

CHAPTER 2: SECONDARY LEGISLATION UNDER THE ACT

2.1. Most of the substance of the legislation is already in the 2006 Act itself rather than in regulations or orders. Regulations and orders will therefore for the most part supplement detailed provisions in the 2006 Act, but there are some important issues on which we would welcome views.

2.2. This chapter covers the areas set out below.

	Paragraphs
A Powers under the Act	2.4 – 2.17
B Company formation and re-registration	2.18 – 2.35
C Company and business names	2.36 – 2.49
D Trading disclosures	2.50 – 2.65
E Addresses on the public record at Companies House	2.66 – 2.118
F Control of political donations and expenditure	2.119 – 2.122
G Accounting and reporting regulations	2.123 – 2.142
H Audit and statutory auditors	2.143 – 2.151
I Share capital	2.152 – 2.207
J Company charges	2.208
K Overseas companies	2.209 – 2.223
L The Registrar of Companies	2.224 – 2.243
M Company records	2.244 – 2.252

2.3. Model articles of association and transitional arrangements for existing companies are considered in detail in Chapter 3 and Chapter 4 respectively.

A Powers under the Act

2.4. Annex B to this consultative document provides a full list of powers in the 2006 Act to make orders or regulations by statutory instrument.

2.5. All of these powers have been commenced with effect from 20 January 2007. Some of the powers are reserve powers, which the Government does not intend to use as part of its implementation of the Act. The position in relation to the following reserve powers is discussed in greater detail below:

- the power to make rules about the terms of a liability limitation agreement under Part 16 (Audit);
- the powers to modify the capital maintenance rules;
- the power under Chapter 2 of Part 21 to make the adoption of a form of paperless transfer and the abandonment of paper-based forms of transfer mandatory for all securities, or specified types of securities;
- the power to make regulations requiring certain categories of institutional investor to provide information about the exercise of their voting rights.

2.6. The table of powers provides a cross-reference to the relevant paragraphs of this chapter in relation to powers which the Government intends to use as part of its implementation of the 2006 Act.

Audit: liability limitation agreements

2.7. The power in section 535 to prescribe or proscribe terms of liability limitation agreements is a reserve power that may be used if, against our expectations, the freedom for company and auditor to choose the terms themselves results in adverse effects, for example on competition. We shall therefore not be making regulations under section 535 when Part 16 is commenced

Reserve powers to modify the capital maintenance rules

2.8. Parts 17 and Part 18 of the 2006 Act contain various provisions which seek to protect creditors and minority shareholders from the misuse or depletion of a company's assets by unscrupulous or imprudent directors and shareholders. These provisions are sometimes referred to as "the capital maintenance rules".

2.9. The capital maintenance rules are extremely detailed and technical in nature. Moreover, it has been argued that some of the rules get in the way of otherwise perfectly legitimate, or at least innocuous, business transactions.

2.10. In response to concerns about the current provisions, which are restated in the 2006 Act, we have been given two new powers in sections 657 and 737 of the Act, which enable the Secretary of State to modify, in regulations made under the Act, various provisions in Part 17 of the Act (which deals with various matters relating to a company's share capital) and all of Part 18 of the Act (which deals with various matters relating to the acquisition by a limited company of its own shares). A further power, relating to distributions, was rejected by the House of Lords as being too broad for secondary legislation.

2.11. We do not propose to use the powers in sections 657 and 737 at this stage: as far as public companies are concerned, the capital maintenance rules are required by EU law (the current rules, as restated in the 2006 Act, are mainly derived from the 2nd Company Law Directive). The Commission has recently funded a fundamental study into alternatives to the current capital maintenance regime which is being carried out by KPMG Germany. KPMG are due to make their final report to the Commission in the summer.

2.12. We propose to keep in touch with stakeholders on this subject as we recognise that there is considerable interest in wider reform.

Paper-free holding and transfer of securities

2.13. Section 207 of the Companies Act 1989 provided a power to make regulations about the paper-free transfer of title to securities. Such regulations have been in force since 1996, enabling the vast majority of shares in UK-listed companies to be held and transferred without the use of paper certificates in the CREST system. However although some 85 per cent by value of shareholdings in such companies are now held and transferred in CREST, some nine million "retail" shareholders still hold their shares in UK-listed companies in certificated form, giving rise to about 10,000 paper-based transfers each day.

2.14. Chapter 2 of Part 21 (Certification and Transfer of Securities) extends the existing power under section 207 of the 1989 Act so that it can be used to require, as well as to permit, the paper-free holding and transfer of shares or other securities. This reflects exploratory work carried out by groups representing City, shareholder and business groups in respect of the case for compulsory dematerialisation, but the Government has said that it would need further information relating to the effect of a compulsory approach before taking a decision to use the extended power.

2.15. The provisions in the Act include important safeguards in the event of a decision to proceed down the path of compulsory dematerialisation:

- section 785(3) provides that regulations made under the relevant power must contain such safeguards as appear to the authority making the regulations appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented;
- section 786(3) is designed to protect the right of individual investors to continue to hold shares in their own names rather than through nominees.

Exercise of voting rights by institutional investors

2.16. Section 1277 confers a power on the Secretary of State and the Treasury to make regulations requiring certain categories of institutional investor to provide information about the exercise of voting rights. The power is drawn intentionally widely to enable any mandatory disclosure regime to respond to varied corporate governance arrangements and to capture a range of institutions investing in different markets. Exercise of the power is subject to affirmative resolution procedure.

2.17. The Government said during the Parliamentary passage of the 2006 Act that it supports the principle of voting transparency in this area. It also made clear that it would prefer an industry-led solution, and intends to see how market practice evolves before considering a mandatory regime. If the Government did decide to exercise the power, it would ensure that there is a full consultation and a cost-benefit analysis to make sure that any final regime was proportionate and properly targeted.

B Company formation and re-registration

Memorandum of association (Section 8)

2.18. The Act makes significant changes to the form of a company's constitutional documents, which will be relevant both to new companies formed under the Act and to existing companies. Existing companies will not need to take active steps as a result, as described in Chapter 4 below. Currently companies are required to put a substantial amount of material in their memorandum of association and are able to divide their constitutional rules between their memorandum and articles of association. In contrast, the memorandum of a company formed under the Act will serve a more limited but nonetheless important purpose: it will be a historic document, evidencing the intention of the founder members (the subscribers to the memorandum) to form a company and become members of that company on formation and, in

the case of a company that is to have a share capital on formation, to take at least one share each in the company. As such it will underpin the statutory contract between the members which forms the basis for UK company law. It will not be possible to change or update the memorandum of companies formed under the Act.

2.19. The “new style” memorandum must be in the prescribed form and must be authenticated by each subscriber. The intention behind this is that the memorandum should be instantly recognisable as such and that it should not contain extraneous or superfluous information (if it does the application for registration is likely to be rejected by the Registrar of Companies).

2.20. Regulations will set out the prescribed form. We propose that they should require the contents of the memorandum of companies formed under the Act to contain the information set out in section 8 of the Act, namely 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.

2.21. The regulations will also require the form to include the name of each of the subscribers and their individual authentication.

2.22. Where the memorandum is completed electronically an electronic authentication will suffice. We propose that there should be no requirement for the authentication to be witnessed.

2.23. The Registrar of Companies will soon be consulting on these rules; this will include electronic authentications for this purpose.

2.24. These provisions will take effect for all constitutional documents submitted on or after 1 October 2008.

Question 2. 1 Do you agree with the proposals for the prescribed form and authentication of the memorandum?

Statement of capital and initial shareholdings (Section 10)

2.25. Where it is proposed that a company will be formed with a share capital, the act requires a statement of capital and initial shareholdings to be included in the application for registration, and provides for regulations to set out what this should include.

2.26. The statement of capital and initial shareholdings is essentially a “snapshot” of a company’s share capital at the point of registration. The requirement for this statement (and the requirement for a statement of capital elsewhere in the Act) is new. For public companies, this requirement is linked to the abolition of authorised share capital. It implements (as far as public companies are concerned) Article 2 of the Second Company Law Directive (77/91/EC) (the “Second Directive”) which states:

“the statutes or instruments of incorporation of the company shall always give at least the following information...

(c) when the company has no authorized capital, the amount of the subscribed capital....”.

Under the 1985 Act a statement of authorised share capital was included in the memorandum but, in line with the recommendations of the Company Law Review (CLR), the Act abolishes the concept of authorised share capital.

2.27. Along with information set out in subsection (2) of section 10, the statement of capital and initial shareholdings must contain

“such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association” (see subsection 3).

2.28. We propose that the prescribed information should consist of the names of the subscribers as written in the memorandum along with an address (this may be a service address provided that it is not a PO Box). Any subscriber who is a UK company should provide the registered office address.

Statement of Guarantee (Section 11)

2.29. Where it is proposed that a company will be limited by guarantee on formation, the application for registration must be accompanied by a statement of guarantee. Like the statement of capital and initial shareholdings that is required where a company is formed with a share capital, the statement of guarantee must contain such information as may be prescribed by the Secretary of State for the purpose of identifying the subscribers to the memorandum. We propose that the same information be required as for section 10(3), namely: the prescribed information will consist of the names of the subscribers as written in the memorandum along with an address (this may be a service address provided it is not a PO Box). Any subscriber who is a UK company should provide the registered office address.

2.30. As mentioned by the Minister during the passage of the Act through Parliament, regulations made under sections 10 and 11 will continue to require the names and addresses of the subscribers. We are told by investigating authorities that this information is useful and we see no reason to depart from this requirement.

Question 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?**

Re-Registration of private limited company as unlimited - Application and accompanying documents (Section 103)

2.31. Where a company re-registers from limited to unlimited there are clearly important implications for the company’s members and it is important that they agree to this change, know what they are agreeing to and that the form of assent is easily recognisable.

2.32. Section 103 replaces section 49(8) and (8A) of the 1985 Act. It sets out the contents of the application for re-registration where a company is proposing to re-register from private limited to unlimited and the documents/information that must accompany this application. “A statement of

compliance made by the directors of the company must accompany the application.”

2.33. The form of assent will continue in its present form but authentication of the document will be required as detailed in 103(2)a:

“The prescribed form of assent to the company’s being registered as an unlimited company, authenticated by or on behalf of all the members of the company’ and a copy of the company’s articles as proposed to be amended”

Where the application is completed electronically an electronic authentication will suffice. Authentication requirements will be set by the Registrar of Companies in her rules, which will be consulted on separately.

Re-registration of public company as an unlimited private company - Application and accompanying documents (Section 110)

2.34. This is a new provision under the 2006 Act allowing a public company to re-register as an unlimited private company. It sets out the contents of the application and the documents/information that must accompany the application. This is a statement of the company’s proposed name on re-registration, 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.

2.35. S110(2)(a) replicates the requirements and the required form of assent as detailed in s103(2)(a). As in s103 documents and information can be delivered either in written form or electronic and authentication requirements will be set by the Registrar of Companies in his rules, which will be consulted on separately.

**Question 2. 3 Do you agree with the proposed contents of an
application to re-register and accompanying
document?**

C Company and business names

2.36. The provisions of Part 5 of the Act relate to company names; Part 41 applies to names used to carry on business in the UK by any person except for individuals if they trade either alone or in partnership under their surnames augmented only by their forenames and/or initials. Regulations restricting the choice of names under which a company may be registered will apply only to company names registered after the commencement of Part 5. Similarly, the regulations relating to business names will not apply where someone continues to use a name that was lawful immediately before the regulations come into force.

2.37. The rules relating to company names ensure that the public can find the information on the public record relating to any company provided only that the company’s name is known. The most basic requirement is that the public can read the name in question. Noting that the UK is chosen as the place for incorporation by many overseas businesses, it is likely that there will be pressure to register companies with names in various languages.

- Question 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, question 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 @?

2.38. At present, there is no statutory limit to the length of a company's name. However the maximum number that the systems at Companies House can handle is 160 characters, of which only 60 are immediately visible. The longest registered name has 159 characters, excluding spaces¹; However only 119 of some 3 million companies have names with more than 99 characters. When two very similar names are also very long, it can be particularly difficult for the public to distinguish between them.

- Question 2. 5** Do you agree that the number of characters that may be used in a company's name should be restricted to 160?

2.39. Being able to trace a company on the public record also requires every company's registered name to be unique. Therefore a company cannot be registered under a name that has already been taken or which is effectively the same as an existing name. And, if the Secretary of State considers a company's newly-registered name to be too like one already registered, then he has power to direct the company to change its name. But there are no property rights in companies' registered names as such. The purpose of the Act's restrictions on the choice of company and business names is not to protect any organisation or company; the primary purpose is to protect the public from harm resulting from their being misled.

- 2.40. The 1985 Act provides that, in determining
"whether one name is the same as another, there are to be disregarded-
"(a) the definite article, where it is the first word of the name;
"(b),(c)[words, expressions and their abbreviations that appear at the end of the name to reveal the company's legal status, eg "Ltd"]
"(d) type and case of letters, accents, spaces between letters and punctuation marks;
"and 'and' and '&' are to be taken as the same."

¹ ALBION HIGHLAND ALL TARTANS BY METRE IN WOOL SILK/OTHER TWEEDS VELVET STOCK & BESPOKE KILTS TREWS CLOTHES HIGHLAND DRESS JEWELLERY FURNISHING PRESENTS EXPRESS MAIL ORDER & LONDON APPT LTD.

The 2006 Act provides power, in section 66, to define what differences between two names should be ignored in deciding whether a proposed name is the same as one already on the index of company names. The intention is to use this power to retain all the existing rules; to add permitted symbols, eg “@”, and “s” at the end of a name to the list of differences to be ignored; to provide that “+” is to be taken as the same as “and” and “&” and that the main currency symbols and words (eg “£” and “pound”) and “%” and “per cent” are also taken to be the same; and to update the list of words, expressions, and abbreviations revealing legal status. There is a particular problem with numbers as, for example, 247 may be expressed as two hundred and forty-seven or two four seven or twenty-four seven or, indeed, CCXLVII. Perhaps this is best addressed by all numbers and their English language equivalents being compared to their representation as Arabic numerals.

2.41. The judgement whether two names are the “same” is to prevent third parties being confused by the simultaneous appearance of both names on the register. None of the characteristics of the two companies, such as location or sector, are relevant and nor are trading and business names, logos, ownership of registered trade or service marks, copyrights, patents etc., or any other proprietary rights existing in names or parts of names.

- Question 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
 - (h) “%” and “per cent”?

- Question 2. 7** **Do you agree that all numbers in names and their English language equivalents should be compared to Arabic numerals?**

Is there anything else which you consider should be included in or excluded from these rules?

2.42. The Act, in section 67, also provides that a company may be directed to change its newly-registered name in two circumstances.

First, if it is the same as a name that is or should have been on the index when it was registered. This is because the index includes not only names registered under the Companies Act but also names registered under other legislation (eg societies registered under the

Industrial and Provident Societies Act 1965) which may not immediately appear on the index.

Second, because it is “too like” a name that is or should have been on the index when it was registered.

2.43. As for the judgment whether two names are the same, the judgement whether two names are the “too like” is to prevent third parties being confused by the simultaneous appearance of both names on the register. The proposal to add to the matters that are disregarded when considering whether two names are the same (see paragraph 2.40 above) is expected to reduce the number of objections that a newly-registered name is too like an existing name. Therefore, we do not consider it necessary to use the power provided by Section 67 to supplement the Secretary of State’s power to direct a company to change its newly-registered name.

2.44. There is a risk of harm to the public if the two names differ only by words that are commonly used to suggest a link between two companies if there is no such link. Sections 66 and 67 therefore provide powers to specify circumstances or consents such that a name is permitted that would otherwise be prohibited because it is the same as another name on the index. The intention is to use these powers so that specified key words are disregarded when considering whether two names are the same unless the application to use the name is accompanied by written confirmation from the company already on the index that the applicant company is, or will be, in the same group of companies as itself and that it agrees to the name being taken as proposed. In these circumstances, an objection by a third party that the two names are “too like” will not be upheld.

- Question 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.**

2.45. Registration of a company's name at Company's House gives the company prior rights to that name as a company's registered name only. It does not provide a right to trade under that name nor does it prevent any other company trading under that name. However, section 69 of the 2006 Act provides for objections to be made to a company names adjudicator in cases

of opportunistic registration. That is if the objection to a company's registered name is because it is either the same as one in which the objector has goodwill or so similar to such a name as to be likely to mislead by suggesting a connection between the objector and the company. Section 71 provides wide-ranging rule-making powers for the proceedings before a company names adjudicator. It is intended that these rules will extend to the admission of evidence and the management of proceedings. They will be based on the Registered Designs Rules 2006. It is also intended that Patent Office members will be appointed as adjudicators. The Patent Office tribunal's rules can be seen on

http://www.hmcourts-service.gov.uk/infoabout/patents/crt_guide.htm .

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

2.46. Every company's name must, as appropriate, end with "public limited company", "community interest public limited company", "limited", "community interest company" or the Welsh equivalent, or a permitted abbreviation. (There is an exception from this rule – see paragraph 2.47.) Similar rules apply to investment companies with variable capital, open-ended investment companies, Limited Liability Partnerships, and Societas Europaea. This is so that a company's legal status is immediately apparent to the world. To be effective, these requirements must be balanced by prohibitions on the various statutory indicators of legal status and similar expressions being misused. Section 65 provides power to make such regulations for companies' registered names (section 1197 provides a similar power for business names – see paragraph 2.49 below).

Question 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.**
- **Includes "not" or "un" immediately before "limited"?**

2.47. There is an exception from the rule that a private company's name end in "limited". Under the 1985 Act, this exception is for companies whose objects are the promotion of commerce, art, science, education, religion, or any profession, and anything incidental or conducive to any of those objects. The purpose of this exception was so that the commercial connotations of "limited" were not conveyed by the name of such companies. The 2006 Act, in section 60, provides for exceptions for private companies that are charities and for those exempted by regulations under section 60. We consider that the provision of the "community interest company" as a new form of incorporation removes the need for further exceptions under this rule. However, if it were to appear that the public is confused about the status of those statutory regulators established as companies and their confidence in the regulators undermined, then the power might be used to exempt such

bodies. This would be consistent with provision in the Financial Services Act 1986 that relieves the Financial Services Authority from the obligation for its name to end in "limited".

Question 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?

2.48. If a company wishes to include a "sensitive" word or expression in its registered name, it must have the prior approval of the Secretary of State. It is an offence for any person, whether or not incorporated, to carry on business in the UK under such a name without the Secretary of State's prior approval (unless the word is part of the name of a sole trader or one of the individuals in a partnership). These provisions are retained in the 2006 Act so as to protect the public from harm arising from businesses using names that, without sufficient justification, suggest a pre-eminence or authority or status. The current list of sensitive words and expressions² is:

words implying national or international pre-eminence:

British	Great Britain	National	Wales
England	International	Scotland	Welsh
English	Ireland	Scottish	
European	Irish	United Kingdom	

words implying business pre-eminence or representative or authoritative status:

Association	Board	Federation	Institution
Authority	Council	Institute	Society

words implying specific objects or functions:

Assurance	Foundation	Patent	Re-insurer
Assurer	Friendly society	Patentee	Sheffield
Benevolent	Fund	Post Office	Stock exchange
Charter	Group	Reassurance	Trade union
Chartered	Holding	Re-assurer	Trust
Chemist	Industrial & provident society	Register	
Chemistry	Insurance	Registered	
Co-operative	Insurer	Re-insurance	

² Company and Business Names Regulations 1985, SI 1985/680 and Company and Business Names (Amendment) Regulations 1994 SI 1995/3022

Other sensitive words and expressions:

Charity, Charitable	District Nurse, Health Visitor, Midwife, Midwifery, Nurse, Nursing	Police	Royal, Royale, Royalty, King, Queen, Prince, Princess, Windsor, Duke, His/Her Majesty
Contact Lens	Health Centre	Polytechnic	Special School
Dental, Dentistry	Health Service	Pregnancy, Termination, Abortion	University

The inclusion of “Sheffield” in this list seems anomalous. It does not seem necessary in order to protect the public. It is therefore proposed to remove “Sheffield” from the list of sensitive words and expressions.

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

2.49. There is also a risk to the public if a company or business name gives the impression that the business is connected with government in some way. The Act retains the current requirement for prior approval for such names. There might also be a danger to the public if a name suggests a link to certain non-governmental public bodies. There have, for example, been problems with bogus agencies purporting to be linked to the Information Commissioner and the Health and Safety Executive. The Act provides a similar power to specify public bodies such that prior approval is required for names that give the impression that the business is connected with any of them. In general, it is easier for those choosing names if any trigger requiring prior approval is listed. Therefore, wherever practicable, the power to prescribe sensitive words and expressions will be used rather than the power to specify public bodies.

Question 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?

D Trading disclosures

Current position

2.50. At present, UK and overseas companies are subject to the requirements of the Companies Act 1985 as regards the information they must display at their premises and include in their business communications.

2.51. For UK companies, the requirements in the 1985 Companies Act were updated by the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006. The current requirement is for the company's name to appear legibly in:

- (a) all its business letters,
- (b) all its notices and other official publications,

- (c) on all its websites,
- (d) all bills of exchange, promissory notes, endorsements, cheques, orders for money or goods purporting to be signed by or on behalf of the company, and
- (e) all bills of parcels, invoices, receipts, letters of credit.

2.52. In addition, all EU member states require the company's business letters, order forms and websites to include fuller particulars, i.e.

- (a) the company's place of registration and the number with which it is registered,
- (b) the address of its registered office,
- (c) in the case of an investment company, the fact that it is such a company, and
- (d) in the case of a limited company exempt from the obligation to use the word "limited" as part of its name³, the fact that it is a limited company.

All these requirements apply whether the document is in hard copy or electronic or any other form.

2.53. Also, when a company is being wound up, whether by the court or voluntarily, every invoice, order for goods, business letter or order form issued by or on behalf of the company, or a liquidator of the company or a receiver or manager of the company's property, being a document on or in which the name of the company appears, and all the company's websites must contain a statement that the company is being wound up.

2.54. There is no requirement for any company to include its directors' details in any document. However 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.

2.55. In the case of overseas companies, those with a place or business or branch registered with the Registrar of Companies, are required to include the company's name and the country in which it is incorporated in all bill-heads, letter paper, notices and official publications. There are also requirements for registration details to be included in letter paper and order forms.

2.56. There are criminal sanctions for breaches of the current requirements. The punishment in each case is a fine of one-fifth of the statutory maximum. (The statutory maximum is currently £5,000.) There is also a daily default fine, one-fiftieth of the statutory maximum, for breach of the requirements relating to fuller particulars and for breaches by overseas companies. These do not apply to shadow directors.

³ Either because it meets the requirements in Section 30(2) of the Companies Act 1985 or because it is an unregistered company to which Section 351 of the Companies Act 1985 applies by virtue of its Section 718 or because it is a community interest company which is not a public company (see section 351(1)(d) of the Companies Act 1985, as amended by the CAICE Act 2004).

2.57. If any company with a place of business in Great Britain trades under any name other than its registered name, it is also subject to the different requirements in the Business Names Act 1985.

Proposals

2.58. The current requirements for business stationery, company publications, and the electronic equivalents, are complex. We intend to simplify all these requirements. They will all be replaced by regulations made under sections 82 and 1051 of the 06 Act.

2.59. The crucial information that must be disclosed is the company's name. We propose that, in general, 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. For companies incorporated in the UK, this both reveals the company's legal status and is all that is needed to find the information about the company on the public record held by Companies House. At present, there is a wide range of documents to which the requirement for the inclusion of a UK company's name applies. This list may be regarded as somewhat archaic, while the range of documents covered for overseas companies is not comprehensive. It may also be excessive to require the registered name in communications which follow from a recent previous agreement between the company and the individual concerned (for example, text alerts which the recipient has requested); we therefore propose an exemption from the requirement to include the registered name in these circumstances.

2.60. It is arguable that it is excessive to require the registered name in addition to the registration details for a company trading under a name that differs from its registered name only by the omission of the statutory indicator of legal status (for example, the requirement for ABCDEFG Ltd if document includes both the registration details and the name ABCDEFG). We therefore propose an exemption from the requirement to include the registered name in these circumstances.

- Question 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?**

2.61. We will retain the current prohibition on companies cherry-picking which directors' names appear on their stationery: as now, the option will be to include all or none.

Question 2. 15 Do you agree that if a business letters 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?

2.62. Every UK Company is required to keep certain records available for public inspection at either its registered office or at another place in the same jurisdiction as specified in regulations under section 1136. Companies are not required to keep all these records at the same address. On the one hand, the public need to know where they can exercise their statutory right to inspect a particular record. On the other hand, it would be burdensome to require companies to disclose this location in all their business letters or some other category of correspondence. The proposal to ensure this information is made available is included in consideration of regulations under section 1136 (see paragraph 2.250).

2.63. It continues to be essential that a company's name can be seen by customers, suppliers and other visitors to any of the company's premises, including its Registered Office and any other place at which its statutory records are kept available for inspection (see paragraphz 2.224 – 2.250). The requirement must be able to be satisfied when premises are shared by several companies, eg when several share a registered office. Pragmatic solutions to this problem include the use of displays that change continuously. It is also apparent that many companies have signs that omit the statutory indicator of their legal status: this does not seem to cause problems.

Question 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?**

2.64. Section 84 also provides power for offences to be committed by the company and each of its officers in default. We propose that breaches of the disclosure requirements in all cases should continue to be subject to a fine of one-fifth of the statutory maximum and that there also be daily default fines of one-fiftieth of the statutory maximum in all instances. We also propose that shadow directors should be liable on the same basis as directors.

Question 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?

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

2.65. The regulations will retain the requirement of The First Company Law Directive for companies' registration details to be included in business letters and order forms (whatever the medium) and websites. (We note that there has been some confusion as to what is meant by websites. Normal practice seems to be for a company's website to include this information on a page giving legal information or information about the company's identity or contact details). We propose to impose similar requirements on overseas companies that are not incorporated in a Member State. (Please see Section K for a further discussion on overseas companies.)

Question 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?

E Addresses on the public record at Companies House

Introduction

2.66. This part contains proposals on the operation of the provisions in the 2006 Act relating to public access to addresses filed at Companies House. In particular it explains our proposals for regulations under section 243 (circumstances in which the Registrar of Companies can use or disclose a director's residential address), 857 (contents of annual return: power to make further provision by regulations) and 1088 (application to registrar to make address unavailable for inspection).

2.67. With some very few exceptions, information filed at Companies House is publicly available. This includes residential addresses of directors, secretaries and overseas companies' GB representatives filed under the Companies Act 1985. The public record at Companies House also includes addresses for UK companies' subscribers, shareholders, registered offices, secured lenders, and charged property.

2.68. Access through the public record to this information is advantageous for a number of reasons but it is open to abuse. We therefore need to strike a balance between on the one hand maintaining the integrity of and accessibility to the public record and on the other protecting individuals who may be at risk of violence and/or intimidation where their details are made publicly available. A particular example of abuse in recent years relates to the activities of animal research organisations. Individuals have been put at risk of violence and intimidation by virtue of their association with the research company itself or with a company that is linked to the research company (either as client or supplier).

The current position

2.69. Under the Companies Act 1985 directors and secretaries of GB companies are required to file prescribed particulars, including their usual residential address, on appointment and to keep this information up to date. This information is available on the public register. Similar requirements apply to secretaries, to directors and GB representatives of overseas companies and to partners in limited liability partnerships.

2.70. To address the types of abuse described above, since 2002 directors, secretaries, overseas companies' GB representatives and partners in limited liability partnerships have been able to apply for a confidentiality order if they can show that disclosure of their residential address creates a serious risk of violence or intimidation (see sections 723B to F of the CA 1985 and the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 ("COR 2002")). By 16 February 2007, 13,094 applications had been received and 12,931 granted. The majority of those with confidentiality orders are likely to be directors - out of a total of over 5 million directors.

2.71. If a confidentiality order is granted the individual must supply a single service address, which becomes part of the public record. The residential address is removed and becomes a confidential record. The service address may be anywhere within the EEA provided that documents may be physically served there. Residential addresses covered by confidentiality orders may only be disclosed to specified public authorities for the purpose of carrying out public functions (generally regulatory purposes and to investigate crime). The order is effective for 5 years and it is a criminal offence to disclose a residential address in breach of COR 2002.

2.72. In addition, on incorporation, the names and addresses of the subscribers must be filed. Thereafter, for companies with a share capital, the Annual Return must include the names and addresses of its shareholders. There is no requirement for any of these addresses to be residential addresses.

2.73. Other addresses that are filed on the public record include the company's registered office and, as part of the information provided on registration of a charge, the address of a secured lender and of charged property.

Position under the 2006 Act - directors' residential addresses

2.74. The 2006 Act revises the information that companies must record for each of their directors and secretaries. Furthermore there are considerable changes to the treatment of residential addresses. In particular, there will not be any requirement for any person's residential address to be on the public record.

2.75. The most significant change is that for all directors and secretaries, a UK company will be required to file:

- a service address for the appointment (this may be stated to be "the company's registered office".)

In the case of directors of UK companies, the company will also have to provide:

- the country or state (or part of the United Kingdom) in which the director is usually resident); and
- the director's usual residential address. Provided that the service address is not stated to be "the company's registered office", this may be a statement to the effect that the residential address is the same as the service address. This will be known as "protected information" (section 240).

The service address and the country/state will be placed on the public record.

2.76. A company will be prohibited from using or disclosing protected information about its directors except in very limited circumstances (section 241). Similarly the Registrar of Companies will be required to omit protected information from the public register (provided that the service address is effective (see section 245 of the Act)) and to maintain a separate confidential record of such information (section 242).

2.77. The move to the public record at Companies House containing only service addresses has been widely but not universally welcomed. One consequence is that it will be much more difficult to check whether a director has been declared bankrupt or has been the subject of court proceedings. This could materially affect companies' credit ratings. Another consequence is that denying access to a director's residential address could make it more difficult for public authorities to exercise regulatory and enforcement functions.

2.78. The 2006 Act addresses these potentially conflicting concerns with special provisions relating to the disclosure of protected information.

2.79. Significantly for the purpose of this consultation, the Registrar of Companies will be prohibited from using or disclosing protected information except:

- to communicate with the director in question;
- to disclose it to specified public authorities and credit reference agencies in accordance with regulations under section 243; or
- in accordance with a court order in section 244.

Paragraphs 2.85 – 2.101 below describe our proposals for regulations setting out the circumstances in which disclosure can be made.

2.80. This is in line with recent changes to the electoral roll. Under the Representation of the People (England and Wales)(Amendment) Regulations 2002 ("ROP 2002") access to the full electoral roll, ie the roll including addresses, is restricted. The police and Government departments have access for the prevention and detection of crime and the enforcement of the criminal law. Government departments also have access for statutory vetting of employees and applicants for employment. Credit reference agencies that are licensed with the Office of Fair Trading under Part III of the Consumer Credit Act 1974 have access for:

- vetting 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;
- meeting 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; and
- statistical analysis of credit risk assessment.

2.81. The existing provisions on confidentiality orders will be removed and replaced with an extra tier of protection for directors in relation to credit reference agencies only. Regulations will be made under section 243(4) to (6) which will permit applications to the Registrar of Companies to refrain from disclosing protected information to such agencies. Paragraphs 2.88 – 2.100 below identify the proposed circumstances in which such applications can be made and outline what will happen to the current beneficiaries of Confidentiality orders when these provisions are repealed.

Proposals for directors' residential addresses

Disclosure to public authorities and credit reference agencies (section 243(2) and (3))

2.82. The 2006 Act leaves to regulations:

- what public authorities may have access to protected information;
- the conditions for the disclosure of protected information to public authorities and credit reference agencies;
- the charges to be made for making such disclosures.

The proposed content of those regulations is described below. Readers may recognise that the proposals draw heavily on existing provisions in COR 2002 and ROP 2002.

What public authorities should be permitted to request protected information (section 243(2)(a))?

2.83. We propose that those enforcement bodies who have access to residential addresses under COR 2002 should be permitted to request from the Registrar of Companies access to directors' protected information, i.e. the "competent authorities" contained in Schedule 1 to COR 2002. Appendix (a) to this Chapter lists the bodies we propose to include (an asterisk indicates an addition or modification to the COR 2002 list).

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

What conditions should apply for the disclosure of protected information to public authorities and credit reference agencies (section 243(3)(a))?

2.84. Where protected information has been disclosed by the Registrar of Companies to a public authority or a credit reference agency and the Registrar of Companies has attached conditions as to the use of such information, then that body will be subject to the prohibition under the Data Protection Act on using that information for unauthorised purposes.

2.85. We propose that public authorities should be permitted to use protected information only if it is done for the purpose of facilitating the carrying out of a public function and for these purposes it is proposed that public function should include –

- (a) any function conferred by domestic legislation;
- (b) any function conferred by Community legislation;
- (c) any function relating to the investigation of a crime or criminal proceedings,

Question 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?

2.86. We propose that a credit reference agency be permitted to disclose protected information only in order to vet applications for credit and to meet money laundering obligations. This is based on regulation 114(3) of ROP 2002, except that agencies will not be able to benefit from the exemption relating to statistical analysis of credit risk assessment. We could not see how conducting such analysis would provide a benefit to either the company or director such that disclosure of the protected information could be justified.

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

- (a) to 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?**

What fees should be charged to public authorities and credit reference agencies that request access to protected information (section 243(3)(b))?

2.87. We are not yet in a position to state what these charges will be, but can confirm that, like those under COR 2002, they will be calculated on a cost recovery basis only.

Application to refrain from disclosure to a credit reference agency (“extra protection” under section 243(4) to (6))

2.88. The second aspect of the regulation making power in section 243 of the 2006 Act relates to the ability to apply to the Registrar of Companies requiring him to refrain from disclosing protected information to a credit reference agency.

2.89. This power was included during the passage of what was then the Company Law Reform Bill to address concerns about the safety of directors at particular risk of violence or intimidation. This is most likely where one of an individual’s directorships is of a company, the nature of whose work puts it at risk of violence and intimidation by a third party (in particular animal research organisations and their customers and suppliers). But we were also concerned about situations where a director is or has been employed or otherwise engaged by the security and intelligence agencies and the police.

2.90. In considering the exercise of this power, we have again used as a starting point the provisions on confidentiality orders in the 1985 Act and COR 2002 (regulations 2 to 12).

Who may make an application and to whom?

2.91. Currently, under section 723B(2) of the Companies Act 1985, only directors may apply for a confidentiality order.

2.92. We considered whether this may be too rigid but concluded that it would not be appropriate for anyone other than the individual director to make the application.

2.93. We propose that the application be made to the Registrar of Companies.

Question 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 of Companies?**

On what grounds may an application be made?

2.94. Under COR 2002, the grounds on which an application may be made are that disclosure of a residential address is likely to create a serious risk that a director, and/or a person who lives with him, will be subject to violence or intimidation. It thus extends protection to individuals in circumstances unrelated to the fact of their directorships. Since the protection of directors’ residential addresses has been enhanced generally by the 2006 Act, we propose to depart from this approach and limit the extra protection purely to circumstances related directly to the fact of a directorship. It is proposed that an application will need to demonstrate either:

- (a) that 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 police.

Question 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;

What information will be required?

2.95. We propose to require the following information:

- (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.

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

How will the application be determined?

2.96. We propose following closely regulations 3 to 5 of COR 2002 so that:

- (a) the Secretary of State is empowered to refer questions to other bodies for the purpose of deciding upon the application (for example currently Companies House routinely ask the police for a risk assessment);
- (b) there is a prescribed manner for notifying the outcome; and
- (c) there is a right to appeal to the court against any decision to reject the application.

Question 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?

What fees will be charged for making such an application?

2.97. As explained above, the fees that Companies House may charge for an application must be calculated on a cost recovery basis only. Since the processes for considering applications for extra protection will be similar to that for Confidentiality orders, we anticipate that the costs will be calculated on a similar basis but the cost of setting up the new service will also have to be recovered which may result in the fee being more than the £100 charged for applications for Confidentiality orders.

In what circumstances will this extra protection cease to apply?

2.98. Unlike confidentiality orders, which last for a maximum of five years, we propose that this extra protection should be effective unless the director concerned or the executors of his estate request that such protection be removed.

2.99. We also propose providing for an equivalent to regulation 11 of COR 2002 which provides for the revocation of a Confidentiality order if the application is found to contain false or misleading information.

Question 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?**

What will happen to the addresses of individuals whose addresses are currently protected by a Confidentiality order?

2.100. We have considered whether the protection given by Confidentiality orders that are in existence when COR 2002 is repealed, should continue and if so how. We believe it is important that protection does not cease and therefore propose that directors who are beneficiaries of Confidentiality orders

at the relevant time will be deemed to have applied successfully for the extra protection under section 243(5).

Question 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?

2.101. Other beneficiaries such as secretaries will of course not have to disclose their residential addresses under the new regime. Paragraphs 2.108 – 2.116 below contain our proposals for the circumstances in which existing residential addresses on the public record can be removed.

Proposals for shareholders' addresses

2.102. The 2006 Act retains the requirements in the 1985 Act for companies with a share capital to file a list of the names and address of their shareholders at the time of the return (and of those who ceased to be members during the year in question) together with the size of each shareholding. The 2006 Act provides power to vary the content of the Annual Return. It also provides power to amend or repeal or to provide exceptions from these requirements.

2.103. The continued availability of all shareholders' names and addresses from Companies House would undermine the safeguards introduced by the 2006 Act for companies' registers of members. During Commons Committee, the Government made clear that:

“We propose to deal with information on the register of members that applies to Companies House in the regulations covering companies' annual returns. We will consult on those issues, but, as hon. Members know, we intend to exempt private companies from the obligation to supply their members' addresses and to exempt public companies from the obligation to supply any details of those who hold less than 5 per cent of a company's shares.”

2.104. The proposal to use the public/private split to determine which regime applies was based on the CLR recommendation. The grounds for the proposed exemption for public companies were that those with interests in public companies above this limit were required to provide information under Part 6 of the 1985 Act – but this provision has been repealed. The Transparency Obligations Directive, implemented in Part 43 of the 2006 Act, provides a basis for the exemption. Companies that are subject to these requirements have thousands of members and their registers of members change continuously. There is no need for the public to know about these companies' shareholders whose shareholdings did not give them either influence or control over the company.

2.105. For other companies, easy access to information about each member's shareholding is valuable. In particular, it enables members to make anonymous checks that the company has been acting lawfully. It also ensures that the company maintains its register.

2.106. We have therefore refined the CLR proposal slightly so that the requirement to supply addresses would **not** apply to:

- (a) private companies and those public companies that are not traded on an EU regulated market as regards all their shareholders ; and
- (b) public companies that are traded on EU regulated markets in respect of shareholders who did not hold 5 per cent or more of any class of shares at any time during the year in question.

2.107. We also propose that public companies be required to confirm on the annual return whether they are traded on an EU regulated market.

Question 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.**

Proposals for removing existing addresses on the public record under Companies Acts 1985

2.108. Under the 1985 Act, there is no provision for information to be removed from the public record held by the Registrar of Companies.

2.109. Given the changes in the 2006 Act to address concerns about availability of directors' residential addresses, corresponding provisions needed to be introduced to remove such information. Equally it was recognised that there might be other types of addresses that would need to be removed, for example subscribers' and shareholders' addresses, the address of the registered office and, in the case of company charges registered with Companies House, the address of the secured lender.

2.110. Section 1088 therefore provides power to make regulations providing that an address already on the public record at Companies House may be made unavailable to the public.

What addresses should be removed?

2.111. We intend to exclude addresses filed before 1 January 2003 from regulations made under section 1088. This is because pre-2003 information is held on microfiche, ie not electronically and is therefore particularly difficult to remove. For every relevant non-electronic record containing the information at issue, expunging requires that a copy be taken, the copy be doctored so that it no longer shows the information at issue, and then the doctored copy replace the existing record which will then be transferred to a secure store for the use of enforcement agencies, etc. Many existing records held on a microfiche are of poor quality: copying is likely to result in the loss of information – and not just that which is to be removed from the public record.

Directors'/Secretaries' addresses: grounds for removal

2.112. The public record at Companies House is used for many purposes and with the introduction of electronic records, information on the public record at Companies House is now also widely available from other sources. The public record may be used as evidence in many circumstances. There is a duty to maintain its integrity. Removal of information from the public record must not be considered lightly. Nevertheless there may be circumstances in which it would be desirable for addresses to be removed from the public record held at Companies House. We are therefore proposing to exercise this power only to provide protection from the risk of violence or intimidation.

2.113. Since 2002, directors, secretaries and overseas companies' UK representatives have all been able to apply for Confidentiality orders if at serious risk of violence or intimidation. Therefore it is proposed that only those granted extra protection under section 243(5) (see paragraphs 2.89 – 2.101 above) and whose residential address was filed during the period 1.1.2003 to 1.10.2008 in compliance with the requirements then applicable in relation to these appointments, will be able to apply also for their residential address to be made unavailable for public inspection.

Question 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?**

Subscribers and Shareholders: grounds for removal

2.114. There has never been a requirement for the residential addresses of either subscribers or shareholders to be on the public record. However, in many cases residential addresses have been filed. Given that companies will have filed shareholders addresses en masse, it is not feasible to remove an individual's address. However, it is proposed that where a company is likely to be subject to violence or intimidation that company may apply for the addresses of all their shareholders' not to be made available to the public. Since the requirement to provide addresses will not apply to all shareholders in future, we do not propose to require service addresses to be filed in substitution.

Question 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.**

Address of registered office

2.115. The address of a company's registered office is essential information. A document may be served on a UK company by leaving it or posting to its registered office. And certain documents must be kept available for

inspection at the registered office. It is therefore essential that the registered office address is on the public record. It is not intended to provide for applications for the address of a registered office to be made unavailable to the public .

Question 2. 32 **Do you agree that there should not be any provision for the removal of a registered office from the public record?**

Address of secured lenders

2.116. The procedures for the registration of company charges include the filing of a form that includes a general description of the property charged and the presenter's name and address. The purpose of this registration is to ensure that third parties can easily discover the extent to which a company's property is encumbered. If the property charged is land or buildings, then the address is essential. The address of the presenter, however, is not essential. It is intended therefore to enable the presenter to apply for its address to be removed if the company is likely to be subject to violence or intimidation; a service address would be required to appear on the public record in its place.

Question 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?**

Particulars of directors and secretaries to be registered

2.117. Section 166 provides power to amend the particulars required by the 2006 Act to be entered in a company's register of directors or register of directors' residential addresses. Section 279 provides a similar power with respect to a company's register of secretaries. These are new powers. As the 2006 Act updates the information that every company must record for each of its directors and secretary, further changes are not needed immediately. Therefore it is not intended at this stage to use the powers under sections 166 and 279.

2.118. The required particulars include a service address for each director. Section 1141 provides power to specify conditions with which a service address must comply. It is not intended to impose any geographical restriction on the service address. However it is intended to require the service address to be a physical location, ie not a PO box or DX number. It will be possible for the service address to be the company's registered office in every instance.

Question 2. 34 **Do you agree that the only restriction on a director's service address should be that it is a physical location?**

F Control of political donations and expenditure

2.119. There are only 2 statutory instruments being made to accompany the provisions in the Act on political donations:

- The Companies (Political Expenditure) Exemption Order (section 377);
- Regulations to set the interest rate on the liability for unauthorised expenditure (section 369).

The Companies (Political Expenditure) Exemption Order is subject to the affirmative resolution procedure, which means it will be debated in the Houses of Parliament. For this reason, and because it is intended to bring these into force on 1 October 2007, comments on control of political donations and expenditure are sought on a tighter timescale than for other issues in this consultation document: the deadline for comments for these issues only is 1 May 2007.

The Companies (Political Expenditure) Exemption Order

2.120. Some companies, 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. It would be impractical for such companies to have to comply with the provisions on political expenditure in Part 14 of the Act, so this Order renders such expenditure by these companies exempt.

2.121. We propose to rewrite the existing Order (The Companies (EU Political Expenditure) Exemption Order 2001, SI 2001/445) in simpler language to correspond with the simpler format and drafting of the Act, with no changes to the substance.

Regulations to set the interest rate on the liability for unauthorised expenditure

2.122. Where the directors are liable to make good to the company the amount of the unauthorised donation or expenditure with interest, we propose that the rate of interest be set at 5% per annum, as this is consistent with the rate given elsewhere in the Act (namely sections 592 and 609, Part 17 Share Capital).

Question 2. 35 Do you have any comments on the government's proposed approach to the statutory instruments on political donations?

G Accounting and reporting regulations

Position under Companies Act 1985

2.123. The detailed provisions on the format and content of accounts for companies are set out in the accounting Schedules to the Companies Act 1985 (the 1985 Act). Some Schedules set out the detailed contents of the accounts and the format in which they must be prepared, and others cover specific types of disclosures (including in the directors' report and directors'

remuneration report) or apply to certain categories of companies. Not all Schedules apply to all companies. The Schedules are as follows:

- Schedule 4 – Form and content of company accounts
- Schedule 4A – Form and content of group accounts
- Schedule 5 – Disclosure of information in notes to accounts: related undertakings
- Schedule 6 – Disclosure of information in notes to accounts: emoluments and other benefits of directors and others
- Schedule 7 – Matters to be dealt with in directors' report
- Schedule 7A – Directors' remuneration report
- Schedule 8 – Form and content of accounts prepared by small companies
- Schedule 8A – Form and content of abbreviated accounts of small companies delivered to the Registrar of Companies
- Schedule 9 – Special provisions for banking companies and groups
- Schedule 9A – Form and content of accounts of insurance companies and groups
- Schedule 11 – Modifications of Part VIII where company's accounts prepared in accordance with special provisions for banking or insurance companies

2.124. A small company⁴ preparing its accounts and reports under the 1985 Act needs to look at Schedules 5, 6, 7 and 8. It may also need to look at Schedule 8A if it files abbreviated accounts with the Registrar of Companies and Schedule 4A if it is a parent company which chooses to prepare group accounts. Small companies can benefit from a number of exemptions to accounting and disclosure requirements, so a small company will not need to make all of the disclosures required by Schedules 5, 6 and 7. It will need to refer to section 246 of the 1985 Act to work out with which parts of those Schedules it needs to comply.

2.125. A medium-sized company⁵ preparing its accounts and reports under the 1985 Act needs to look at Schedules 4, 5, 6 and 7, and at Schedule 4A if it is a parent company which chooses to prepare group accounts⁶. It can benefit from some exemptions, which are set out in section 246A of the 1985 Act.

2.126. A large company preparing accounts and reports under the 1985 Act will need to look at Schedules 4 (or 9 if it is a banking company and 9A if it is an insurance company), 5, 6, 7 and 7A (if it is a quoted company), and Schedule 4A (if it is a parent company).

⁴ For the purposes of the Companies Act 1985 and the Companies Act 2006, a small company is defined as one which meets two of the following three criteria - turnover not more than £5.6m, balance sheet total not more than £2.8m and not more than 50 employees - and does not fall into one of the excluded categories (eg public, banking or insurance company).

⁵ For the purposes of the Companies Act 1985 and the Companies Act 2006, a medium-sized company is defined as one which meets two of the following three criteria - turnover not more than £22.8m, balance sheet total not more than £11.4m and not more than 250 employees - and does not fall into one of the excluded categories (eg public, banking or insurance company).

⁶ Under section 399 of the Companies Act 2006, parent companies of medium-sized groups will be required to prepare group accounts.

Position under Companies Act 2006

2.127. Part 15 of the 2006 Act replaces the provisions of Part 7 of the 1985 Act on accounts and reports. It provides for detailed accounting and reporting requirements to be set out in regulations made by the Secretary of State rather than in Schedules to the Act. So the Schedules to Part 7 of the 1985 Act must be restated as regulations under the 2006 Act. As with the rest of the 2006 Act, Part 15 extends to Northern Ireland.

General approach

2.128. The restatement could be done simply by reproducing the existing accounting and reporting Schedules as a series of regulations, but that is not the only option.

Small companies

2.129. For small companies, we propose to take a different approach. In line with the “Think Small First” approach followed in the 2006 Act, we propose a single set of regulations for small companies. This would gather together in a single document the requirements in Schedules 5, 6, 7, 8 and 8A of the 1985 Act applicable to small companies. It could also include the requirements currently in Schedule 4A of the 1985 Act for those small companies which are parent companies and which choose to prepare group accounts, although this may only be relevant for a small number of companies. This approach means that small companies will have to look in only one place to establish what they are required to include in their accounts and reports. They will not have to look at regulations that also apply to large companies and work out which parts apply to them. We believe that this approach has clear benefits for small companies.

Question 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?

Other companies

2.130. We also propose to follow this approach for other companies, and prepare one set of regulations applying to all companies other than small. This would inevitably be more detailed than the small company regulations. As well as setting out the basic requirements applying to all companies other than small, it would also indicate the exemptions for medium-sized companies, and the additional requirements for quoted companies, investment companies, banks and insurance companies. However, this detail will be less of an issue for the types of companies concerned, as they are likely to be more sophisticated with access to professional advice. In the long run, a single set of regulations rather than a series of regulations may be

easier for companies to use as all the requirements would be in a single place.

2.131. An alternative approach would be to replicate the existing structure in the Schedules to Part 7 of the 1985 Act for all companies other than small companies. This would entail companies having to refer to a number of sets of regulations, but the structure would be already known, so the time spent getting familiar with them should be minimal.

2.132. It would also be possible in the longer term to prepare separate sets of regulations for each category of company eg medium-sized, large, quoted, banking and insurance companies. However, this would result in a lot of duplication, as many of the requirements are common to all categories of company other than small. It may also not be possible to achieve this in time for introduction in April 2008.

Question 2. 37 **Do you agree with the proposal to set out the requirements for other companies in a single set of regulations?**

Question 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.**

Position of other entities

2.133. The accounting requirements for other entities such as limited liability partnerships, banking undertakings and insurance undertakings are based on those for companies in the Schedules to the 1985 Act. It is proposed that regulations will apply these requirements to such non-company entities in the same sort of way, although not necessarily in the same time frame.

Policy changes

2.134. The restatement exercise will in most respects change the structure of the existing Schedules without changing the substance of the requirements. However, there are a few areas where we propose to make policy changes to the requirements.

Disclosure of consideration given to the pattern of remuneration in the company as a whole when deciding directors' pay

2.135. Under the Combined Code of corporate governance, the remuneration committees of quoted companies are expected to be sensitive to the wider scene, including pay and employment conditions elsewhere in the group, when determining directors' remuneration. During the passage of the Companies Bill, an amendment was proposed to the directors' remuneration report disclosure requirements to require quoted companies to include an analysis of the general pattern of remuneration in the company and how that was taken into account in determining directors' remuneration. The Government did not accept the amendment, but promised to consult on the issue of companies reporting more effectively on the way in which they take

pay and employment conditions elsewhere in the group into account in deciding directors' remuneration.

Question 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?**

New requirement for small and medium-sized companies to disclose turnover

2.136. Since 1981 small and medium-sized companies have been permitted to file short-form accounts (known as abbreviated accounts) with the Registrar of Companies. Abbreviated accounts exclude key information (in the case of small companies they exclude the profit and loss account and directors' report entirely). The CLR recommended abolishing abbreviated accounts in the interests of greater transparency. They felt that a significant body of interested parties (eg suppliers and customers) were being denied useful information on the level of trading activity of the company because the accounts they filed with the Registrar of Companies were so abbreviated.

2.137. The Government recognised that the option to file abbreviated accounts was popular with many companies. Therefore, it was decided that the option should be retained. However, in order to provide some additional transparency and information for users, the Government decided that both small and medium-sized companies should be required to disclose the amount of turnover for the relevant financial year. This policy was set out in the White Paper "Company Law Reform" published in March 2005 (Cm 6456).

2.138. In light of the increased importance placed on ensuring that additional burdens are introduced only where they are justified by benefits, the Government wishes to give interested parties another opportunity to comment on this proposal.

Question 2. 40 **Do you agree the benefits of requiring small companies to disclose turnover in their abbreviated accounts would outweigh any additional burden? Please explain your reasons.**

Question 2. 41 **Do you agree the benefits of requiring medium sized companies to disclose turnover in their abbreviated accounts would outweigh any additional burden? Please explain your reasons.**

Disclosure of employee information

2.139. In the White Paper "Company Law Reform", it was proposed to remove the requirements for disclosures in respect of the employment of disabled persons and in respect of employee involvement in company matters of concern to them (paragraphs 9 and 10 of Schedule 7 to the 1985 Act), as these had been largely overtaken by requirements under other legislation. However, further consideration has shown that, while other legislation imposes substantive requirements in these areas, the specific reporting

requirements imposed on companies by the 1985 Act are not duplicated elsewhere. The Government therefore propose to retain these disclosure requirements.

Question 2. 42 Do you agree with the proposal to retain these reporting requirements? Please explain your reasons.

Political donations

2.140. In line with the policy set out in the White Paper “Company Law Reform”, the threshold for disclosure of charitable and political donations will be raised from £200 to £2000.

Consolidated accounts

2.141. A number of technical amendments are being considered for the provisions on consolidated accounts in the context of UK accounting standards being converged with International Financial Reporting Standards (IFRS). The proposals by the International Accounting Standards Board for a new IFRS on business combinations (and provisions), if adopted for UK financial reporting purposes, could give rise to a conflict between accounting standards and the law. The amendments would seek to address the potential for differences with the proposed accounting standards by increasing flexibility (to the extent permitted by European law). These proposals will be set out in detail in the consultation later this year on draft regulations.

European Directive 2006/46

2.142. Changes will also need to be made to implement Directive 2006/46, which amends the European accounting directives. These are the subject of a separate, parallel consultation by the Department (“European Company Law and Corporate Governance: Implementation of Directive 2006/43/EC on Company Reporting – Amending the Accounting Directives”). In the light of that consultation we will include the necessary changes in the regulations under Part 15 of the 2006 Act on which we will be consulting later this year.

H Audit and Statutory auditors

2.143. Part 16 of the Act restates the law on audit with some significant changes, including on auditor’s liability. Most of the law on audit is on the face of the Act, and there will be regulations to fill out the detail on relatively few areas.

Disclosure of services provided by auditor or associates and related remuneration (section 494)

2.144. This power restates the existing provision in section 390B of the 1985 Act. The current rules are set out in the Companies (Disclosure of auditor remuneration) Regulations 2005 (S.I. 2005/2417). There will be some changes to the rules as part of implementing Article 49 of the Statutory Audit Directive (2006/43/EC), on which the Department will shortly be consulting separately.

Senior Statutory Auditor (section 504)

2.145. A senior statutory auditor is now to be identified by an audit firm, and that senior statutory auditor will sign his or her own name to the audit report. The European Commission may issue standards that will inform the choice of senior statutory auditor, but if it does not, then UK guidance may be issued by the Secretary of State or a body the Secretary of State appoints by order. We propose to appoint the Professional Oversight Board (POB) of the Financial Reporting Council for this purpose.

Guidance relating to offences in connection with auditor's report (sections 508 and 509)

2.146. These provisions allow for the Secretary of State (in respect of England, Wales and Northern Ireland) and the Lord Advocate (in respect of Scotland) to issue guidance to help avoid adverse consequences when an auditor's behaviour might give rise to both disciplinary action by professional supervisory bodies, and to prosecution for the new offences.

2.147. We propose that the guidance should say that prosecution should be used in the most serious cases, in the sense of cases where the conduct is most blameworthy. We also propose that the guidance should reflect the importance of a clear evidential basis for proving recklessness. In other words, for a prosecution to be brought under this new offence, there should be specific evidence of recklessness, and one should not generally rely on inference of recklessness from hindsight, even where such hindsight showed a judgement to have been so wrong that it was not credible that the auditor did not know the risk that he or she was running.

Disclosure of Liability Limitation Agreements by company (section 538)

2.148. One of the major changes made by Part 16 is that a company will be able to agree a limitation of its auditor's liability. This will require authorisation by the members of the company (or waiver of the need for authorisation in a private company), and the limitation will be subject to being set aside if a court finds that it the limitation will give an amount that is not fair and reasonable in all the circumstances.

2.149. Section 538 provides for disclosure of this agreement by the company. We propose to make regulations that will specify the content and the method of disclosure. The information to be disclosed will be the principal terms of the limitation agreement, and the date of the resolution approving the agreement, or waiving the need for such approval. The method will be by means of a note to the annual accounts.

Question 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?**

European directive 2006/43

2.150. The Department will shortly be consulting separately on the implementation options for the European Directive on the statutory audit of annual and consolidated accounts (2006/43/EC). The implementation of this Directive will depend on many of the provisions in Part 42 and, in some cases, other parts of the Act. Once responses to that consultation have been reviewed we plan to consult on the draft regulations needed to implement the Directive.

2.151. With respect to Chapter 3 of Part 42, (provisions for the Auditors General) consultation on draft regulations will be carried out by HM Treasury.

I Share capital

Statement of capital: Prescribed particulars of the rights attached to the shares

2.152. A statement of capital is a summary of a company's total share capital at a particular point in time (on formation the statement is referred to as a statement of share capital and initial shareholdings). The requirement for this statement is new and, as mentioned above (see paragraph 2.26), for public companies is linked to the abolition of authorised share capital.

2.153. A statement of capital is required where it is proposed that a company formed under the Act will have a share capital on formation and, with limited exceptions (in particular, where there has been a variation of class rights which does not affect the company's aggregate subscribed capital) whenever a limited company makes an alteration to its share capital.

2.154. A statement of capital is also called for in certain circumstances where an unlimited company having a share capital makes a return to the Registrar of Companies (see, in particular section 856 which is concerned with the contents of the annual return).

2.155. In making a statement of capital (or as the case may be a statement of capital and initial shareholdings) a company is required to provide "*prescribed particulars of the rights attached to the shares*". Regulations will be used to specify the detail of the information which is required to be filed with the Registrar of Companies.

2.156. Whilst the requirement for a statement of capital is new, the requirement to provide the Registrar of Companies with particulars of the rights attached to a company's shares is not; for example, there is a similar requirement in section 123 of the 1985 Act (which relates to increases in a company's authorised share capital) and section 128(1) and (2) of that Act (which relates to an allotment of a new class of shares). It is intended that the information provided to the Registrar of Companies should cover the same matters as before, which include the right to participate in dividends, voting rights and the right to a return of capital in a winding-up. Additionally, where a company is required to make a statement of capital in connection with an allotment of redeemable shares and the directors are authorised (by the articles or resolution of the company's members) to set the terms and manner of redemption, the terms and conditions of redemption must be set out in the

statement of capital required to be filed under section 555 (currently this information must be set out in the articles).

2.157. Whilst it would be possible to give examples of the types of information that is required under the broad themes referred to in the previous paragraph, we do not propose to do this as the rights attached to a company's shares are essentially a matter for the members to agree and will differ from company to company. Moreover, the forms prescribed under the 1985 Act do not set out examples and we are not aware that this causes the members and directors of companies any particular difficulties.

Question 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?

Return of allotment by limited company

2.158. Within a month of making an allotment of shares, companies limited by shares and companies limited by guarantee and having a share capital must make a return to the Registrar of Companies (a return of allotment) under section 555 of the 2006 Act. The return must "*contain the prescribed information*" relating to the allotment and must be accompanied by a statement of capital (see above). "Prescribed" in this context means prescribed by the Secretary of State by order or by regulations made under the Act - no Parliamentary procedure is required. This replaces a similar requirement, contained in section 88 of the 1985 Act, for such companies to make a return of allotment to the Registrar of Companies in the "*prescribed form*" (Form 88(2)).

2.159. It is intended that regulations made under section 555 will require the return of allotment to contain the following information: the number and nominal amount of the shares comprised in the allotment; the amount, if any, paid or due and payable on each share (whether on account of the nominal value of the share or any premium paid or due and payable on it); and details of any consideration received in respect of shares which are allotted as fully or partly paid up otherwise than in cash (see below)

2.160. It is also intended that the return of allotment will be made in the form prescribed by the Registrar of Companies and that it should be authenticated. The persons who may authenticate the return and the manner of authentication will be a matter for the Registrar of Companies's rules under sections 1068 and 1117. The rationale behind prescribing both the contents of the return of allotment and the form of it is that a return made under section 555 should be instantly recognisable as such and should only contain information which is pertinent to the allotment.

2.161. It should be noted that under the 1985 Act, where the shares are allotted as fully or partly paid up otherwise than in cash, companies are currently required to deliver to the Registrar of Companies for registration the contract that they have with the allottee, or "*prescribed particulars of the contract*" if it is not in writing. The contract that the company has with the allottee may contain commercially sensitive information which the company

would not normally want to or be obliged to disclose and, in response to representations made to us by interested parties during the passage of the Act through Parliament, we propose not to take this requirement forward (but as mentioned above, companies will have to provide details of the consideration received where shares are allotted as fully or partly paid up otherwise than in cash).

2.162. In addition, in line with the changes that we are proposing in respect of the annual return (see paragraph 2.102 – 2.107 above), we propose to drop the current requirement for the return of allotment to contain the names and addresses of the allottees. This change responds to concerns that activists may use this information to target individual shareholders. Information pertaining to the members of companies will continue to be included in the register of members. The Act provides new protections where access to the register of members is sought other than for a proper purpose.

Question 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?

Return of allotment by unlimited company allotting new class of shares

2.163. Section 556 is a new provision which requires unlimited companies to make a return of allotment to the Registrar of Companies where the directors allot a new class of shares. It carries forward the requirements of section 128(1) and (2) of the 1985 Act, (which relates to an allotment of a new class of shares) as it applies to unlimited companies: in particular the return must contain “*prescribed particulars of the rights attached to the shares*”. It is intended that the particulars that will be required will mirror those that are required in the statement of capital that is required where a limited company allots new shares (see paragraph 2.157).

2.164. Again it is intended that the return of allotment will be made in the prescribed form and that it should be authenticated in accordance with the Registrar of Companies’s rules.

Question 2. 46 Do you agree that the return of allotment should not contain the names and addresses of the allottees?

Meaning of payment up in cash and cash consideration

2.165. Section 583 of the Act defines when a share is deemed to be paid up or allotted for cash. This definition is relevant to a number of provisions in the Act, for example, the shares taken by the subscribers to the memorandum of a public company must be paid up in cash and where a public company proposes to allot shares as fully or partly paid up otherwise than in cash, that consideration must be independently valued.

2.166. Section 727 defines what is meant by “cash consideration” where treasury shares are sold and mirrors, in part, the definition in section 583.

2.167. Whilst these sections (which restate corresponding provisions in the 1985 Act) are not intended to comprise an exhaustive list of the cases in

which shares are to be treated as paid up in cash or what amounts to cash consideration for the purposes of a disposal of treasury shares, interested parties expressed concern during the passage of the Act through Parliament as to whether the creation of an assured payment obligation under the CREST assured payment system constitutes payment in cash / cash consideration and asked us to put this matter beyond doubt.

2.168. In our view the creation of an assured payment obligation (that is, an obligation to make payment to or for the account of the company in accordance with the rules and practices of the operator of a relevant system as defined by regulation 2(1) of the Uncertificated Securities Regulations 2001) under the CREST settlement system constitutes absolute payment, not merely performance by a means other than payment, and should therefore be treated as payment in cash/cash consideration in the same way that the various items listed in sections 583 and 727 are.

2.169. We therefore intend to make it clear, in regulations, that the creation of an assured payment obligation under CREST will constitute payment in cash/cash consideration when a share is deemed to be allotted or paid up in cash/where there has been a disposal of treasury shares. This will enable the uncertainties surrounding the CREST settlement system to be resolved. Further regulations could be made in future in the event that new methods of settlement are developed or identified.

2.170. It should however be stressed that the exercise of the powers to make regulations is not intended to imply that the definitions in these sections constitute an exhaustive list of the permitted means of payment.

2.171. We are in the process of identifying other settlement systems that may operate in the EU. We would welcome assistance with this matter and suggestions as to other payment systems which should be permitted to be treated as payment in cash for the purposes of section 583 or cash consideration for the purposes of section 727.

Prescribed form of solvency statement

2.172. As recommended by the CLR, sections 641 to 644 of the 2006 Act introduce a new solvency statement procedure for capital reductions which enables private companies to reduce their share capital without having to go to court. This procedure – which may be used as an alternative to the court approved route – requires a special resolution of the company's members and a solvency statement made by the directors.

2.173. The conditions which must be satisfied in order for a private company to reduce its share capital using the new solvency statement procedure are set out in section 642 which provides, amongst other things, that the solvency statement must be made available to the members when they vote on the resolution to reduce the company's share capital. In addition the solvency statement must be filed with the Registrar of Companies.

2.174. The contents of the solvency statement are set out in section 643 of the 2006 Act which provides that each of the directors must confirm that they have formed the opinion, as regards the company's situation at the date of the statement, that there is no ground on which the company could then be found to be unable to pay (or otherwise discharge) its debts. The directors must

also confirm that they have also formed the opinion that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date (or alternatively, if it is intended that the company should commence winding-up proceedings within twelve months of the date that the directors make the solvency statement, the directors must confirm that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the winding up). In all cases the directors must take into account all of the company's liabilities (including any contingent or prospective liabilities). The solvency statement must also state the date on which it is made and the name of each of the directors of the company.

2.175. The solvency statement must be in a form to be set out by regulations. The rationale behind prescribing the form of the solvency statement is that it should be easily recognisable as such: in particular it must contain the information set out in section 643. In addition it is intended that the solvency statement should not contain extraneous information which is unhelpful to the company's members or other persons who may have cause to examine it (for example, creditors searching the public register). It will not, for example, be permissible to qualify the solvency statement in any way.

2.176. Whilst the directors may put their name to a single document, this is not essential and each of the directors may make separate solvency statements if they wish. In either case the solvency statement or statements will need to be authenticated by each of the directors who have made it. The form of authentication will be a matter for the Registrar of Companies's rules in accordance with section 1068 of the 2006 Act. (It should be noted that if one or more of the directors is unable to make a solvency statement the company will not be able to use the solvency statement route to effect a reduction of capital unless the directors who are unable or unwilling to make the solvency statement resigns).

2.177. Where a director makes a solvency statement without having reasonable grounds for the opinions expressed in it he commits an offence.

Redemption or purchase of shares out of capital by private company: prescribed form of directors' statement

2.178. Sections 171 to 177 of the 1985 Act set out a statutory scheme for a redemption or purchase of own shares out of capital. This is carried forward in section sections 709 to 720 of the 2006 Act. As before, this scheme will only be available to private companies.

2.179. Currently, before a private company may make such a payment out of capital the directors are required to make a full enquiry into the company's affairs and prospects and must make a statutory declaration regarding this.

2.180. Consistent with the approach taken elsewhere in the Act, the current requirement for a statutory declaration is replaced with a requirement for a simple statement (the directors' statement) which, in contrast to a statutory declaration, does not need to be sworn before a solicitor or Commissioner of Oaths.

2.181. The directors' are required to make a full inquiry into the affairs and prospects of the company and to make a statement, in the form prescribed by regulations, on their opinion of the company's solvency (see section 714(5) of the 2006 Act). The section also provides power to specify further information that is required to be provided in the statement. We do not propose to specify any such information at this time.

2.182. This mirrors the current requirement as regards the contents of the statutory declaration save for the fact that, consistent with the solvency statement procedure for capital reductions (see above), in making a statement under section 714, the directors are required to take account of all of the company's liabilities, including contingent and prospective liabilities.

2.183. Whilst the directors may put their name to a single document this is not essential and each of the directors may make a separate statement if they wish. In either case the director's or directors' statement must be authenticated by each of the directors who have made it and the form of authentication will be a matter for the Registrar of Companies's rules. (It should be noted that if one or more of the directors is unable to make a statement under section 714 the company will not be able to make a payment out of capital for a redemption or purchase of own shares unless the directors who are unable or unwilling to make the statement resign).

2.184. As now, where the directors make a statement without reasonable grounds for the opinion expressed in it they commit an offence.

Question 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?**

Minimum share capital requirement for public companies

2.185. A public company which is incorporated as such may not do business without first obtaining a trading certificate from the Registrar of Companies. There is a minimum share capital requirement, known as "the authorised minimum", which is currently set at £50,000. The same minimum share capital requirement applies where a private company re-registers as a public company.

The authorised minimum

2.186. The authorised minimum can currently only be satisfied if the company has issued shares denominated in sterling to the value of at least £50,000 (one quarter of which must be paid up). This implements Article 6 of the Second Company Law Directive which permits the authorised minimum to be satisfied in euro or the Member State's national currency – but not in other currencies.

2.187. In line with the CLR's recommendations, section 763 carries forward the requirement that a public company must have a minimum share capital of at least £50,000 but enables this to be satisfied in sterling or "the prescribed euro equivalent" - but not a combination of the two (see section 765).

2.188. Whilst on the face of it permitting public companies to satisfy the authorised minimum in sterling or euro may seem a simple matter, in order to achieve this policy it has been necessary to make provision for circumstances in which the prescribed euro amount is no longer equivalent to the prescribed sterling amount, that is as a result of exchange rate fluctuations. Section 763 therefore enables the Secretary of State to prescribe, in secondary legislation, the amount in euro that is to be treated as equivalent to the sterling amount of the authorised minimum. The power in this section will only be used to achieve approximate parity between the prescribed sterling and euro amounts. It will be necessary to exercise this power prior to section 763 coming into force and subsequently where the prescribed euro amount significantly differs from the prescribed sterling amount owing to exchange rate fluctuations.

Power to alter authorised minimum

2.189. As it may be necessary or desirable to change the minimum share capital requirement for public companies from time to time, for example, in response to changes to the minimum share capital requirement for public companies at EU level, we have carried forward the power that is currently contained in section 118 of the 1985 Act in section 764 of the 2006 Act. This power enables the Secretary of State to alter the prescribed sterling amount of the authorised minimum and to make a corresponding alteration to the prescribed euro equivalent.

2.190. This is a reserve power and there is currently no intention to change the prescribed sterling amount, which has been set at the current level since 1980. We accept that the authorised minimum for UK companies is set much higher than EU law requires, but we see no reason to depart from the CLR's recommendation that the authorised minimum should continue to be £50,000: in particular, we think that a minimum share capital requirement of £50,000 (or the euro equivalent to this) is commensurate with the benefits that flow from plc status.

Authorised minimum: application where shares denominated in different currencies

2.191. Whilst the minimum share capital requirement for public companies must be satisfied in euro or sterling (not a combination of both – see paragraph 2.185 above) on registration or re-registration as a public company, there is nothing to stop a public company from subsequently redenominating (converting) its entire share capital, including the authorised minimum, into any currency of its choosing. To take an example, a public company that was incorporated with a share capital of £60,000 may subsequently choose to convert £40,000 worth of shares into dollar shares under section 622 of the Act (which contains a new procedure that enables a company limited by shares to easily convert their share capital from one currency to another).

2.192. This raises a question about how references in the 2006 Act to the authorised minimum are to be applied where a public company has shares denominated in more than one currency, where it has converted its shares from one currency to another or where it allots new shares in a currency other than that in which it satisfied the authorised minimum or registration or re-

registration as a public company. This is important as various provisions in the Act specify what is to happen where a public company's share capital falls below the authorised minimum, for example, where such a company reduces its share capital under sections 645 to 649 of the Act (reduction of capital confirmed by the court) and the effect of the reduction is to bring the company's share capital below the authorised minimum, the Companies Act 2006 may not register the court order confirming the reduction of capital unless the court so directs or the company re-registers as a private company.

2.193. Continuing with the above example, if the company applied to the court to reduce its share capital by £5,000 it could be argued that it should re-register as a private company as it now only holds £20,000 worth of sterling shares (or £15,000 worth of sterling shares if the proposed reduction is sanctioned by the court) and no euro shares. This may however produce an inequitable result if exchange rates have remained stable since the date that the company converted its sterling shares into dollar shares or if the value of the dollar has risen vis-à-vis the pound (for example, if applying an appropriate exchange rate at the date of that the court confirms the proposed reduction of capital the dollar shares were now worth £45,000).

2.194. We will therefore prescribe, in regulations made under section 766 of the Act, the test that is to apply where a public company is required to demonstrate that it continues to satisfy the authorised minimum (see section 650 which is concerned with reductions of capital and section 662 which is concerned with the duty to cancel shares in a public company in certain circumstances).

2.195. We propose that where a public company no longer holds sterling shares to the value of at least £50,000 (or euro shares to the value of the prescribed euro equivalent) and it proposes to effect a reduction of share capital under sections 645 to 649, or is required to cancel shares under section 662, it must carry out a theoretical conversion of its share capital (or part of it if it is clear that the company's allotted share capital is equivalent to or £50,000 or the prescribed euro equivalent) into sterling or euro (the company will be permitted to specify which currency is to apply). The company will be deemed to satisfy the authorised minimum if it can demonstrate that it holds shares to the value of at least £50,000 (or the prescribed euro equivalent) after applying the theoretical exchange rate and adding the value of the "converted" shares to the value of any shares that are held in sterling or euro (depending on which currency the company elects to demonstrate it continues to satisfy the authorised minimum in).

2.196. In the case of a reduction of capital under sections 645 to 649, we propose that the theoretical exchange rate that is to apply to this "conversion" is the rate prevailing on the date on which the court makes an order confirming a reduction of capital under section 650. Where shares are cancelled under section 662, we propose that the theoretical exchange rate that is to apply should be a rate prevailing on the date that the shares are forfeited, surrendered or acquired (as the case may be).

2.197. Where a public company no longer continues to satisfy the authorised minimum, it will be required (in regulations made under section 766) to either allot new shares or re-register as a private company. If the company is unable

to or chooses not to allot further shares with a view to ensuring that it satisfies the authorised minimum, it will be able to use an expedited procedure for re-registering as private limited similar to that which is prescribed in section 664 to 667 of the Act (see section 766(4)).

Hyperinflationary currencies

2.198. We have considered what should happen where a public company has converted its entire share capital, including the authorised minimum or part of it, into a hyperinflationary currency and we have concluded that there is no need to make further provision for these circumstances for the following reasons:

- First, our interpretation of EU law is that the requirement for the authorised minimum to be satisfied in euro or the Member State's national currency only applies on registration or re-registration as a public company (such an interpretation is consistent with our policy that subsequent to registration or re-registration a public company may redenominate its entire share capital, including the authorised minimum, into any currency of its choosing).
- Second, it would be impractical to require companies to continually monitor their share capital with a view to ensuring that they do not inadvertently fall foul of the minimum share capital requirement owing to exchange rate fluctuations.
- Third, where a company is proposing to reduce its share capital, or is required to cancel shares under section 662, it must take stock of whether it continues to meet the minimum share capital requirement for public companies in regulations made under section 766 at the relevant date (see above).

Question 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?**

Question 2. 49 **Do you agree that exchange rate fluctuations are irrelevant to the question 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?**

Treatment of reserves arising from a reduction of capital

2.199. Under Part 23 of the 2006 Act, companies are only permitted to pay a dividend to their shareholders out of "*profits available for the purpose*". This is defined in section 830 of the Act and, generally speaking, equates to

accumulated realised profits less accumulated realised losses. At present, what amounts to a realised profit or loss is left to be determined by generally accepted accounting principles (GAAP) and additional guidance issued by the Institutes of Chartered Accountants in England and Wales (ICAEW) and Scotland (ICAS).

2.200. Under the current guidance issued by the Institutes, amounts transferred to reserves following a reduction of capital are treated as a realised profit that can be offset against realised losses for the purposes of determining whether a company is able to pay a dividend.

2.201. Companies may want to reduce their share capital for a variety of reasons but they will often do so, in order to be able to pay future dividends. For example, a company that has accumulated realised losses of £1,000 in its balance sheet (e.g. because it has been trading at a loss for a number of years) could reduce its share capital by £1,500, thereby eliminating the loss on its profit and loss account of £1,000 and creating a realised profit of £500. The company could then either pay a dividend to its shareholders of up to £500 or alternatively carry forward the realised profit to future accounting periods.

2.202. At the moment, limited companies may only reduce their share capital if they go to court (unlimited companies are free to reduce their share capital in any way they see fit). Whilst there is no statutory requirement for this, the courts have developed a practice of asking companies to provide evidence that the creditors have agreed to the proposed reduction of capital or, where no such agreement has been obtained, to provide evidence that the creditors' debts or claims against the company have been discharged or secured.

2.203. As recommended by the CLR, the 2006 Act introduces a new procedure for capital reductions, which enables private companies to reduce their share capital without going to court. This requires a special resolution of the company's members and the directors must also make a solvency statement in accordance with section 643 of the Act (see paragraphs 2.172 – 2.184 above). In essence the directors must be able to satisfy themselves that the company is a going concern and must confirm in the solvency statement, that the company is in a position to pay all of its debts as at the date of the solvency statement and that it will continue to be able to pay its debts in the year immediately following the statement (or within a year of the company commencing winding-up if it is intended that company should be wound-up at the date of the statement). The solvency statement must be in a prescribed form.

2.204. Whilst there are criminal sanctions for publishing a misleading solvency statement and the statement must be filed with the Registrar of Companies, the creditors do not have to consent to the reduction of capital and the company is not required to discharge or provide security for the creditors' claims.

2.205. Section 654 therefore contains a new provision which enables the Secretary of State, in an order made under the Act, to specify the cases in which a reserve arising from a reduction of capital will be distributable and when this reserve is to be treated, for the purposes of Part 23 of the Act, as a

realised profit. An order under this section is subject to affirmative resolution procedure.

2.206. We propose to use this power to enable amounts credited to reserves following a reduction of capital under Generally Accepted Accounting Principles (GAAP), following the making of a solvency statement to be treated as a realised profit, which can be offset against realised losses for the purposes of calculating whether the company can pay a dividend. This means that companies will only be able to use the solvency statement procedure to distribute capital to their shareholders if they can comply with the provisions of Part 23 of the Act.

2.207. This would give private companies less flexibility as regards the circumstances in which they can distribute amounts to their shareholders following a reduction of capital using the statement procedure than they have under the court-approved route, but we think this strikes the right balance between facilitating reductions of capital in private companies and protecting the interests of longer-term creditors.

Question 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?**

Question 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 question may be distributable?**

J Company Charges

2.208. Part 25 restates the provisions in Part 12 of the 1985 Act relating to registration of company charges by UK companies. There has been an element of restructuring but, with one exception, no substantive changes have been made other than to ensure compatibility with the rest of the 2006 Act. The exception relates to the registration of charges by overseas companies (see paragraphs 2.214 – 2.221 below). Part 25 also contains two new powers:

- (a) Section 893 - power to make provision for effect of registration in a special register. The purpose of this power is to remove the double registration requirement that affects charges over assets for which there is a specialist register, for example the current Land Registry and the UK Register of Aircraft Mortgages and in future the register for floating charges under Scots law which will be established under the Bankruptcy and Diligence etc. (Scotland) Act 2006. As was made clear during the passage of the Companies Bill, we intend the first use of the power to be in respect of the Scottish Register of Floating Charges.

- (b) Section 894 - a general power to amend (but not to replace) the existing scheme.

The timetable for the use of these powers will be largely determined by the development programmes of Registers of Scotland and the Land Registry. A consultation document relating to Scottish Floating Charges will be published later this year.

K Overseas companies

2.209. Part 34 applies to companies incorporated outside the UK. It enables various registration, reporting and disclosure requirements to be imposed on overseas companies. We have been considering the way forward in defining overseas companies who operate their business in some way in the United Kingdom. At present there are two parallel regimes, one applying where a company is incorporated outside the UK and Gibraltar, but has set up a branch in UK; the other where a company is incorporated outside UK and establishes a place of business in the UK. The former regime reflects the requirements of the Eleventh Company Law Directive (89/666/EEC), which applies to Community companies that set up a branch. Both types of company are currently required to make public disclosures to the Registrar of Companies by, for example, filing accounts.

2.210. The CLR recommended changes to the current framework so that a single regime applies to all overseas companies, based on the requirements of the 11th Directive. There is no definition of branch in the directive (as there is no definition of establishing a place of business in the existing law) itself but in another context the Court of Justice has held that the concept "implies a place of business which has the appearance of permanency... has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension." The place of business regime predates the Directive requirements, and continues to apply to places of business which are not branches. The registration requirements are similar, but not identical, under the two regimes. In the light of subsequent case law it is likely that there would be less emphasis on the relationship with head office, since the establishment in the UK may be all there is.

2.211. The CLR said the existence of two differing regimes gives rise to a number of problems. It creates confusion and uncertainty for overseas companies wanting to establish a presence here, as it is not always clear which regime they should register under. It is not also clear why different information should be available according whether an overseas company is carrying out business under the place of business regime or under the branch regime. The Government agrees.

2.212. When the CLR carried out its review, it opted for "place of business" but with slightly increased filing arrangements for some overseas companies. Since then there have been a number of decisions from the European Court of Justice to the effect that requirements on Community companies going

beyond those in the 11th Directive, could be contrary to Community law. Since the Directive is silent on what should happen where (to the extent there is a difference) a Community company establishes a place of business which is not a branch we are therefore restricted in the extent to which we can apply disclosure requirements in such circumstances.

2.213. The Government is therefore minded to limit requirements to register particulars under section 1046 to overseas companies with branches here in the UK. That approach is most consistent with European Community law and the 2006 Act, which mandates registration of particulars in these circumstances only. It means that (to the extent that there is a difference) companies who operate a place of business in the UK but not a branch would no longer be required to register with Companies House. Conversely companies which establish a branch but not a place of business under the current law would be required to register.

Question 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)?

2.214. The restrictions imposed by the 11th Directive and subsequent Community case law do not, however, apply to companies incorporated outside the Community (“third country companies”), who establish either a branch or place of business here. We are therefore also considering whether different registration arrangements should apply to such overseas companies. We could, for example, consider whether any third company with a presence in the UK (however defined) should be required to register their details with Companies House.

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

Company charges (Section 1052)

2.215. The Law Commission in their 2005 report “*Company Security Interests*” noted

“There is universal agreement that the current law that applies to charges created by companies incorporated outside Great Britain (‘oversea’ companies) is profoundly unsatisfactory and must be changed. The problems relating to the registration of company charges by foreign companies have been recognised for some time, and have been the subject of criticism by a number of commentators. . . . This area is clearly still in need of reform. . . . ”

2.216. There are three main reasons why the existing provisions (section 409 for England and Wales and section 424 for Scotland) are unsatisfactory:

- Neither provision makes registration of the overseas company at Companies House a pre-condition to their application to register its charge. This omission has led the courts to require registration of a charge by companies about which Companies House has no record on its register. A special register (called “Slavenburg” after the name of the court case in which the issue first arose) has been set up to make compliance possible but information is not easily accessible by a potential creditor because there is no company number to search against. Similarly the information it contains is of little use because, in the absence of a formally registered company (to which a number has been allocated), one cannot verify to which company the information relates.
- Both provisions require registration of a charge created by a company incorporated outside Great Britain, which has an established place of business in England and Wales (or Scotland). In the absence of a definition in legislation, it is not clear what is meant by an “established place of business”.
- Neither provision deals adequately with property that is located overseas when the charge is created but that is subsequently brought into Great Britain.

Given these problems, we removed from what is now Part 25 of the 2006 Act, the provisions requiring overseas companies to register their charges. However it continues to be in the interests of UK bodies, in particular potential lenders to and creditors of overseas companies, that the public record includes details of their charges. We therefore introduced a power in section 1052 to make separate provision for these.

2.217. The power in section 1052 extends to provisions about the registration of specified charges over the UK property of registered overseas companies. The duty to register will apply only if the overseas company is registered with Companies House, under section 1046 of the 2006 Act (“a registered overseas company”); it will not apply if the company is not required to register under section 1046 (see paragraph 2.212 above) or fails to do so. Given the limitations of the Slavenberg register described above, we do not want to establish a new regime which re-creates those problems by requiring registration of a charge by a company for which we have no record on the register. We also propose that the duty to register will end if the company has given notice to the Registrar of Companies under section 1058 of it ceasing to have a registrable presence in any part of the UK.

Specified charges

2.218. We propose that regulations made under section 1052 will cover the following types of charges:

- (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;

Question 2. 54 Do you agree that these listed charges should be registrable for overseas companies?

Sanctions for failing to register a charge

2.219. We propose that where a charge is created over property in the UK of a company that has already registered under section 1046, the provisions of Part 25 will be applied to it (with appropriate modifications), so that if the charge is not registered within 21 days of creation it will be invalid.

2.220. The sanction of invalidity will not apply however to the types of charges described in (e) above, i.e where the company has already registered under section 1046 but the property was not in the UK when the charge was created over it (and therefore wasn't registrable under the 2006 Act). Instead we propose that the sanction for failing to register the charge once the property is brought into the UK (and remains there for at least 60 days) should be a criminal offence, punishable by a fine.

2.221. We propose taking the same approach (i.e criminal sanction as opposed to invalidity) with respect to charges over UK property granted by an overseas company that was not registered with Companies House when the charge was created. In such cases the intention is that the company itself will be required to include particulars of the charge when it registers its presence under section 1046.

2.222. The reason for moving away from the sanction of invalidity in these latter two cases is this. We do not consider it justifiable to apply the sanction of invalidity where the lender has no control over whether the charge will be registered (or indeed has to be registered). In this way we propose to treat failure to register in these latter two cases as equivalent to failure to register the acquisition of property subject to the charge (sections 862 and 880 of the 2006 Act).

Question 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?

Question 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)?**

Question 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)?**

2.223. Please also see Section D for a discussion on trading disclosures and overseas companies.

L The Registrar of Companies

Annotation of the Register (Section 1081)

2.224. It is important that the register is a useful source of information to those who search for information on companies. This section sets out the circumstances in which the Registrar of Companies is obliged to annotate the information on the register to ensure that the reader has as much relevant information as possible.

2.225. Subsection (1) explains that annotations must show the date of delivery of information, and the fact that information has been replaced corrected or removed.

2.226. The Secretary of State has the power to make provision by regulations extending the circumstances where the register can or should make annotations.

2.227. In the short term we are proposing to allow annotations in two circumstances. The first is to cover transitional measures from the 1985 Act towards the final implementation of the 2006 Act; such annotations will be made as transitional provisions under section 1296 of the 2006 Act, rather than using the power in section 1081. As we envisage that the new Act will have implications for forms and documents already filed, some information may not be required or is overtaken by new requirements, and in order to ensure transparency we propose to annotate the register to this effect.

2.228. Following the commencement of the Act and as an ongoing measure the Registrar of Companies also intends to use this annotation power in order to make the public register clearer to searchers. This will specifically relate to the annotation of any material that is confusing or misleading to the searcher.

2.229. An example of this may be where the Registrar of Companies receives a notice of termination of a director and subsequently places it on the register, but he has not previously received the appropriate notice of appointment of that director. The Registrar of Companies would ask the company for the appropriate form, but when received would appear to the searcher that the

director or secretary had be reappointed; as it would naturally appear on the register after the termination. In this scenario the Registrar of Companies would wish to use the annotation power to make the searcher better aware of the true position of the director or secretary and the company.

Question 2. 58 Do you agree that the annotations should extend to confusing or misleading material?

Rectification of the register on application to the Registrar of Companies (section 1095)

2.230. The Secretary of State has been given the power to make provision by regulations requiring the Registrar of Companies, on application, to remove from the register certain material that derives from anything invalid or ineffective or that was done without the authority of the company or is factually inaccurate, or is derived from something that is factually inaccurate or forged.

2.231. It is intended that the Registrar of Companies will be able to use this power in respect of material filed which could be used to commit fraud, for example, names and addresses and change of registered office that could be used in cases such as company hijacking (where a third party supplies a false company address for profit), or the false appointment of company directors or secretaries.

2.232. Therefore, any person affected by the invalid, ineffective or inaccurate document, within the specified areas in the regulations mentioned previously, may apply to the Registrar of Companies for rectification of those documents, provided that he or she gives reasons as to why the rectification is necessary. These reasons will need to be supported by evidence (in due course the Registrar of Companies may produce guidance or make rules in relation to the nature of evidence required).

2.233. Once an application has been made, the Registrar of Companies will give notice of the application to anyone he believes to be affected. It is proposed that any such person would have to object within a specified time period - possibly 30 days.

2.234. The application to rectify would then be determined by the Registrar of Companies and he would then send notice of his decision to the applicant and the person opposing.

2.235. In situations where the Registrar of Companies does not consider rectification by her is appropriate, or indeed that the supporting evidence is not substantiated or clear, then the removal of the material may still be possible on application to the court.

Question 2. 59 Do you agree with the overall proposals under rectification of the register?

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

Welsh companies

2.236. The Companies Act 2006 continues the general policy position on filing requirements for Welsh companies i.e. allowing for documents to be delivered to the Registrar of Companies in Welsh. Depending on the particular document companies may also be required to file a certified English translation. However the Secretary of State proposes to allow Welsh companies to file the following documents at Companies House without providing a translation into English: the company memorandum and articles; annual accounts, annual reports and auditors reports of companies except in relation to public companies. We will continue to keep these regulations under review and extend the provisions to other documents.

Documents that may be drawn up and delivered in other languages

2.237. Section 1105(2)(a) to (c) of the 2006 Act sets out documents that may be filed in a language other than English, provided that an English translation is provided. Section 1105(2)(d) enables the Secretary of State to specify additional documents that may be drawn up and delivered in a foreign language, but that must be accompanied by a certified translation into English.

2.238. In addition regulation 4 of the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (SI 2006/3429) permits a contract for the allotment of shares paid up other than in cash to be delivered to the Registrar of Companies in a foreign language provided it is accompanied by a translation.

2.239. We propose using this power to specify the Memorandum and Articles of overseas companies who have a presence in the UK as documents, which can be filed in a foreign language, but with an English translation – please see Part K on overseas companies.

2.240. Section 1102 provides power to make provisions by regulation applying the requirements relating to documents delivered in Welsh and other languages (in sections 1103, 1104, 1105 and 1107 to documents delivered to the Registrar of Companies under any other enactment.

Question 2. 61 What documents should be accepted in a foreign language.

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

Alternative to publication in the Gazette (section 1116)

2.241. This section provides for The Secretary of State to make provision as to what alternative means of publication may be used other than the Gazette.

2.242. At this stage we do not intend to make use of this power. The Registrar of Companies will be working with companies over the next few years to ensure that there is a smooth transition period between the current regulations towards those that will finally be introduced in October 2008. This will involve numerous system and process changes.

2.243. However this is a power that the Secretary of State may in the choose to use once this period of transition is over, but this will only occur after a full consultation with the users of Companies House.

Question 2. 63 Do you agree that we should not make provision at the present time for an alternative to the Gazette?

M Company records: places for inspection, inspection rules

2.244. Companies have always been required to make key records available for inspection by anyone who wishes. These key records include the register of members, directors' service contracts and records of resolutions. While some of these records must be filed at Companies House, generally the only way to inspect an up-to-date record is to visit the place where it is kept. At present, some of these records must be kept at the company's registered office. These are:

- Register of directors and secretaries
- Copies of all resolutions of members passed otherwise than at general meetings and minutes of all proceedings of general meetings (for single member companies, a record of equivalent decisions)
- Contracts etc for purchase of own shares
- Instruments of charges and registers of charges.

For other records, companies have an alternative. The register of members and its index may be kept where the register is made up provided that this is in the same jurisdiction as the registered office. The following records may be kept either at the registered office or with the register of members:

- Register of debenture holders and its index
- Register of directors' interests
- Register of interests discloses and its index

2.245. There is a further option for copies of directors' service contracts (or, if the contract is not in writing, a written memorandum setting out the terms of the contract): they may also be kept at the company's principal office provided this is in the same jurisdiction as the registered office.

2.246. The 2006 Act retains the statutory right to inspect all these records except for the register of directors' interests which companies will no longer be required to maintain. It also introduces a statutory right to inspect copies of any qualifying indemnity provision for its directors (or, if the provision is not in writing, a written memorandum setting out its terms), and documents relating to redemption or purchase of own shares out of capital by private companies. Section 1136 provides power to specify an alternative to the registered office as the place where each of these records (except for indexes that must be kept with their registers) must be kept available for inspection; section 1137 provides power to set the rules relating to the inspection and copying of records. The rules for inspection apply not only to the records for which there is a statutory public right of inspection. They also apply to all

records which a company must make available to someone, in particular papers relating to an imminent meeting which companies are required to make available to their members at their registered offices in the period immediately beforehand.

2.247. It is likely that it would be most convenient for those wishing to inspect a company's records if all its records for which there is a statutory right of inspection were required to be kept in a single place. However any such statutory restriction must balance the needs of those wishing to inspect companies' records with those of companies in keeping the records.

2.248. Companies, on the other hand, will generally want each record to be kept wherever it is most convenient for each record concerned. This is likely to vary widely, both between companies and between different types of record. For example, companies with few members are likely to keep their registers of members in hard copy, possibly in bound books with their other registers. However, under the present regime, this has the effect of requiring such companies to keep their registers of members at their registered offices. By contrast, companies with many members generally employ commercial registrars to keep their registers of members electronically and these are then available for inspection at the commercial registrar's offices possibly together with other statutory registers but some registers and records must be kept at the registered office in all cases. On the other hand, a company may keep its directors' service contracts at their principal office, provided it is in the same jurisdiction as its registered office.

2.249. It is possible that a company might seek to thwart inspection by keepings its records in different far-flung places. We consider the choice should be restricted to a single location. In any event, the place or places for registers would need to be in the same jurisdiction as the company's registered office so as to ensure that is the jurisdiction for any proceedings relating to the validity of entries in it⁷. This means a company whose registered office is located in Wales would be able to use a location in either England or Wales.

2.250. It is of course essential that those wishing to inspect a record can discover where is its place of inspection. The current requirement for a company to notify the Registrar of Companies of where its register of members is kept and to include this information in its Annual Return will need to be modified. In addition, those wishing to exercise their right to inspect a company's records should be able to find out where to go directly from the company.

Question 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?**

⁷ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

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?**

2.251. The statutory rules for inspection will also affect what is convenient. At present, companies must make the records available for inspection for at least 2 hours between 9am and 5pm on every weekday that is not a bank holiday. It seems likely that this pushes some small companies into making their registered offices that of their lawyers or accountants. It is unclear how otherwise many companies, for example management companies for residential flats, are able to comply with the current requirements throughout the year. We consider that private companies should continue to be required to make records available for inspection for at least 2 hours between 9am and 5pm on every weekday during the fortnight leading up to a General Meeting and the fortnight following the circulation of a special resolution, but that at other times the right to inspection should be subject to a request having been made.

2.252. The current regulations permit a person inspecting a record to copy by taking notes or by transcription while making clear that the company does not have to provide facilities other than those needed for inspection. These rules do not cover the possibility of companies being faced by several simultaneous requests to allow inspection of a record. Clearly it is not possible to satisfy more than one when records are kept in bound books, but it would be possible for electronic registers.

Question 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.

Question 2. 66

A company should not be required to enable inspection by more than one person at a time?

Question 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?

APPENDIX TO PART E "ADDRESSES ON THE PUBLIC RECORD AT COMPANIES HOUSE"

The Secretary of State;

An inspector appointed under Part XIV of the Companies Act 1985 or regulation 30 of the Open-Ended Investment Companies Regulations 2001;

Any person authorised to exercise powers under section 447 of the Companies Act 1985, or section 84 of the Companies Act 1989;

An inspector appointed under Part XV of the Companies (Northern Ireland) Order 1986 or Regulation 22 of the Open-Ended Investment Companies (Companies with Variable Capital) Regulations (Northern Ireland) 1997

Any person authorised to exercise powers under Article 440 of the Companies (Northern Ireland) Order 1986;

Any person exercising functions conferred by Part VI of the Financial Services and Markets Act 2000 or the competent authority under that Part;

A person appointed to make a report under section 166 of the Financial Services and Markets Act 2000 (reports by skilled persons);

A person appointed to conduct an investigation under section 167 or 168(3) or (5) of the Financial Services and Markets Act 2000;

An inspector appointed under section 284 of the Financial Services and Markets Act 2000 (collective investment schemes: power to investigate);

The Department of Enterprise, Trade and Investment in Northern Ireland*;

The Scottish Executive;

The Scotland Office;

The National Assembly for Wales;

The Wales Office (Office of the Secretary of State for Wales);

The Welsh Assembly Government*;

The Treasury;

The Commissioners for Revenue and Customs*;

The Bank of England;

The Director of Public Prosecutions and the Director of Public Prosecutions in Northern Ireland;

The Serious Fraud Office;

The Secret Intelligence Service;

The Security Service;

The Financial Services Authority;

The Competition Commission;

The Pensions Regulator*;

The Panel on Takeovers and Mergers;

The Chief Registrar of Friendly Societies and the Registrar of Companies of Credit Unions and Industrial and Provident Societies for Northern Ireland;

The Director General of Fair Trading;

The Office of the Information Commissioner;

The Friendly Societies Commission;

A local weights and measures authority;

The Charity Commission;

The Department for Social Development in Northern Ireland*;

An official receiver appointed under section 399 of the Insolvency Act 1986;

A person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986;

The Official Receiver for Northern Ireland;

A police force within the meaning of section 101(1) of the Police Act 1996 or section 50 of the Police (Scotland) Act 1967;

Any procurator fiscal;

An overseas regulatory authority within the meaning of section 82 of the Companies Act 1989.

* addition or modification to the COR 2002 list