

Summary: Intervention & Options

Department /Agency:

Business, Enterprise & Regulatory Reform

Title:

Impact Assessment of The Companies Act 1985 (Annual Return) Regulations 2008

Stage: Consultation

Version: 1

Date: 29 April 2009

Related Publications: The draft The Companies Act 2006 (Annual Return and Service Addresses) Regulations and related Impact Assessment <http://www.berr.gov.uk/bbf/co-act-2006/draft/>

Available to view or download at:

<http://www.berr.gov.uk/bbf/co-act-2006/draft/page40411.html>

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What is the problem under consideration? Why is government intervention necessary?

Companies limited by capital are required to include the names and addresses of all their members in their Annual Returns to Companies House under provisions of the Companies Act 1985 that remain in force until 30 September 2009. From 1 October 2008, this will undermine the safeguards for this information provided by provisions of the Companies Act 2006 that are already in force.

What are the policy objectives and the intended effects?

The requirements for details of members in Annual Returns under the 1985 Act should be revised so that they are the same as those that will apply from 1 October 2009, ie "early change".

What policy options have been considered? Please justify any preferred option.

Consideration has not been given to an alternative. The problem is a consequence of the delay in bringing into force the relevant provisions in the Companies Act 2006.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Regulations will not apply to Annual Returns made up to dates after 30 September 2009.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option: early change	Description: The Companies Act 1985 (Annual Return) Regulations 2008
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
Other key non-monetised costs by 'main affected groups' credit reference agencies and public authorities will not be able to obtain details of members from Companies House			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' they support the safeguards for shareholders addresses under the 2006 Act brought into force, with transitionals, 1/10/07			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	1/10/08				
Which organisation(s) will enforce the policy?	Companies House				
What is the total annual cost of enforcement for these organisations?	£ fee recovery				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	Yes				
What is the value of the proposed offsetting measure per year?	£ n/a				
What is the value of changes in greenhouse gas emissions?	£ n/a				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border: none;"> <tr> <td style="width: 25%; text-align: center;">Micro 0</td> <td style="width: 25%; text-align: center;">Small 0</td> <td style="width: 25%; text-align: center;">Medium 0</td> <td style="width: 25%; text-align: center;">Large 0</td> </tr> </table>	Micro 0	Small 0	Medium 0	Large 0
Micro 0	Small 0	Medium 0	Large 0		
Are any of these organisations exempt?	<table style="width: 100%; border: none;"> <tr> <td style="width: 25%; text-align: center;">Yes/No</td> <td style="width: 25%; text-align: center;">Yes/No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	Yes/No	Yes/No	N/A	N/A
Yes/No	Yes/No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

BACKGROUND

1. When a company is incorporated, its key data are put on the public record to be readily available for inspection by third parties, including enforcement bodies. The Annual Return ensures that any elements of the key data which may change over time are updated at least once a year. For companies with share capital, the key data includes the names and addresses of all its members.
2. Company law also requires every such company to permit anyone to inspect and to be provided with copies of its register of members. The public availability of members' names and addresses has been abused, particularly by those seeking to intimidate the shareholders of sensitive companies and those using high pressure tactics to sell worthless shares ("boiler room operations"). Sections 116-119 of the Companies Act 2006 introduces safeguards so that this public right of access to a company's register of members is not abused. These safeguards would be undermined if the company were subsequently to file the information on the public register at Companies House.
3. The Companies Act 2006 (Annual Return and Service Address) Regulations 2008 will replace the requirement for every company limited by share capital to provide the names and addresses of all its members. These Regulations will distinguish between:
 - most companies who will be required to provide the names and details of shareholdings of all their members (but not the addresses); and
 - those companies whose shares are traded on a regulated market. These will be required:
 - to indicate that their shares were traded on a regulated market at any time during the period covered by the return
 - to provide the names, addresses and details of shareholdings of those members who held 5 per cent or more the issued shares of any class of the company during the period covered by the return.

The Companies Act 2006 (Annual Return and Service Address) Regulations 2008 will come into force on 1 October 2009. A draft Impact Assessment for these Regulations, which also make other changes to the requirements for the Annual Return, has already been published. It is the basis for this Impact Assessment .

THE REGULATIONS

4. The Companies Act 1985 (Annual Return) Regulations 2008 will amend the requirements for the information that must be included in the Annual Return made up to a date on or after 1 October 2008. The change will only affect companies that have share capital. The information relating to their members that they will have to provide will be the same as to be required under the Companies Act 2006.
5. We have considered the three mandatory impact tests (gender, race, disability) and consider that the proposed Regulations are unlikely to have any discriminatory effects. The other tests are not applicable.

IMPLEMENTATION OF THE CHANGED REQUIREMENTS

6. Companies House will not put on the public record an Annual Return made up to a date after 30 September 2008 that includes the names and addresses of all the company's members.

7. So as to minimise any problems for companies, it will not be possible to complete an Annual Return electronically that does not comply with the correct requirement. To minimise the risk of a company submitting a paper Annual Return made up to a date after 30 September 2008 that includes the names and addresses of all its members, Companies House will prescribe new forms for annual returns made up to dates after 30 September 2008 so that:

- for private companies, there is no space to give details of their shareholders addresses;
- public companies whose shares are traded on a regulated market are asked to indicate this on the form (in addition, the guidance note will - make it clear that they must give addresses only for those shareholders who hold more than 5% of the issued shares of any class of share;
- For public companies who do not indicate that their shares are traded on a regulated market, there will be no space for details of shareholders' addresses (ie the same as for private companies).

In addition, Companies House will:

- implement strict examination policies to ensure that if a private company, or public company not traded on a regulated market, filed the earlier version of the form with shareholder addresses on it, then Companies House would reject the form.
- make the new requirements clear in all their published guidance notes and via all other normal channels

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

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