

**COMPANY LAW**

Providing a flexible framework  
which allows companies to  
compete and grow: discussion  
paper

JANUARY 2012



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# Introduction

The Government's objective for company law is to provide a framework that gives companies the flexibility to compete and grow effectively. An important part of this is ensuring that creditors, customers and suppliers have the information they need in order to be able to do business with a company with confidence. An effective company law framework balances these elements.

This paper sets out the work we are already doing to improve the company law framework to support our objective, it also considers areas where more work might be done. The Red Tape Challenge theme concentrates on the regulations associated with company and commercial law, however we realise that alternative approaches and improved guidance may also improve the framework. In support of the 'spotlight' period for company and commercial law we would welcome views on how the company law framework can be improved in all areas. Along with responses to the questions raised below we would welcome information on any aspects of the company law framework which acts as a barrier to doing business quickly and efficiently.

## **The Red Tape Challenge Spotlight**

The Red Tape Challenge (RTC) aims to reduce the overall burden of regulation by reducing the "stock" of regulations that are already in place. The government is seeking public input through a dedicated RTC website: [www.redtapechallenge.cabinetoffice.gov.uk](http://www.redtapechallenge.cabinetoffice.gov.uk)

Thousands of existing regulations have been published on the website, including approximately 120 regulations that relate to company and commercial law. You can comment on these at any point during the two year Red Tape Challenge but we will be focussing – or putting a 'spotlight' - on company related regulations for a three-week period starting on 26 January.

# Company Law in the UK

The company law framework is enabling. The owners of a business will consider whether the benefits of limited liability are sufficient to decide to form a company and become subject to the company law framework. There is no obligation to incorporate as a company, and many businesses thrive in the UK as sole traders or as partnerships. Others thrive using other legal forms such as Limited Liability Partnerships and mutuals.

If a business does decide to incorporate as a company, the UK system is considered to be one of the best places in the world to set up and run a company. Our procedures are considered to be fast, flexible and low cost. It costs less than £20 to incorporate a company electronically and 99% of all electronic incorporation requests are processed within 24 hours of receipt. During the last financial year Companies House incorporated over 400,500 companies and the size of the register is currently around 2.8million companies.

In 1998 the government launched the company law review, which delivered its final report 'Modern Company Law for a Competitive Economy' in 2001. The aim of the review was to ensure that UK company law was world class, setting an example which others would wish to follow.

Rewards for modernising company law were seen as:

- A framework for business that puts small companies first, not last
- A reduction in costs and burdens for all businesses
- A climate which encourages people to set up in business and make them grow
- A framework which promotes international competitiveness, encourages inward investment, and provides flexibility and responsiveness to changing business needs
- Clear rules which enable people to deal with and invest in companies with confidence
- Renewed public confidence in the legitimacy of an approach to wealth- creation that is based on clear and widely accepted principles.

With these principles in mind companies legislation was rewritten, resulting in the Companies Act 2006. The Impact Assessment accompanying the Bill estimated annual savings of between £160 and £340 million. The 2009 independent evaluation and

evidence from other sources suggests that savings for companies are in line with and may possibly exceed the estimates within the impact assessment.

However, there is no room for complacency. There are still improvements that can be made to ensure that the company law framework is as efficient as possible and that the experience of companies and their officials corresponds to the policy intent of the Companies Act and associated regulations.

## Work In Progress

We have already begun to consider what further improvements can be made:

### **Exemptions from mandatory audit:**

Consultations have recently closed on a number of measures which will allow certain companies to be exempted from mandatory audit; as a result we hope to make significant amendments to Part 16 of the Companies Act. The changes will affect both small and medium sized companies which we hope will deliver savings in the region of £1/2billion per year. A further announcement on the responses to the consultation will be made in March 2012. Along with this, at European level the proposed changes to the accounting directives also include increased size thresholds for small companies allowing more companies to be exempted from mandatory audit.

### **Partial exemption for micro companies under the EU accounting directives**

There is now agreement at European level to exempt micro companies from certain EU accounting requirements. The UK will look to implement these changes as soon as possible, and we will value comments on proposed changes when we consult on the detail of the proposals later this year. We estimate that around 1.5m companies will be able to take advantage of these changes if they choose to do so.

### **Changes to narrative reporting requirements.**

Consultation has recently closed on a new regime for narrative reporting which includes proposals to change company narrative reports to make it easier for investors to locate the information they need. We are also reviewing the disclosure requirements that we place on companies to streamline and remove inconsistencies. We expect amendments will be made to the Companies Act 2006 and associated regulations.

## Company Charges

We are working on changes to how companies register use of their assets to raise finances. The proposals will replace the old schemes and introduce one UK single scheme for charges. We estimate that these changes will lead to savings of around £20m per year.

# Suggested Areas for Reform

We want to build on this work and consider whether further improvements can be made which would remove burdens on business and lead to growth. We are aware from our work with stakeholders that there are some areas that could be improved. To inform further work in these areas we would welcome your response to the questions below:

## Names

All companies have registered names but may trade under a different name ie a business name. Sole traders and others may also adopt a business name.

In the UK we do not have a register of business names; the government currently places restrictions on the choice of name to protect the public. Areas where prior approval is required include certain sensitive words or phrases (university, institute) and names that suggest a link to government or the devolved administrations. The current law states that a name must not give a misleading indication of the nature of the business which could cause harm to the public.

A company's registered name is the principal means by which the public can get information about that company. Each name on the register is therefore required to be distinctly different from every other registered name. An adjudicator may also consider claims that a name was chosen to exploit another company's goodwill or reputation.

We are aware that some companies believe that the process of registering a company name is time consuming and bureaucratic. There may be scope to reduce the number of words that need prior approval and strengthening the law in relation to misleading names. It may also be useful to improve guidance in this area.

**Question 1: Has the law on company names caused you problems and delays? If so, how could we make improvements?**

## Company Filings

In order to provide transparency about a company certain information is required to be sent to the registrar on an annual basis, this includes the annual return and accounts. We would like to reduce the filing obligations for companies, particularly if there is very little change year on year. We are considering some of the following options:-

Annual Return and accounts filings: We are exploring ways of making the filing of Annual Return information via our online services simpler and quicker, especially where there has been no change. It is already possible for companies to align the dates for filing their annual return and accounts and it may be beneficial to build on this by combining the information to be submitted into one single filing for companies which choose to do this.

**Question 2: Would companies find it useful to be able to file accounts and the annual return together? If so, what changes to the current system would make it easier for companies who wish to do one annual filing (annual return and accounts) at Companies House?**

- We are aware that government often asks for duplicate or very similar information to be sent to more than one government organisation. Companies House is committed to offering an integrated customer experience for business to government transactions. For example, it is working with HMRC on a joint web registration service, forming a key part of the Coalition's "one click" agenda, and Companies House already have a joint filing template with HMRC for annual accounts.

**Question 3: Do you agree that there are benefits to be gained from submitting information only once to government and that information then being used for multiple purposes as appropriate and agreed?**

- The Companies Act requires many filings to be made at Companies House, so that those who search the register are able to see up to date information on companies. Over recent years processes have been updated and there has been a move towards electronic filing which speeds up the process of information exchange, while reducing the number of rejected forms. There may be more that could be done to improve these processes and simplify the way we collect information or further improve the rejection rate.

**Question 4: Are there particular filings that we require that cause individual companies problems? If so, how could these be improved?**

## Rights to inspect Registers and require copies

The right to limited liability has always been subject to the public right to know who is using this right, ie a public right to be provided with a copy of the register with the name and addresses of members of limited companies. The Companies Act 2006 requires that all companies must keep their registers available for inspection, either at its Registered Office or an alternative named address. All companies must inform Companies House where the registers are kept and update the information when any changes are made. In the last year there were over 56,000 filings relating to alternative inspection locations. We believe that the policy of making registers available, to both Members of a company and others with good reason to interrogate it, is the right one but would welcome suggestions as to how burdens associated with this requirement may be reduced, including whether better use could be made of company websites.

**Question 5: Do you agree that registers should be available for inspection, and how can this requirement be achieved in the simplest way?**

## Requirement to Register Newspapers

The Newspaper, Libel and Registration Act currently requires certain newspaper proprietors to register with Companies House, where the newspaper is not registered as a company. There is a requirement for newspapers to file a return every year and to notify Companies House if there are any changes to the registered proprietors at any other time of the year. This ensures that people searching the register can have access to a newspaper proprietor if they need it. There have been approximately 110 newspaper forms filed over the last three years.

**Question 6: Are there benefits to newspaper proprietors registering with Companies House, or should the requirement be removed or changed?**

## Penalties and Enforcement

In the UK the Companies Act seeks to achieve compliance with the law by setting fines and penalties. This approach has proved very successful and the UK has very high levels of compliance, this is important to ensure the high levels of transparency we spoke of earlier.

**Question 7: Do you agree that the UK system should be based on achieving compliance, and setting suitable penalties and fines to achieve this? Could improvements be made and high levels of compliance ensured in other ways?**

## Employee Share Schemes

Company law imposes certain safeguards for existing shareholders relating to the issue of new shares. We are considering whether there should be any special rules to simplify employee share ownership schemes.

**Question 8: Are there any provisions in Company Law or should any changes be made to simplify the design and operation of company share ownership schemes?**

## Other Issues

The Red Tape challenge relates to improving current regulations but there is work going on in parallel, both on a domestic and European level.

The European Commission is currently negotiating changes to both the audit and accountancy directives with Member States. We also expect there to be further communications on corporate governance and other company law issues. The UK is involved in these discussions and where possible is seeking simplification and resisting proposals for further regulation.

The Department of Business, Innovation and Skills will make a separate announcement on executive pay.

## Seeking your views

This paper is being published as part of the Red Tape Challenge. We would like to

- hear your views on how we can improve the regulatory framework for company law to support growth in the UK economy
- hear your comments on any of the regulations published as part of the company and commercial law theme
- responses to the questions raised above
- any other suggestions you may have to improve the framework and reduce burdens on business whilst ensuring that companies are transparent about their transactions

You can respond to these questions and comment on specific regulations on the RTC website: [www.redtapechallenge.cabinetoffice.gov.uk/](http://www.redtapechallenge.cabinetoffice.gov.uk/)

Alternatively you can write to us direct at:

Red Tape Challenge  
Business Environment Directorate  
Department for Business, Innovation & Skills  
Spur 2, Third Floor  
1 Victoria Street  
London  
SW1H 0ET

Or email: [redtapechallenge@cabinet-office.gsi.gov.uk](mailto:redtapechallenge@cabinet-office.gsi.gov.uk)

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

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