

Oct 2009

Register71

essential corporate knowledge

includes:

- A simple guide to the new Companies Act
- Adjudicator's Report for Companies House
- Companies & the Law



Companies Act 2006

a simple guide to key changes

Companies
2006

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— for the record —

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Companies House

Companies House has the public records of over 2.5 million companies. Our three main statutory functions are:- to incorporate and dissolve companies, to examine and hold documents under the Companies Act and related legislation and to make this information available to the public.

Every limited company has the legal obligation to provide Companies House with an up to date annual return (which includes the registered office address and directors’ and shareholders’ information) and annual accounts. Only by ensuring that companies meet their filing obligations can we provide the public with the company information which increases the confidence of the markets and protects the consumer, creditor and shareholder.

If you would like further details about Companies House please Call:
Contact Centre - **0303 1234 500** or log on to: **www.companieshouse.gov.uk**
For training and quality purposes, your call may be monitored.

The Editor welcomes articles, letters and other contributions for publication in Register and reserves the right to amend them. Any such contribution is, however, accepted on the understanding that its author is responsible for the opinions expressed in it and that its publication in Register does not imply that it represents the view of Companies House or BIS.

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Talking Point

I'm writing this in the run up to what I believe will be the most significant and exciting event for all of us this year - the coming into force of the remainder of the Companies Act 2006. There's not a single part of Companies House that hasn't been affected by the change to the legal framework under which we operate and I know it's had a big impact on our stakeholders too. October sees the culmination of three years work since the Act completed its passage through Parliament - and for some of us - longer still in helping the Department for Business to develop the legislation. The focus has always been to try and support small business and we think the Act will bring some useful benefits - such as a more responsive and flexible register, the use of service addresses for company officers, and more protection for companies from fraudulent filing.

I hope you find that the transition to the new Act and in particular how we have implemented the changes here, works well. We've been working hard to change (and improve) all of our forms and guidance, and to communicate in as simple a way as possible what the changes are and how to get more information from our website. We have written to over 2.3 million companies, advertised extensively, held information days, and worked closely with stakeholders to help achieve a smooth transition to the new law. We are particularly looking forward to welcoming staff and customers from Northern Ireland when Companies House takes on UK wide company services in October.

But this is not the only thing of strategic importance this year, - on 1 September, Stephen Banyard, Director of the Business Customer Unit, HMRC, and I made a public announcement that Companies House would be developing iXBRL (inline extensible reporting language) for the filing of company accounts. This gives much needed certainty to business that we are serious about harmonising services with HMRC and in particular the introduction of a single filing facility for company accounts and company tax returns. Our plan is to add iXBRL software filing for unaudited and abbreviated accounts to our services by summer 2010 and continue to develop our capability for other accounts by summer 2011. I will report on progress in later issues of The Register.

Last but not least - Europe. Though as an executive agency we are at arms length from EU developments we do take a keen interest in discussions and of course in the development

and implementation of directives which involve us - the most imminent being the Services Directive which is due to come into force on 28 December this year. The main focus is the use of a single point of contact for business which in the UK is businesslink.gov.uk. I'm pleased to say that Companies House WebFiling and search services are already accessible through Businesslink. Work will also begin soon to integrate all of our guidance onto the site as part of the Government's plans to simplify the provision of information through the two main sites - Direct.gov.uk and Businesslink.gov.uk

I hope you enjoy reading this issue of The Register which includes interesting articles on, the important changes to the relationship between the memorandum and the articles of association and the important annual report of our Independent Adjudicator. In addition we are highlighting some of the avenues we are using to inform Companies about the important changes coming about as a result of the Companies Act 2006.

Your feedback on this and all of our services is highly valuable. If you have any comments please contact us through our website.



Gareth Jones
Chief Executive & Registrar

Companies & the Law

by Brenda Hannigan

Professor of Corporate Law,
University of Southampton

October 1, 2009 brings the final commencement of the Companies Act 2006 (CA 2006) which will sweep away the CA 1985 and with it some of the more arcane areas of company law. In particular, the CA 2006 sees the effective demise of the company's memorandum of association as an important constitutional document with the articles of association rightly promoted to centre stage instead.

The memorandum of association

Under the CA 1985 and earlier enactments, the memorandum of association was an important external-facing document telling the outside world the key facts about the company including its name, the company's objects, that the members' liability was limited, and setting out the amount and division of the company's authorised share capital.

From 1 October 2009, for companies formed under the CA 2006, the memorandum simply records that the subscribers to the memorandum wish to form a company, agree to become members and to take at least one share each. In many cases, the original founders will be formation agents and so the document will have no continuing relevance.

Provisions previously contained in the memorandum

For existing companies formed under the CA 1985 and its predecessors, provisions that were contained in the memorandum will be treated, from 1 October 2009, as provisions of the company's articles (CA 2006, s 28) which means that they may be altered, in the usual way, by a special resolution (i.e. 75% majority) under the CA 2006, s 2. An initial issue for such companies is whether to do anything with respect to such memorandum provisions. There is no legal obligation to do anything but, in the interests of 'good house-keeping', companies may want to take the opportunity to review the overall coherence of their articles in the light of the CA 2006 generally and in the light of this deemed inclusion of the provisions of the memorandum in the articles.

For example, a company may choose to delete the statement of the company's authorised capital (which typically states, say, that the company's share capital is £100 divided into 100 £1 shares). The authorised capital acted as a ceiling on the number of shares which could be issued (though the shareholders could always agree to increase it) but the CA 2006 does away with this concept of a ceiling. Unusually, the law allows existing companies to remove this clause by an ordinary resolution (simple majority) of the shareholders even though it is deemed to be a part of the articles. If companies retain the capital clause, it operates as a limit on the powers of the directors to allot shares and, in some companies, that restriction on the directors may be desirable so removal would not be an option that the shareholders would want to pursue.

Objects Clauses

One of the most significant consequences of the alteration of the status of the memorandum relates to the company's objects. Under the old law, the company's objects determined the company's capacity and acts outside of the objects were ultra vires and void. Over the years, the impact of that doctrine in practice was reduced almost to obsolescence by a combination of drafting techniques, judicial interpretation and statutory reform. Nevertheless companies typically included extensive objects clauses in their memorandum of association on a 'just in case' basis.

For existing companies, the choice is to do nothing and so retain their objects as before or to consider deleting them, post 1 October 2009. If a company does amend its articles to add, vary or remove an objects clause, notice must be given to the registrar of the change (as well as sending a copy of the resolution) and the amendment is not effective until the notice is entered on the register (s 31(2)). Even if a company decides to retain the objects clause, the impact is limited to a restriction of the powers of the directors. This is because the CA 2006, s 39 provides that the validity of an act done by the company cannot be challenged on the grounds of a lack of capacity by reason of anything in its constitution. In other words, no issue of ultra vires can arise in future and an act cannot be challenged on the ground that it was not within the company's objects (though it may be challenged on other grounds).

For companies formed under the CA 2006, unless a company's articles specifically restrict the objects of the company, the company's objects are unrestricted (s 31(1)). For newly formed companies, therefore, the (somewhat pointless) practice of drafting exhaustive objects clauses running to tens of provisions to ensure maximum corporate capacity to act can be consigned to history. Newly formed companies which do choose to restrict their objects (and not many are expected to do so) will be able to draft such objects much more succinctly since they are restricting an open-ended capacity rather than trying to confer it, as was the case in the past.

New model articles

As before, every company must have articles of association and if, on formation of a limited company, articles are not registered or, if articles are registered, in so far as they do not exclude or modify the relevant model articles, the relevant model articles form part of the company's articles automatically (s 20(1)).

Model forms of articles are provided for public and private companies limited by shares and for companies limited by guarantee (the discussion below concentrates on private companies limited by shares). Any company may adopt all or any of the provisions of the relevant model articles for that type of company and the draftsman is free to add, subtract or vary the model articles, as need be. The model articles are available on the Companies House website at <http://www.companieshouse.gov.uk/about/modelArticles/modelArticles.shtml>

The issue for existing companies is whether they should take the opportunity to review their articles and consider adopting all or some of the model articles appropriate to their company. There is no legal obligation to do anything and existing companies which are content with their articles as they stand (typically articles based on the Table A articles – the default articles under the CA 1985) can continue as they are. Newly formed companies can adopt all or part of the appropriate model articles or adopt tailor-made articles to meet their particular circumstances.

In any case the new model articles may prove attractive because they are written in a much clearer, shorter, form than before and they spell out in plain English the basic framework with regard to directors' decisions, share transfers, distributions and sundry other matters while leaving much of the material included in Table A to the Companies Act 2006 (for example, with regard to company meetings). In part, the intention was to avoid unnecessary duplication between the articles and the Act. It is also a reflection of the underlying assumption that most private companies do not hold meetings and so do not need elaborate provisions in their articles as to notice, voting, proxies etc.

Reflecting the Companies Act

Whether the decision is taken to adopt new articles entirely or to draw in part on the model articles or indeed to stick with existing Table A articles, companies generally need to review their articles simply to ensure that they are consistent with the new framework under the CA 2006. For example, articles of private companies often provide that the directors may refuse to register any transfer of any shares without giving any reason for that refusal. That provision is ineffective now for the CA 2006, s 771 requires directors to give reasons for any refusal to register a share transfer.

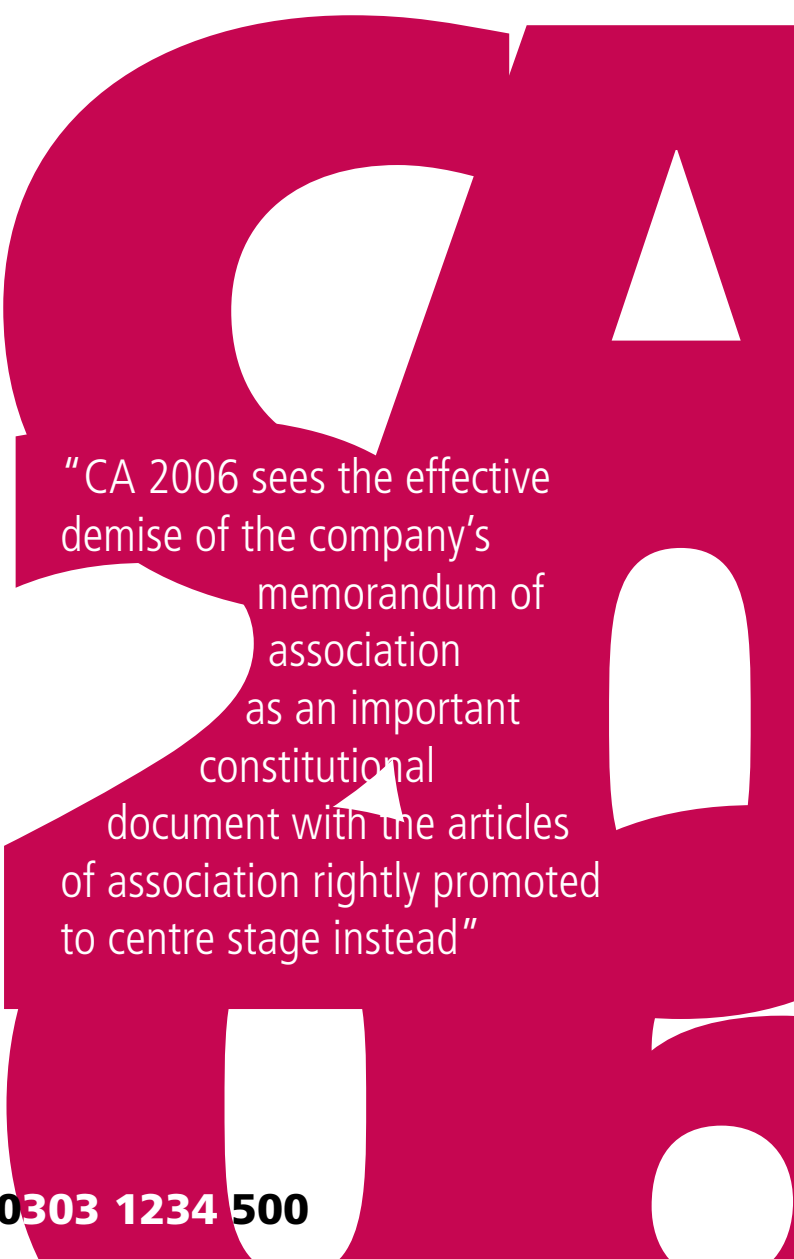
A more general issue is that the CA 2006 generally proceeds on the basis that a company (i.e. the directors) can do various things (for example, reduce capital (s 641) or purchase the company's own shares (s 690)) unless the articles restrict or exclude the particular power. The CA 1985, on the other hand, generally proceeded on the basis that a company could do certain things (such as reducing capital or purchasing its own shares) only if authorised by the articles. Given the more liberal regime under the CA 2006, shareholders may wish to consider whether they want to remove existing authorisations in the articles, since they are now unnecessary, and, vice versa, to consider whether they should place restrictions in the articles on powers which the directors will now otherwise have.

For example, it may be appropriate to make provision as to the directors' powers to allot shares given that, for companies formed under the CA 2006, there is no ceiling (in the form of an authorised capital) on the number of shares which may be issued. Furthermore, directors of a private company with only one class of shares (most private companies fall into that category) are able to allot shares without the need (which was the case before) for shareholder authorisation, unless they are prohibited from doing so by the company's articles (s 550). Existing companies can be placed in the same position by resolving to remove the authorised capital clause from their articles, as discussed above, and by resolving that their directors should have the powers to allot given by s 550.

The net result is that the directors would have quite a free hand as to the allotment of additional shares. They would still be restrained by the need for a rights issue (offering new shares to the existing shareholders, s 561), but that requirement too can be excluded or disapplied (ss 567-571). Given the possible permutations here, it may be worth considering, in the light of the circumstances in a particular company, whether and if so what provision should be made in the articles with respect to the allotment of shares.

Entrenching articles

Another issue to consider is whether the minority (or indeed the majority) should seek to 'entrench' provisions in the articles so as to prevent their alteration by a 75% majority. The CA 2006 introduces new procedures whereby a 'company's articles may contain provision ('provision for entrenchment') to the effect that specified provisions of the articles may be amended or repealed only if conditions are met, or procedures are complied with, that are more restrictive than those applicable in the case of a special resolution' (s 22). Such a provision for entrenchment may be included in the articles on formation or it can be added subsequently to the articles if agreed to by all the members of the company.



"CA 2006 sees the effective demise of the company's memorandum of association as an important constitutional document with the articles of association rightly promoted to centre stage instead"

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Companies & the Law

continued

An entrenched provision can be altered only in accordance with the method indicated in the provision or by agreement of all the members of the company or by order of the court (s 22(3)) so it does offer a greater level of protection than an 'ordinary' provision in the articles which is open to alteration by a 75% majority.

Rectifying/construing articles

The ability to amend the articles by special resolution (where a provision is not entrenched) is one of the distinctive features of the contract created by the articles between the company and the members. Another distinctive 'feature' is that the articles cannot be rectified by the court even if the articles do not accord with what is proved to have been the intention of the parties, the courts taking

the view that the parties should amend the articles instead of seeking rectification by the court. It is always useful therefore to review articles from time to time to ensure they do mean what the shareholders think they mean and that they are coherent and workable.

This reluctance to rectify the articles is qualified somewhat in that the courts will attempt to resolve difficulties by construing the articles in a way that gives them 'reasonable business efficacy'. Lord Hoffmann, one of the leading corporate lawyers and judges of his generation, who has just retired as a Law Lord, recently reviewed this issue of construction etc of the articles in a case on appeal to the Judicial Committee of the Privy Council from Belize (AG for Belize v Belize Telecom [2009] UKPC 10). Essentially, he said, when construing a commercial document such as the articles of association, the court looks to spell out what the document could reasonably be understood to mean.

Strictly speaking, decisions of the Privy Council are not binding on a matter of English law, though clearly they are very influential, given that the decisions are rendered by the Law Lords. Subsequently, the Court of Appeal, while acknowledging that Lord Hoffmann's analysis in the Belize case is likely to be widely cited, also seemed concerned that he had expressed the test too widely. The key, in their view, is whether it is necessary for the court to add something to a document to make it work (Mediterranean Salvage v Seamar Trading [2009] EWCA Civ 531).

Time for review

These cases would seem to leave us with a somewhat uncertain lottery, it would seem, between 'reasonableness' and 'necessity' should a problem arise with the meaning of the articles. The best approach is initially to draft and subsequently to review the articles of association to ensure that they do reflect accurately the parties' agreements and understandings in a clear and coherent way and are consistent as between different articles (something which is a particular problem when layer upon layer of alterations have built up over time) and with the law. The final commencement of the CA 2006 would seem to be an opportune moment for such a review.

by **Brenda Hannigan**
Professor of Corporate Law,
University of Southampton

Brenda Hannigan writes in a personal capacity and regrets that she is unable to advise on individual cases.

"Strictly speaking, decisions of the Privy Council are not binding on a matter of English law, though clearly they are very influential, given that the decisions are rendered by the Law Lords."

The FINAL ACT



OPENS OCT.1

The curtain rises on the final implementation of the Companies Act 2006 on October 1, 2009. Rewrites have seen company law updated and modernised, and will help make running your business simpler. The Companies Act 2006 will impact upon every company in the United Kingdom, so it's important you find out how it affects your business.

See a preview now, at a screen near you, www.companieshouse.gov.uk

Annual Report by The Independent Adjudicator to Companies House (1st April 2008 - 31st March 2009)

1. INTRODUCTION

1.1 My principal role is to deal with appeals against late filing penalties once they have passed through the first two stages which are internal to Companies House. If the Senior Appeals Manager upholds a late filing penalty at the second stage of the process, the appellant may ask the Independent Adjudicator to consider the case. As the Companies Acts define precisely the powers of the Registrar of Companies and are backed up by case law, the scope for him to exercise his discretion not to collect a penalty is limited. If I reject an appeal, the appellant may ask the case to be referred to the Registrar who is the final arbiter in the appeals process.

1.2 I also investigate complaints about delay, discourtesy and mistakes and the way in which complaints have been handled by Companies House. Again, there are two internal stages for consideration of a complaint, the second one being referral to the Director of Customer Delivery. If the complainant remains dissatisfied, he or she may ask the matter to be referred to me. After I have considered a case, if the complainant wishes to escalate the complaint, he or she may approach a Member of Parliament and ask for the case to be referred to the Parliamentary and Health Service Ombudsman.

1.3 For ease of reference, I have summarised my comments and recommendations in Appendix A.

2. APPEALS

VOLUME

2.1 I dealt with 105 appeals during the year between 1st April 2008 and 31st March 2009 and upheld seven. In some cases, a single appeal related to more than one company, particularly where an accountant had incurred late filing penalties for a number of companies. This was an average of 8.8 cases a month, compared to an average of 4.8 for the eight months from my appointment on 1st August 2007 to 31st March 2008. See Table 1 overleaf.

2.2 Companies House anticipated that appeals would increase following the higher late filing penalties and shorter penalty bands introduced on 1st February 2009 by the Companies Act 2006 for all accounts filed late after that date, irrespective of when they became overdue. See Table 2 overleaf. These changes are designed to reduce the amount of time a company is in default. They did not apply to any cases I received prior to end of the relevant period for this Annual Report. It is believed that the increase in appeals over the last twelve months results from the difficult economic climate making people less willing simply to pay a penalty without challenging it. Another factor may be that the increased use of email makes it easier to pursue an appeal through the various stages, compared to sending letters through the post.

TABLE 1
Number of Appeals

	2007-8	2008-9
April	-	15
May	-	11
June	-	1
July	-	13
August	5	3
September	3	7
October	7	3
November	5	10
December	2	3
January	3	14
February	9	14
March	1	11
Average per Month	4.4	8.8
Total	34	105

TABLE 2
Amounts of Penalties

How late the accounts are delivered	Penalty Private Company		Penalty PLC	
	Before 01/02/2009	From 01/02/2009	Before 01/02/2009	From 01/02/2009
1 Month	£100	£150	£500	£750
1 Month 3 Months		£375		£1500
3 Months 6 Months	£250	£750	£1000	£3000
6 Months 12 Months	£500	£1500	£2000	£7500
12 Months	£1000		£5000	

2.3 The number of appeals is expected to continue to increase as the impact of the new late filing penalty regime makes itself felt. Further increases are expected in 2010 when the period allowed after the year end to file accounts reduces from ten months to nine for private companies and from seven to six months for PLCs, for accounting reference periods beginning on or after 6th April 2008. Although Companies House has publicised the change, and reminder letters will be sent correspondingly earlier, it is likely that significant numbers of accounts will be filed late by people who have not realised that the timescales have shortened which will produce a corresponding increase in appeals. This will start to have an impact from November 2009 for PLCs and February 2010 for private companies. (In the last year, I received only one appeal from a PLC.)

2.4 A further provision of the Companies Act 2006 will introduce a double penalty for repeated late filing into the regime. This will apply to companies with accounting periods that begin on or after 6th April 2008 that file two consecutive sets of accounts late. The aim is to deter the worst offenders, as currently 26% of companies receiving late filing penalties also filed late in the previous year. The effect will start to be felt from February 2011 and will inevitably increase the number of late filing penalty appeals.

2.5 In anticipation of an increase in penalties and, consequently, appeals, Companies House increased the number of staff dealing with late filing penalties and created a panel of three independent adjudicators from 1st April 2009. My two new colleagues are Mr Leslie Cuthbert and Mrs Jessica Pacey.

REFERRALS TO THE REGISTRAR

2.6 The fourth stage of the appeals process is an appeal to the Registrar. Table 3 below shows the number and percentage of cases where the appellant has sought a

review of my decision by the Registrar. The Registrar did not overturn any of my findings in the period in question.

2.7 It can be seen that the percentage of appellants who ask the Registrar to consider their case after they have received my finding fell in 2008/9 compared to 2007/8. Since June 2008 I have been advising appellants that they should not appeal to the Registrar merely because they disagree with my conclusions but should have a further reason for appealing to him which may account for reduction since that date.

ANALYSIS OF APPEALS

2.8 I have carried out an analysis of the grounds for appeal which is set out in Table 4 below. Appellants often give more than one reason for appealing and sometimes give alternatives. For instance, an appellant will often say that either the accounts were lost in the post or they were lost at Companies House. An equally common alternative is that either the accounts were delayed in the post or Companies House did not bar code them with the correct date. Multiple grounds for appeal mean that the figures in Table 4 total much more than the 105 cases. In 30 cases, the penalty could have been avoided or reduced had the recipient reacted to communications from Companies House.

NB The figures vary from Table 1 as the column 'Cases to Adjudicator' includes complaints. The figures for cases escalated to the Registrar for 2008/9 may increase as appeals to him for cases concluded in February and March may be received after completion of this report.

TABLE 3
Referrals to the Registrar

	2007-8			2008-9		
	Cases to Adjudicator	Escalated to Registrar	%	Cases to Adjudicator	Escalated to Registrar	%
April	9	2	22.22	13	5	38.5
May	7	1	14.3	9	5	55.6
June	7	2	3.5	4	0	0
July	No Adjudicator			13	2	15.4
August	6	1	16.7	6	0	0
September	6	2	33.3	6	3	50.0
October	5	2	40.0	9	3	33.3
November	6	3	50.0	8	0	0
December	1	1	100.0	10	0	0
January	3	1	33.3	12	2	16.7
February	9	5	55.6	17	1	5.9
March	6	2	33.3	12		
Total	65	22	33.8	119	21	17.6

Director Suffering Serious Illness or Catastrophe Shortly Before Deadline

2.9 The greatest number of appeals were on the grounds that the director had been ill or had suffered a catastrophe. Such appeals can only be entertained for a sole director or where all directors are affected, and where the event occurred shortly before the filing deadline. In 21 of the 32 cases, the appellant was not the sole director and there was no impediment to other director or directors dealing with the accounts.

TABLE 4
Analysis of Appeals

Grounds for Appeal	Number of Cases	Rejected	Upheld
TOTAL	105	99	7
Director Ill, Bereaved, or Catastrophe Occurred	32	31	1
Postal Delay	20	20	
Lost in the Post	14	14	
Companies House did not show Correct Date of Receipt	14	14	
Companies House Lost the Accounts	17	14	3
Accounts not Correct, Needed to be Resubmitted, not Done by Deadline or Extended Deadline	11	11	
Web Filing not Available or did not Work	10	10	
Accountant or Member of Staff Ill or Died	8	7	1
Ineffective Registered Office Address	5	5	
Incompetence by Person Submitting Accounts	4	4	
Reminder not Received	5	5	
Wrong Advice from Companies House	4	3	1
Thought did not Need to Submit Accounts as Dormant (First Accounts, New Company)	4	4	
Mistake over Due Date	3	3	
Oversight/Breakdown in Communications between Directors or Company Secretary	3	3	
Did not Submit Accounts as did not have all Information	2	2	
Disagreed with Amount of Penalty	2	1	1
Confusion over Companies Act 2006	1	1	
Thought Obligation Discharged by Submitting Accounts to HMRC	1	1	
Failure to React to Communications from Companies House, or say not Received	30		

NB The number of reasons for appeal exceeds the number of cases because in many cases there was more than one reason for appeal.

As I observed in my last annual report, often only one director has the skills or information to be able to exercise their legal responsibilities, and other directors are that in name only and are unable or unwilling to act when it becomes necessary. In many cases, either the event had not happened shortly before the filing deadline, should not have prevented filing, or the illness was chronic or not serious.

2.10 When something happens which means that it is unlikely that accounts can be filed by the due date, an application in writing may be made to Companies House for a short extension as long as it is made before the deadline. In many of these cases, had that been done, the late filing penalty could have been avoided. However, even though this advice appears in the reminder letter which is usually sent shortly before the deadline for filing the accounts, appellants did not communicate with Companies House until their accounts were overdue, and a late filing penalty inevitable often not until many months had elapsed and several overdue accounts notices had been sent.

2.11 I upheld one appeal in the case of a property management company where the four directors owned the four flats in the building. The director who usually prepared the accounts died. Two of the other directors were aged 94 and 88, and suffered from various illnesses and disabilities. The fourth director was receiving treatment for cancer. The correspondence was sent to the address of the deceased director and the other directors had no access to it. The combination of events, no single one of which would have been sufficient, led to me upholding the appeal.

Accounts Delayed or Lost in the Post

2.12 The next two largest categories related to accounts which were delivered after the deadline due to a delay in the post, followed by accounts which were lost in the post. Companies House advises directors not leave it until the last minute to send accounts or, if they do, to use a guaranteed delivery service with consequential loss cover. In some cases, directors or accountants were unaware that accounts had not been received at Companies House until they received an overdue accounts notice. It is good practice to check if accounts have been received at Companies House and accepted for filing. This can be done online, by telephone, or by enclosing an acknowledgement slip and a stamped addressed envelope with the accounts which can be returned to the sender to confirm receipt.

Accounts Mislaidd or Wrongly Dated at Companies House

2.13 In a substantial number of cases, the appeal was based on the assertion that the accounts were not delayed in the post, but given the wrong bar code date at Companies House. This applied particularly to Saturday postal deliveries to Companies House, when the post may not be processed until the Monday. However, such post is segregated and, when the items are processed, they receive a bar code showing the date of arrival at Companies House and not the date of processing. In the absence of any evidence, such appeals must fail, as there is no reason for supposing that the document was mishandled at Companies House rather than delayed in the post. A number of cases related to accounts posted over the Christmas period, where the Post Office warns that there are likely to be delays.

2.14 When Companies House has no record of receiving accounts which appellants say they have posted, appeals are often based on Companies House having lost the accounts. Such appeals must fail in the absence of proof of delivery or some other evidence which demonstrates that the accounts were delivered to Companies House. I upheld three such appeals. In one, the director said that the accounts had been contained in an envelope with a covering letter which said that a cheque and the accounts were enclosed. Companies House had processed the cheque before the deadline for filing the accounts. If the accounts had not been enclosed, the person processing the letter ought to

have contacted the director to advise him of the oversight. Alternatively, the accounts may have been enclosed and mislaid.

2.15 I upheld a second appeal where the accountants' computerised records showed that the accounts had been sent by courier to Companies House's London office on the day of the filing deadline and the courier's records showed that the accounts had been signed for along with four other items. In a third case, I upheld an appeal because the appellant said that the accounts had been in the same envelope as other accounts which records showed had been received at the Companies House Edinburgh office before the filing deadline.

WebFiling

2.16 Although I did not uphold any appeals relating to web filing, I noted that the website does not have any information about availability on a Bank holiday and suggested that this be amended.

Accountant Died

2.17 In another case, the company's accountant had died. When the reminder that the accounts would soon be due was received by the director, it was sent back before the filing deadline with an explanatory note written on it. This might have been construed as a written request for an extension, but Companies House did not react to this communication. I upheld this appeal.

Amount of Penalty Disputed

2.18 In two cases, the appellant disputed the amount of the penalty. I upheld one case as the appellant had been told on the telephone by a member of Companies House staff that, because there had been a delay in sending out an overdue accounts letter due to the introduction of a new computer system, a penalty of £100 rather than £250 would be collected. I concluded that, having given this assurance, Companies House should collect the lower amount.

2.19 The other appeal, which I did not uphold, was based in part on a challenge to the corresponding date rule and in part on the assertion that the date of delivery should not be counted for calculation of penalty. The corresponding date rule is established by way of stated case and I rejected this leg of the appeal. The other argument which the appellant put forward related to the use of the word between in section 242A Companies Act 1985 (the relevant section for the imposition of a late filing penalty) and two court cases where it was determined that the neither the due date nor the date of delivery should be counted in calculating how late the accounts were. Neither of these judgments is binding and the Registrar has not followed them. He takes the view that the date of delivery does count, as to do otherwise has the perverse consequence that a late filing penalty could not be imposed if accounts were delivered a day late. I concluded that if the appellant wished to challenge the meaning of the wording of section 242A, he would have to do so in a court of law.

2.20 The corresponding date rule is set out in the relevant guidance booklet, Accounts and Accounting Reference Dates, and on the website. The rule is that a period of months after a given date ends on the corresponding date in the appropriate month. For instance, three months from 30th September is 30th December and not 31st December. The corresponding date rule, which many found counter-intuitive and difficult to understand, will not apply for the purpose of filing accounts for accounting periods starting from 6th April 2008, when the period allowed for filing accounts will end with the last day of the appropriate month. For example a private company with an accounting reference date of 30th April will have until midnight on 31st January of the following year to deliver its accounts, not 30th January.

Wrong Advice from Companies House

2.21 The final appeal which I upheld related to advice given by Companies House. The director had dissolved his company in

2001 but his accountants had failed to transfer all the assets to his other company beforehand, necessitating an application to restore the company to the register in order to transfer the assets. The Court Order made in 2002 for the company's restoration required it to be dissolved again as soon as the assets were transferred. It proved impossible to transfer one of the assets and, eventually in 2008, the director applied for the original company to be fully restored to the register in order to retain the asset.

2.22 Accounts had not been filed since 2001 and had to be brought up to date prior to the company's full restoration to the register. Because Companies House had expected the company to be dissolved as soon as the transfer of assets was complete, they had not taken any of the normal steps of sending reminders shortly before accounts were due, or sending late filing notices, or otherwise pursuing the failure to file accounts. When the director first intimated to Companies House in July 2007 that he would apply for full reinstatement of the company, he was given advice about bringing the record up to date in respect of the accounts, but there is no evidence that he was told that if penalties were applicable they would be levied. When the director sought the full restoration of his company, he was unaware that late filing penalties would be incurred. The information was not given until the application for full restoration was initiated. As all the accounts for the period 2002 to 2007 were overdue, when they were filed, late filing penalties totalling £4500 were incurred.

2.23 I considered that the director should have been given a fuller understanding of his position at the time that the conditional restoration to the register was made and again when he indicated that he would seek permanent restoration of his company. It should also have been made clear to the director at the time of the conditional restoration that he was expected to act expeditiously and dissolve his company again and the matter should not have been allowed to stretch out over a period of years without comment from Companies House.

2.24 I suggested that Companies House may wish to consider making some changes to its procedures when dealing with restorations which are intended to be temporary, to ensure directors are fully aware of the consequences if dissolution does not follow within a short period.

Other Grounds for Appeal

2.25 Appellants frequently ask for their appeals to be considered on a range of other grounds such as that the penalty is disproportionate for a small company, or for a new company, or for one which is not trading or has no assets. Inability to pay is often quoted, as is the current economic situation and the hardship caused by the penalty. However, the legislation applies equally to all companies, large or small, trading or not, whether or not they are able to pay. The Registrar cannot exercise his discretion on any of these grounds. It is also not uncommon to assert that Companies House deliberately loses or bar codes documents with a date later than the date of receipt or uses other tactics to ensure accounts are delivered late, in order to generate income by imposing late filing penalties.

Ancillary Matters

2.26 In the course of dealing with the appeals, I identified a number of ancillary issues. On more than one occasion, a letter of appeal had been sent in with a duplicate copy of the accounts, but had been overlooked. I suggested that the Register Maintenance Team might be advised to scrutinise covering letters accompanying overdue accounts more carefully.

2.27 In another case, I drew attention to the fact that there appeared to be some problems with correspondence in the Enforcement Unit at Companies House which had no record of two letters and an email which they should have received.

2.28 Companies House advises directors of dormant companies that if they apply for their company to be dissolved, the penalty will not be collected. It would be inadvisable to do this if the company owns assets (such as a property management company which owns a freehold) which, if they were not transferred to a new company prior to dissolution, would revert to the Crown. I suggested that when case managers give such advice, it should have a caveat placed on it.

Categories of Company

2.29 I have given some consideration to the frequencies of appeals from different classifications of companies. See Table 5 below.

TABLE 5 Breakdown by Type of Company

	Number of Appeals to Adjudicator	% of Appeals to Adjudicator	% of Total Number of Companies
Scottish Companies	3	2.9	5.5
Dormant Companies	29	27.6	13.3
Property Management Companies	14	13.3	2.4

NB Figures are for England, Wales and Scotland

2.30 Only 2.9% of the appeals I received were from Scottish companies which constitute only 5.5% of the total number of companies in Great Britain. The figures are too small to draw any meaningful conclusion.

2.31 The majority of the companies which appeal to me are small companies, many either not trading or with a low turnover or making little profit. The impact of a late filing penalty on such companies can be considerable. Equally, without the infrastructure of bigger companies, some directors struggle to deal with the various compliance issues such as filing accounts with Companies House. Dormant companies make up 13.3% of the total number of companies in Great Britain, but over 27% of the appeals I dealt with in the last year came from such companies.

2.32 Most property management companies are dormant and they constitute nearly half of the appeals from dormant companies. Property management companies typically exist to own the freehold of a block of flats or common land on a housing estate and to manage common parts of the building or estate. They have a higher than average compliance rate, with 98.5% (March 2009 figures) having an up to date set of accounts on the register, compared to an average for Great Britain of 94.9% (figures for 2008/9 April to March). However, they are represented disproportionately highly in asking for their appeals to be referred to me. Such companies usually have a number of directors, but often one takes responsibility for complying with Companies House requirements. When something happens, for instance that person becomes ill, in many cases I have seen, the other directors are either unaware or feel unable to step into the breach. This may explain the fact that, on the one hand, the levels of compliance for such companies are higher but, on the other, the number of appeals which reach me is disproportionately high.

3. COMPLAINTS

3.1 During the period 1st April 2008 and 31st March 2009, I dealt with nine complaints and three appeals against late filing penalties which contained complaints which were distinct from the appeal. I upheld one complaint.

Dissolutions

3.2 The case which I upheld related to an application for dissolution of a company which had gone into administrative receivership in July 2003 and had not filed accounts since 2001. As long as the company was in existence on 31st March each year, its Pension Scheme had to pay a levy to the Pension Protection Fund. The Pension Scheme was an unsecured creditor of the company. Its trustees decided that Companies House should be asked to dissolve the company, in order not to have to pay the next levy which would be raised if the company was still in existence on 31st March 2007 and the process was initiated in August 2006.

3.3 The Company was struck off but not until after 31st March 2007. As a result, the Pension Scheme incurred a levy from the Pension Protection Fund of £228,645. Companies House had been asked to depart from the standard procedure in order to speed up proceedings whilst still complying with legal time scales. The Companies House staff dealing with the correspondence failed to appreciate that the applicant was a third party and not the company itself and also insisted that standard procedures had to be followed. I found that the solicitors for the Pension Scheme could have done more to drive their case forward but also that Companies House had failed to give proper consideration to the request to expedite the process.

3.4 A second complaint relating to the dissolution of a company was that Companies House had accepted an objection from the company's accountants against dissolution on two occasions and suspended the dissolution process as there was a dispute over the accountants' fee. The director of the company said that the objection was malicious and Companies House should not have accepted it and that he was being victimised by Companies House because he was rude to a member of staff on the telephone. (He had apologised and the apology had been accepted). If the Registrar is advised that there is an outstanding claim against a company, he may decide to delay dissolution. In the absence of evidence that the objection was malicious, it would have been wrong not to suspend the dissolution of the company.

3.5 The director of the company complained that the anonymity afforded to the objector runs counter to his right to know his accuser. Companies House policy is only to disclose the identity of those objecting to dissolution on request and with the consent of the person objecting. There are two competing issues here: the right to privacy for the person objecting and the right of the directors of the company to know who is objecting and why. Companies House requires a person objecting to the dissolution of a company to provide supporting evidence. An objection to an application for voluntary dissolution will be held by Companies House for twelve weeks, and then dissolution will proceed unless a further objection is received, in which case the objector will have to demonstrate that the matter is being progressed with the company. Thus for an objection to be sustained, it follows that the company will know the nature of the objection and who is making it. I found no evidence that the director was being victimised and that the complaint was otherwise without merit.

3.6 A third complaint related to the loss of a form 652a applying for a company to be dissolved which had been enclosed with a cheque for the fee and the accounts. The accounts were wrongly rejected and returned for amendment. They were not resubmitted until after the filing deadline and a late filing penalty was incurred.

It was acknowledged that the accounts should not have been rejected, and the late filing penalty was cancelled. The cheque had been banked but the form 652a was mislaid and not processed. As a result, the striking of the company from the register was delayed.

The company secretary sought compensation for time, expense and exhaustion caused by the Companies House errors. She had received an apology for both lapses which she did not accept. Companies House was willing to make an ex-gratia payment to cover the costs incurred as a direct result of its error and I suggested the complainant submit an itemised list of costs attributable to the errors for consideration. I did not uphold the complaint.

Incorporation of Company

3.7 This complaint related to the director's contact by telephone and email with various members of staff at Companies House over her efforts to incorporate her company. She made two attempts at incorporation but the paperwork was incomplete on both occasions. She complained that a returned application and an email which she did not receive had never been sent. She also complained that a member of Companies House staff had been rude to her on the telephone and she made an unspecified complaint against two other members of staff. I found that the complainant had not followed some of the advice she had been given, that there was nothing to substantiate the complaints she had made about staff, and that the responsibility for submitting an application rests with the applicant, who should seek professional advice and not rely on Companies House for the entirety of the process. Companies House could not have done more for the complainant and, arguably, did much more than it needed to. I did not uphold the complaint.

Company Names

3.8 Two complaints related to company names. In the first, the director complained that he had not been advised that he could change the name of his existing company and did not need to dissolve it and set up a new company. I found no evidence that he had been given wrong advice.

3.9 In the second case, the director complained that Companies House should not have allowed him to register his company name because another company of the same name already exists. The other company has a similar but not identical name and is a Canadian company, not a British one. The Companies House guidance notes on company formation and the Companies House website both recommend that customers check the name they have chosen for their company on the Companies House Register before they apply for their company to be incorporated. Companies House will not register two companies of the same name, and it has not done so. I did not uphold the complaint.

Registration of Memorandum and Articles of Association

3.10 The complainant believed that the new Memorandum and Articles of Association for the company, which was a community trust, had not been properly adopted and complained that Companies House should not have registered them or should subsequently have removed them. Proceedings at meetings are an internal company matter, governed by the company's Articles of Association. Companies House does not interpret a company's Articles nor does it intervene in any dispute over whether a company has acted in accordance with its Articles, nor does it have the powers to verify or validate information sent to it.

As long as documents are sent to it in an acceptable format, then Companies House will comply with its statutory duty to register them. Once information has been placed on the public register, the Registrar has no power to remove it other than following a court ruling. I did not uphold the complaint.

Failure to Issue Share Certificate

3.11 The complainant first complained that the directors of the company had not notified Companies House that shares had been allocated to him. He was advised that transfers of shares are shown on the Annual Return which was not yet due.

He then complained that he had not been issued with a share certificate contrary to section 185 of the Companies Act 1985 (now section 776 of the Companies Act 2006) which requires companies to have share certificates ready for delivery within two months of the allotment or transfer of shares. However, the company was in dispute with the complainant and said he was not entitled to any shares, in which case there was no share certificate to be prepared. I supported the Companies House position that this was a dispute between the two parties in which they could not intervene.

Fraudulent Accounts

3.12 This complaint was made by the victims of a fraud. Fraudulent accounts had been delivered to Companies House and placed on record. Companies House was aware that the company was being investigated by the Companies Investigation Branch of BERR (Department of Business, Enterprise and Regulatory Reform) and had been contacted by a firm of accountants which said they had been misrepresented as having prepared the accounts. The complainant, a finance company, gave credit to a second company on the basis of an invoice from the company which was being investigated and a check on their accounts on the Companies House record. The company under investigation did not exist and the second company defaulted on payment resulting in a loss of over £27,000 by the finance company. The finance company complained that Companies House had not removed the accounts or placed a warning on them.

3.13 Companies House is a registry of information supplied by companies. Documentation is given a basic examination to ensure it meets the appropriate standard before acceptance and then placed on the public record. The Registrar has no power or duty to check the accuracy of the information he is given nor does he have any investigative powers. The Companies Act does not give the Registrar any authority to remove documents from the register but he will do so on receipt of a court order. The Companies House website contains a disclaimer which explains that it does not verify the accuracy of the information sent to it by companies.

3.14 Whilst I did not uphold the complaint, I had considerable sympathy for the loss incurred by the finance company. Companies House currently has no power to annotate or otherwise place a warning against a record on the company register. It will receive such a power in October this year. However, the Registrar would be unwise simply to place a warning when an allegation is made, as this would have the potential to compromise any investigation and would also have a detrimental affect on a company if it transpired that the allegation was unfounded or malicious. Companies House has no investigative function but refers the information it receives to the appropriate bodies such as the police, advising the complainants to do the same.

3.15 As things stand, Companies House has no power in law to remove information from the register on the grounds that it is incorrect. Provisions of the Companies Act 2006, which come into force in October 2009, will give the Registrar powers in some cases to remove material from the register which turns out to be fraudulent. I recommended that Companies House should look at how it might develop policies and procedures so that an independent objective body, such as the Companies Investigation Branch, the Serious Fraud Office, the Serious and Organised Crime Agency or a police force, could notify the Registrar when they establish that a particular piece of information on the register is false and the Registrar should then be able to act on this information without the necessity of a court order .

3.16 I also suggested that Companies House reviews its policies and arrangements for both passing on and ensuring that it receives information from bodies engaged in investigating fraud, as part of the move being led by the newly formed National Fraud Authority to improve the co-ordination and efficacy of all relevant parties in the fight against fraud. Companies House is currently working with the National Fraud Authority and the City of London Police which is the national lead force for economic crime on their proof of concept for national fraud reporting.

Delay in Making Repayment

3.17 In this case there was a delay in paying a late filing penalty of £100. By the time it was paid, debt collection agents had been instructed by Companies House and legal costs of £65 incurred. The Company Secretary then sent £165 which was the amount of the penalty and the costs, and was an overpayment of £100, as he had already paid the penalty. He complained that it took more than six weeks to make the refund. Companies House sent a further £100 to refund the £65 legal costs and make a goodwill payment of £35. He returned the cheques and Companies House withdrew the offer to pay £100. I did not uphold the complaint which was over the penalty, the legal costs, and the delay in the refund. I found that Companies House had acted correctly throughout and supported the withdrawal of the payment of an additional £100 over and above the refund of £100.

Miscellaneous

3.18 In two further cases, appellants against late filing penalties also complained, in one case that the way in which the late filing penalty system is administered is unfair, and in another that the substance of his appeal was not addressed and that he was treated in a bullying manner. I did not uphold either complaint.

CONCLUSION

4.1 As last year, I have continued to find the staff at Companies House to be very thorough, accurate, speedy and helpful in their dealings with me. I should particularly like to thank the Senior Appeals Manager and all the Case Managers including the new ones in the Late Filing Penalties Department for the help they have given me, especially in some of the more complex cases. I repeat the observation which I made last year that my scrutiny of the files I have been sent reveals that appeals and complaints are dealt with to a very high standard and in short timescales. Appellants and complainants are dealt with courteously and sympathetically and given clear explanations.

4.2 Companies House showed considerable forethought in putting measures in place to cope with an expected increase in the number of appeals, which occurred earlier than expected, due probably to the current economic problems. Staff coped with the influx of work, still managing to deal with cases promptly.

4.3 In the period covered by this report, Companies House received 9887 complaints of which the number referred to me (9) is very small by comparison. This says much for the work which is done by Companies House staff at an early stage, especially to set things right where something has gone wrong.

Elizabeth Neville DBE QPM
28th May 2009

APPENDIX A **SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS**

2.16 I noted that the website does not have any information about availability on a Bank Holiday and suggested that this be amended.

2.24 I suggested that Companies House may wish to consider making some changes to its procedures when dealing with restorations which are intended to be temporary, to ensure directors are fully aware of the consequences if dissolution does not follow within a short period.

2.26 On more than one occasion, a letter of appeal had been sent in with a duplicate copy of the accounts, but had been overlooked. I suggested that the Register Maintenance Team might be advised to scrutinise covering letters accompanying overdue accounts more carefully.

2.27 In another case, I drew attention to the fact that there appeared to be some problems with correspondence in the Enforcement Unit at Companies House which had no record of two letters and an email which they should have received.

2.28 Companies House advises directors of dormant companies that if they apply for their company to be dissolved, the penalty will not be collected. It would be inadvisable for to do this if the company owns assets (such as a property management company which owns a freehold) which, if they were not transferred to a new company prior to dissolution, would revert to the Crown. I suggested that when case managers give such advice, it should have a caveat placed on it.

3.15 I recommended that Companies House should look at how it might develop policies and procedures so that an independent objective body, such as the Companies Investigation Branch, the Serious Fraud Office, the Serious and Organised Crime Agency or a police force, could notify the Registrar when they establish that a particular piece of information on the register is false and the Registrar should then be able to act on this information without the necessity of a court order.

3.16 I also suggested that Companies House reviews its policies and arrangements for both passing on and ensuring that it receives information from bodies engaged in investigating fraud, as part of the move being led by the newly formed National Fraud Strategic Authority to improve the co-ordination and efficacy of all relevant parties in the fight against fraud.

Registrar's Response to the Adjudicator's Annual Report

I am most grateful to Dame Elizabeth Neville for her Annual Report for 2008/9 as Independent Adjudicator for Companies House. Dame Elizabeth has done a huge amount of work again this year and her report is included within this edition of the Register. The role of the Adjudicator is to consider appeals against late filing penalties that have already passed through two internal stages within Companies House. The Adjudicator also considers any complaints we receive about our standards of service. Readers will be unsurprised to hear that the vast majority of cases considered by the Adjudicator are as a result of late filing penalty appeals.

“Certain types of accounts can be filed electronically and I would strongly advise customers to use our e-filing services”

In Companies House we very much welcome suggestions to help us improve our services and the Adjudicator is an important channel to help us achieve this aim. While we are always willing to learn from experience, I am pleased to see that Dame Elizabeth reiterates the advice we give to directors about not leaving it until the last minute before sending accounts to Companies House.

Certain types of accounts can be filed electronically and I would strongly advise customers to use our e-filing services to: help eliminate cases of accounts being delayed or going missing in the post; ensure quick and efficient delivery and greatly improve security of information at the same time.

An up to date register provides valuable information to UK business and the general public. People are better able to make informed business decisions and this can only benefit the wider economy, something which is especially important at difficult economic times. The past few years have seen increasing numbers of companies filing late. To reverse this trend a new late filing penalty regime came into being on 1st February 2009 with higher penalties and a swifter escalation through penalty bands. I am pleased that the new regime has resulted in accounts compliance being higher than ever. That means that UK businesses have better access to high quality up-to-date information to help their decision making.

The Companies Act 2006 has introduced many improvements for customers, with more to come in October 2009. One important change is that the time allowed for filing accounts has been reduced by one month for private limited companies, public limited companies and limited liability partnerships. It is therefore vital that directors and designated members are aware of the new filing deadlines and take the appropriate steps to ensure they file on time. We at Companies House do not want to levy penalties

(which we do not keep anyway); our interest is in having an up-to-date register, which means encouraging all directors to file on time.



Because the number of late filing penalty appeals has increased, we have appointed two new adjudicators to work alongside Dame Elizabeth. I am delighted to welcome Mrs Jessica Pacey and Mr Leslie Cuthbert to the role and I look forward to reading their reports and recommendations in future years. Finally, I would like to thank Dame Elizabeth for her continued valuable contribution.

Gareth Jones
Chief Executive & Registrar

or call us on **0303 1234 500**

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Companies House

Companies Act 2006 Seminars

Each year Companies House organises and attends a variety of events to support and advise businesses. This includes attending business focussed exhibitions throughout the UK and organising our own Information Days and WebFiling seminars which cover a wide range of topics, including the provision of guidance on legislation, demonstrations of our products and services, and information on the new Companies Act 2006.

To allow Companies House to provide a comprehensive overview of what the 2006 Companies Act will mean for customers, a new specific Companies Act seminar has been introduced.

These free seminars are being held at various locations around the UK. Each seminar has been designed to ensure that customers are aware of the implementations that have been phased in over the last three years and focuses on helping customers gain a clear understanding of the changes within the final implementation in October 2009.

During the seminars there will be demonstrations of our online services. Companies House staff are on hand to address any questions that customers may raise during an informal session after the main presentations. At this seminar customers can see, first hand, how to use our safe and secure WebFiling service to file company documents online which eliminates the need to learn a new paper process for the changes resulting from the Act.

Companies Act seminars recently held in Newport, London and Edinburgh were attended by over 900 customers, representing more than 40,000 companies. Each seminar was well received and customers told us that as a result of attending these seminars they now understand the issues concerning the Companies Act and how they relate to their company.

Our next Companies Act 2006 seminar will be held at:

Plymouth
Holiday Inn Plymouth, Armada Way, Plymouth PL1 2HJ
Thursday 22 October 2009 at 9.30am and 2.00pm,
please note, you have the option of choosing to attend the morning or afternoon session for this seminar.

To book your place on the above seminar, please complete the online booking form on our website:

www.companieshouse.gov.uk/eventbooking

Companies House Events



Events Team



WebFiling

Stop the Fraudsters **Opt-in to PROOF** via WebFiling

Companies House WebFiling now features an online opt-in to PROOF.

What is PROOF?

The PROOF (**PRO**TECTED **O**NLINE **F**ILING) scheme helps companies protect themselves from company hijack.

How does PROOF prevent fraud?

By signing up to PROOF, companies can prevent unauthorised changes being made to their public record.

Most information filed at Companies House is now filed online. In fact 90% of all companies now e-file at least one document a year at Companies House. They may only file new information online using a secure company authentication code. This is evidence that the change is being made with the company's authority.

As explained in an article in March this year, Companies House accepts information filed on signed paper forms in 'good faith'. This policy leaves companies exposed to fraudulent filings and even company hijack if they choose to remain outside of the PROOF scheme.

When you opt into PROOF, Companies House stops accepting key changes to your company's record when they are submitted on paper forms.

How can paper forms be used in fraud?

The most common cases of company hijack involve fraudsters changing a company's details at Companies House using paper forms. The stolen identity of a creditworthy company is then used to obtain goods and services before the fraudster disappears, leaving the company with serious debts.

Which forms are covered?

The PROOF scheme covers all the paper forms that are commonly used by fraudsters to hijack companies. These are the current AD01, AP01, AP02, AP03, AP04, TM01, TM02, CH01, CH02, CH03, CH04 and Annual Return forms (AR01). They are used to appoint new directors, terminate current appointments, change the particulars of company officers or change a company's registered office address.



Free Of Charge

PROOF has been protecting companies from fraud since 2005. Even though PROOF protection is totally free-of-charge, the original registration process deterred many companies from taking advantage of the protection it offers.

Customer feedback prompted Companies House, therefore, to replace the counter intuitive paper-based process with a simple, but secure online opt-in.

Now Online

It's now easy to register for PROOF. When you log-in to WebFiling for a company that is currently outside of PROOF, you will be invited to opt-in to PROOF via an automatic prompt.

You can also opt into or out of PROOF at any time from the WebFiling main menu. The menu is only accessible to filers when they log into WebFiling using the company's authentication code. This is the same secure code you would use to file or update information online: for example to register the appointment of a new director or file an annual return.

Will I know if I am targeted by fraudsters?

Yes. When a company has joined the PROOF scheme, Companies House will reject any paper versions of the above forms and send them to the registered office address. If the change was legitimate, the company will then be able to register it online.

What happens in October?

In October, the new Companies Act comes fully into effect, bringing with it radical changes to company law. As part of this, all the 1985 Companies Act forms will be replaced by new forms, with new form numbers.

Companies House will issue a new version of PROOF terms and conditions in October to reflect the new Act and the new form references covered by the PROOF scheme. These will include forms prefixed: AD, AP, TM, CH and AR.

If you have opted into PROOF before October, Companies House will notify you of the change in terms and conditions and remind you to transfer to the new scheme to continue to enjoy protection from fraudulent filings.

Monitor - get the bigger picture

The Companies House **Monitor** service enables you to keep an eye on your competitors, business collaborators and your own company and 'monitor' which documents have been filed into Companies House. You know that certain company information lies within the public domain, so what could be more efficient than information that could help or protect your business being available to you the moment it is filed?

For further information on combating identity fraud and PROOF, visit the Companies House website at www.companieshouse.gov.uk.

The Companies Act 2006

Recently, we sent pocket-sized fold away guides on the new Companies Act to every Registered Office on our database. These were to give a brief insight into some of the key changes in the new Companies Act.

Key things

you need to know from 1st October 2009

director's address protected from disclosure

Every director will have a service address and a usual residential address. The service address for each directorship will be publicly available. The residential address will only be made available to public authorities and credit reference agencies. On 1st October a director's current residential address will automatically become the service address. However, if you want to have a different service address (e.g. the company's registered office), you will be able to change these details online from 1st October on our website.



alternative address for registers There will be changes to the arrangements for inspecting a company's registers. These registers may be held at the registered office address or at a single alternative inspection location (SAIL). You must notify us if you set up a SAIL address or if the SAIL address is moved, and you may only have one SAIL address for a company at a time. Once the SAIL address is set up, you can move some or all registers to the SAIL address by notifying us. New forms for this will be available on the Companies House website.

easier to set up a company A number of changes have been made to make it easier to set up a company. Full details can be found on our website.

articles for new companies There will be changes to company articles for new companies. They will include the company's objects and liabilities – which were previously in the memorandum. Copies of model articles are available on the Companies House website.

notifying us of articles changes You must send any amendments to the company's articles to us within 15 days. Otherwise you could be liable to a criminal offence and a civil penalty of £200.

Guidance to help your business

Companies House has produced **guidance notes** which explain the changes and give step-by-step instructions on how to form a company, what you need to send us during the life of a company and how to dissolve a company.

The guidance notes are available from our website and on request, as large print and audio formats, in both English and Welsh language versions.



Don't forget!

The following changes have already taken place

Some things are optional, others are not:

You must:

- be **aged 16** or over to be appointed as a director.

You do not need to:

- appoint a **company secretary** if you are a private company, though you can still do so if you wish.
- hold an **annual general meeting** if you are a private company, unless you opt to do so.
- have a **unanimous vote for resolutions**, subject to articles, if you are a private company. Members may agree in writing to resolutions.
- get a **court order to make capital reductions** as a private company – they can be supported by a solvency statement instead.



File accounts one month earlier to avoid a penalty

All Companies House accounts filing deadlines have been reduced by one month.

You have one month less to file your accounts. For a private company it is nine months and six months if you are a public company. This applies to accounting periods beginning on or after 5 April 2008.

If you file your accounts late you will be liable for a late filing penalty of up to £1500 for a private company. Full details can be found on our website.

Remember, you have 1 month less time.

It is vital that you remember, as you can face a significant financial penalty if you do not file your accounts by the due date.



Forms

All Companies House forms will change from 1st October 2009.

The new forms include:

- Companies Act 2006 information requirements
- new numbers updated to be relevant to the 2006 Act
- additional guidance notes
- details of any fee (if applicable)

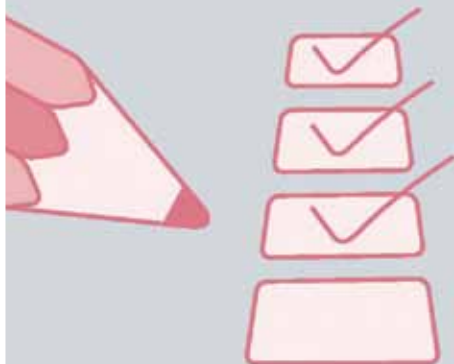
The new forms must be used for all company events that take place on or after 1st October 2009. If you use an old form it will be rejected.

Company events which take place before 1st October must be submitted on 1985 Act forms.

Specimen forms are available on the Companies House website www.companieshouse.gov.uk/act

Fees To cover the cost of running the register, Companies House charges fees for the filing of certain forms such as the annual return, change of name, mortgage and voluntary dissolution.

Please remember to send the fee in with a paper form otherwise we will be unable to accept it.



Save time and trouble by

filing online



You can file many of our forms electronically.

This saves you time in providing information and gives you step-by-step help to prevent any errors or the situation of having forms rejected. It can be cheaper too for some of our forms.

You can access the WebFiling pages on our website.

Protecting your company from hijack

From 1st October, the Registrar's PROTECTED Online Filing (PROOF) scheme will operate under the framework of the Act (section 1070).

Corporate identity fraud is becoming an increasing problem, with smaller firms just as vulnerable as larger ones. PROOF is our scheme which reduces the likelihood of your company falling victim to fraud. PROOF customers are protected from changes to their company details. They agree with the Registrar that they will only file certain documents electronically. If a fraudster tries to 'hijack' their company by filing a piece of paper, this will be rejected.

Protect your company with PROOF. Find out more or sign up on our website.

The Registrar urges all companies to sign up to PROOF. It can now easily be done via the WebFiling service using the company's authentication code (you no longer need the written consent of each director).



Already a PROOF customer?

Even if you are already a PROOF customer, you will need to sign on after 1st October to accept the new statutory PROOF terms and conditions.

Companies Act 2006
a simple guide to key changes

Companies

Marie Connors

Companies House Customer Care Manager Receives MBE Honour

Marie has been instrumental in delivering change and making a real difference to customers. She joined the Customer Care team 23 years ago in a world of microfiche, paper, roll film and magnetic tapes. Communications were either by letter or face to face. Marie now operates in a world of electronic delivery of products and email communication. She has been instrumental in embracing and delivering these changes to customers, and throughout has listened and negotiated with customers to help them through the changes. This has not been an easy task as some of the customers were reticent to change and Marie has been truly innovative and persuasive in her approach.

When Companies House intends to introduce new services or policies, Marie organises customer focus groups to work with them to provide a workable solution for them.

She is greatly admired and respected by customers. Some customers have known Marie since joining their company fresh out of school to becoming senior manager. Customers depend and rely on her and she is open and honest with them and exceeds their expectations. Marie is often personally mentioned in customer satisfaction surveys as providing extraordinary service and she was instrumental in Companies House being short listed for the Operational delivery Award in the Whitehall and Westminster Civil Service Awards in 2006.

She is a role model for her team. Her team has been identified in Companies House as one which upholds the values of working as a team and respecting each other. Marie has truly taken the lead in instilling these values in the way that her team behave. Marie is not only respected by her team, but is seen as an inspirational leader, and an ambassador for Companies House. Marie has two children and is also involved with charity and volunteer work.



Marie Connors with Gareth Jones, Chief Registrar


Penalties on Articles

Where a company amends its articles of association, a copy of the amended articles must be sent to Companies House within 15 days. Failure to comply is a criminal offence.

The Companies Act 2006 introduces a new civil penalty of £200 for failure to comply. The penalty will only trigger if a company receives notice from the Registrar requiring it to deliver a copy of its amended articles and it does not comply within 28 days. The company would remain liable to criminal proceedings in addition to the £200 civil penalty.

Further information on the Companies Act 2006 can be found at

www.companieshouse.gov.uk/companiesAct/companiesAct.shtml



24-7

Companies House Service Availability Trial

Companies House Executive Board recently approved a proposal to increase our service availability for customers to 24 hours a day 7 days a week (24/7) on a trial basis from August. This follows on from our successful move to 17/7 in December 2008.

This means that Companies House will be offering 24/7 availability of its on-line services from 1st August 2009 on a trial basis. We have undertaken a series of actions and feasibility tests to get to this position.

The trial will test the effectiveness of the proposed service in 'real' time. Our aim, subject to the outcome of the trial, is to offer our services on 24/7 basis (with 99% availability target and some planned maintenance 'downtime') from 1st January 2010. We will do our best to ensure full service availability during the trial but cannot be guaranteed.

or call us on **0303 1234 500**

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Companies Act 2006

Our National Communications Campaign

For the final run up to the final implementations of the Companies Act 2006 we are undertaking a national communications campaign.

This has started with a mail-out of a "Z Card" to every registered office address containing a brief insight into some of the key changes.



In addition we will be advertising in the Vertical trade press during September and October. These will include:- Chartered Secretary, Growing Business, Accountancy Age, Accountancy, The Director, Legal Week, First Voice, In Business, Business First(NI) New Business, Zee TV Magazine.

the press adverts



We will also be placing Adverts in 3 editions of the following National Press:- The Belfast Telegraph, The Scotsman, The Times, The Daily Telegraph, The Mail on Sunday and the National Metro.

The adverts will have two iterations:- One for pre October 1st and one for Post October 1st. There will also be an outdoor campaign which will hit 70 sites across the country, straddling the last week in September and the first week in October. All adverts will feature the "stage" creative to inform business that this is the final implementation of the Act .

the billboard posters



We will also have a strong on-line presence during this period through Accountancy Age, Accountancy Web, IS4Profit and British Chambers of Commerce.

Featured below is an example of just some of our online marketing, these are still shots taken from an animation that will run on those websites.

1



web animation

2



3



4



5



6



information

& Our Services



If you wish to notify us of a change of mailing address or name, for the receipt magazine please fill in **your previous and new details in the section below**, and send the entire form to:

**Companies House, Marketing,
FREEPOST CF4008, Cardiff CF14
1ZZ, or email at: [amendregister@
companieshouse.gov.uk](mailto:amendregister@companieshouse.gov.uk)**

Previous Details

please tick

Mr

Mrs

Miss

Ms

Other _____

Initials _____ Surname _____

Company Name (in Full) _____

Address _____

Town _____

Country _____

Postcode _____

New Details

please tick

Mr

Mrs

Miss

Ms

Other _____

Initials _____ Surname _____

Company Name (in Full) _____

Address _____

Town _____

Country _____

Postcode _____

and their agents may use to file company information to comply with company law. We also provide a parallel set of services that provide access to information on over 2.5 million companies and over 6 million company directors.

Companies House Direct

Subscribe to Companies House Direct for our widest range of available information and downloadable documents including company accounts and annual returns.

WebCheck

You can enter WebCheck directly from our website homepage to access a core range of information, documents and reports, many of which are free.

Monitor

Get email notification as soon as we register new information for your company. Alternatively use this service to keep an eye on the changes being filed by your clients, suppliers or competitors.

This service is available through Companies House Direct and WebCheck

WebFiling

WebFiling is the simple and secure way to file company information and changes. Access the service from our website homepage to file annual returns and changes to addresses, appointments and share capital. WebFiling also features downloadable templates for the submission of abbreviated and dormant accounts.

Software Filing

Our Software Filing service enables use of third party software to electronically file a wide range of statutory information and changes, as well as over 90% of all new incorporations.

Software Filing is suited to frequent filers of information. For details of available software packages and formation agents that provide an electronic incorporation service, visit www.companieshouse.gov.uk/softwarefiling

Filing of Documents

Anyone filing documents at Companies House should send documents for English and Welsh companies to the Registrar in Cardiff and for Scottish companies the Registrar in Edinburgh.

Postal Deliveries-Saturday

There are no postal deliveries to Companies House on Saturday other than Cardiff or Edinburgh.

Delivery by hand of documents outside office hours

All offices can accept documents delivered by hand 24 hrs a day, either at a manned reception desk at Cardiff or letterboxes at the other offices.

Your Letters

The Editor welcomes articles, letters and other contributions for publication in the 'Register' magazine. The Editor reserves the right to pick those chosen for publication and amend them where necessary.

Any such contribution is, however, accepted on the understanding that its author is responsible for the opinions expressed in it and that its publication in the 'Register' magazine does not imply that it represents the view of Companies House or BIS.

Cardiff

Crown Way, Cardiff CF14 3UZ
Central Enquiries -Tel: 0303 1234 500
Opening times: 8.30am to 6.00pm

London

21 Bloomsbury Street London WC1B 3XD
Tel: 0303 1234 500
Opening times 9.00am to 5.00pm

Edinburgh

4th Floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh,
Scotland, EH3 9FF

Fax: 0131 535 5820

Opening times: 9.00am to 5.00pm

Belfast:

Companies House,
1st Floor, Waterfront Plaza,
8 Laganbank Road, Belfast, BT1 3BS.

Fax: 028 9090 529

Tel: 0303 1234 500

We offer a range of services that companies

or call us on **0303 1234 500**

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The FINAL FACT



AT A SCREEN NEAR YOU

www.companieshouse.gov.uk

The final implementation of the Companies Act 2006 is now performing live. Rewrites have seen company law updated and modernised, and will help make running your business simpler. The Companies Act 2006 will impact upon every company in the United Kingdom, so it's important to find out how it affects your business. It's appearing now on our website, so don't miss it.

www.companieshouse.gov.uk

BIS | Department for Business
Innovation & Skills

A BIS SERVICE



Companies House
— for the record —