals as to how the new regulations should be structured.

Overseas companies

1.15. At present two slightly different sets of regulation operate to cover overseas companies with either a branch or a place of business in the UK; importantly, both types of company are required to make public disclosures to the registrar by, for example, filing accounts. The Government are considering aligning the definition so that it would in future cover overseas companies with branches in the UK.

Court procedural rules

1.16. Some provisions in the 2006 Act will necessitate changes to the procedural rules used by the courts. (Different rules apply in England and Wales, Scotland and Northern Ireland.)

Powers under the 2006 Act

1.17. The First Commencement Order commenced all powers to make orders or regulations by statutory instrument with effect from 20 January 2007. Annex B provides a full list of such powers.

1.18. Some of the powers are reserve powers which the Government do not intend to use by October 2008 as part of its implementation of the 2006 Act. Chapter 2 provides a commentary on such powers.

1.19. The rule-making powers conferred by the 2006 Act on the Takeover Panel under Part 28 and on the Registrar of Companies under Part 35 will be commenced on 6 April 2007 and 1 October 2008 respectively (at the same time as general commencement of those parts of the 2006 Act).

Implementation of EU company law directives

1.20. The Government will be implementing the following changes to EU company law alongside, and as part of, its implementation of the 2006 Act:

- the Directive on Statutory Audit of Annual Accounts and Consolidated Accounts (which replaces the 8th Company Law Directive). The Government intends to implement this Directive with effect from 6 April 2008, when it will also commence most of the provisions in Part 16 (Audit) and Part 42 (Statutory auditors) of the 2006 Act;
- amendments to the Fourth, Seventh, Banking Accounts and Insurance Company Accounts Directives, in relation to new accounting and disclosure provisions and the raising of the thresholds for small and medium sized enterprises. The Government intends to implement these amendments with effect from 6 April 2008, when it will also commence most of the provisions of Part 15 (Accounts and reports) of the 2006 Act.

1.21. DTI is publishing separate consultation documents in relation to its implementation of the Directive on Statutory Audit of Annual Accounts and Consolidated Accounts and the amendments to the Fourth, Seventh, Banking Accounts and Insurance Company Accounts Directives, which should be read in conjunction with this consultation document.

1.22. The Government will in addition implement the Cross Border Mergers Directive by 15 December 2007, but this will not directly affect implementation of this Act. The Government does not believe that changes to UK company law are necessary to implement the amendments to the Second Company Law Directive which seek to simplify the rules relating to capital maintenance.

1.23. These issues are considered more fully in Chapter 6.

Companies House

1.24. The Registrar has power under Part 35 of the 2006 Act to impose requirements in relation to certain matters. For example, section 1068 enables the Registrar to specify the form, authentication and manner of delivery of documents to her; and section 1075 similarly enables her to determine the form and manner of any company instructions as to informal correction of the register. Section 1117 provides that the Registrar may set out these requirements in Registrar's rules. Companies House will be consulting separately on these rules, and on its policy in relation to late filing penalties. These regulations will respect common commencement dates.

Consequential amendments

1.25. Consequential amendments will need to be made to other legislation (including legislation such as Acts of the Scottish Parliament).

1.26. Private contracts and other forms of legal agreement may rely on matters which have been changed in the legislation (such as references to an annual general meeting or company secretary in contracts with private companies, when in future a private company may not have these). The Government invites views on whether we should make legislative provision in respect of contracts and other forms of legal agreement (see paragraphs 4.29 – 4.32).

Other forms of business association

1.27. Legislation relating to some other forms of business association is modelled on, or reflects, companies legislation. The relevant forms of business association are:

- Limited Liability Partnerships (LLPs);
- Open Ended Investment Companies (OEICs);
- Industrial and Provident Societies;
- Friendly Societies.

The Government are considering where there are aspects of the Companies Act 2006 which should be applied to these forms of business association. It would welcome views on these important issues, which are considered in greater detail in Chapter 5 of this consultation document.

1.28. The law relating to partnerships and limited partnerships does not reflect company law in the same way. The Government have announced that it will separately be reforming the law relating to limited partnerships.

Guidance for existing companies

1.29. The Department has published checklists for existing private and public companies, and for their members, which highlight the most significant changes to company law. In particular, they highlight:

- changes which existing companies may wish to make to their articles of association in the light of changes to company law under the 2006 Act (e.g. in relation to meetings and decision taking). These changes will need to be approved by the company's members;
- new requirements under the 2006 Act (e.g. in relation to the rights of indirect investors under Part 9 of the 2006 Act);
- requirements under previous companies legislation which have been repealed and not replaced (e.g. the requirement to maintain a register of directors' interests, which will be repealed with effect from 6 April 2007).

The checklists are available on the DTI website at www.dti.gov.uk/bbf/co-act-2006/.

1.30. The Government are also publishing extracts from the statements made by Ministers in Parliament during the passage of the Bill in relation to the statutory statement of directors' general duties to the company. These gave important guidance in relation to the new statutory statement.

1.31. Increasingly, small businesses are using the Companies House website as a source of information. Companies House will continue to improve its website, including the presentation of web-based guidance and links to related websites. There will be links between DTI and Companies House websites so that users will be able easily to find the guidance they need.