

EXPLANATORY MEMORANDUM TO
THE COMPANIES (DISCLOSURE OF ADDRESS) REGULATIONS 2009

2009 No. 214

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform (BERR) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Part 2 of The Companies (Disclosure of Address) Regulations 2009 relates to the disclosure of “protected information” which is defined by section 240 of the Companies Act 2006 (the “2006 Act”) as being a director’s usual residential address and also any statement that his service address is his usual residential address. Section 242 of the 2006 Act puts the Registrar of Companies under a duty to omit this information from the public record. Part 2 provides for the circumstances under which the Registrar is permitted to disclose protected information to:

- specified public authorities;
- credit reference agencies.

It also provides for applications to the Registrar for protected information not to be disclosed to credit reference agencies in defined circumstances. Part 3 provides for applications for addresses to be removed from the public record maintained by the Registrar.

2.2 Part 3 provides for applications under section 1088 of the 2006 Act for addresses to be removed from the public record maintained by the Registrar.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1 Under sections 288 and 289 of the Companies Act 1985, companies are required to file with the Registrar the usual residential address of all their directors. The usual residential address of directors forms part of the register which the Registrar is required to make publicly available. Under sections 723B-723E of that Act and the Companies (Particulars of Usual Residential Address) (Confidentiality Order) Regulations 2002 (SI2002/912), those directors at risk of violence or intimidation may apply for their address not to be available for public inspection; they are required to provide a service address for the public record. There is no provision for directors’ usual residential addresses or any other addresses that have been filed with the Registrar to be removed from the record or otherwise cease being publicly available.

4.2 Under sections 162, 163, 165 and 167 of the 2006 Act (provisions which will be brought into force on 1 October 2009), companies are required to file with the Registrar both a service address and the usual residential address for each of their directors. The service address is put on the public record for public inspection. Section 243 provides that the usual residential address may be disclosed by the Registrar only to specified public authorities and credit reference agencies under conditions to be specified in regulations and also that regulations may provide for applications to be made for a director's address not to be made available to credit reference agencies. Section 1088 provides for any address on the register to be made unavailable for public inspection on application and power to make regulations to specify the application procedure.

4.3 Section 1068 of the 2006 Act gives the Registrar a power to make rules about form, authentication and manner of delivery of documents. Section 1112 makes it an offence to make a statement to the Registrar that is misleading, false or deceptive in a material particular. Section 1292 provides power for regulations made under the Act to include supplementary, incidental and consequential provision.

4.4 EEA States have obligations under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data. These are enshrined in the Data Protection Act 1998, which requires those who process personal information to comply with eight principles. These include that "appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data". Under Section 34, information which the data controller is obliged by or under any enactment to make available to the public is exempt from this Act's non-disclosure provisions.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Ian Pearson, Economic and Business Minister, has made the following statement regarding Human Rights:

In my view the provisions of the Companies (Disclosure of Address) Regulations 2009 are compatible with the Convention rights.

7. Policy background

Current Position

7.1 At present, information on the register at Companies House relating to directors' usual residential addresses is used primarily for:

- the identification of the individual and the investigation of links with other companies, including those being wound-up;
- the enforcement of statutory obligations on directors;
- the service of documents by any person.

The information is also used, in conjunction with information from other sources, for many other purposes such as:

- assessing companies' and individuals' financial standing, including their credit-status, etc.;
- checks under money-laundering rules and regulations;
- enforcement of other legislation;
- checking applications for trade and business licences;
- checking links between companies and, in particular, whether a director has a conflict of interest;
- checks on individuals by journalists and members of the public;
- compiling lists for direct mailshots;

The unrestricted public availability of directors' home addresses has also been abused, leading to intimidation of individuals, especially directors of companies in sensitive sectors. In November 2000, the Independent Company Law Review noted, "the development of CD-ROMs and other databases which assemble data on directors in a manner which it is hard to interpret as entirely innocent." (*Completing the Structure*, paragraph 8.4)

7.2 Individuals who are secretaries of companies, who are directors or secretaries or permanent representatives of overseas companies, or who are members of limited liability partnerships also have to register their usual residential address. Anyone with a Confidentiality Order files a service address for the public record while the usual residential address is kept by the Registrar in confidential records and is only disclosed to specified competent authorities. Under the provisions of sections 723B-723F and The Companies (Residential Address) (Confidentiality Orders) Regulations 2002 (SI 2002/912):

- Confidentiality Orders are granted to those for whom availability for inspection by members of the public of particulars of the individual's usual residential address creates, or is likely to create, a serious risk that the individual or a person who lives with him, will be subjected to violence or intimidation;
- the specified competent authorities consist mainly of bodies such as the police, and certain other public sector regulators.

7.3 Companies are required to include other addresses of other persons (but not necessarily the usual residential address) on various documents they must file. These include the addresses of the members of the company and, possibly, of a company's secured lender. The information that companies file is placed on the public record. In general, once information is on the public record it is available to the public from Companies House indefinitely. Usually, it will subsequently be available from secondary sources in the public domain, for example in directories and from credit reference agencies.

7.4 The safeguards for personal information in the Data Protection Act 1994 do not apply to data filed for the public record. (These safeguards do apply to personal information protected by Confidentiality Orders). Rather the public record held at Companies House, including the usual residential addresses of most directors, is available to the public over the net and through visits to its information centres. In addition, eight companies have contracts (referred to as "bulk contracts") with Companies House for the daily supply of the entire database of company directors which includes the addresses of

all those that do not hold Confidentiality Orders. These companies use this information in their preparation of reports on companies. The availability of finance to many companies, particularly small and new companies, depends heavily on this process.

Position from 1 October 2009

7.5 In provisions that will come into force on 1 October 2009, the 2006 Act provides that every company must file with the Registrar for each director who is an individual:

- a service address and the country of residence, for entry on the public record; and
- the usual residential address (or a statement that it is the same as the service address). This information is “protected information” under section 240.

A company must provide this information for a director on his appointment and in the event of any change to it. The service address and country of residence must also be provided in the company’s annual return. For company secretaries, however, only a service address is required, ie there will no longer be a requirement for the usual residential address of a secretary of a company to be filed with the Registrar.

7.6 This means that, from 1 October 2009, directors’ usual residential addresses will no longer be placed on the public record (unless this address is provided as the director’s service address). Therefore the usual residential address will no longer be publicly available or provided by Companies House in any circumstances including as part of the current “bulk contract”. Section 243 of the 2006 Act provides that the Registrar may, however, disclose protected information to specified public authorities and to credit reference agencies subject to conditions to be specified in regulations made in accordance with this Section. As the conditions for disclosure must be fulfilled at the time the information is disclosed, they must be either facts or statements of intent. Once the information is disclosed, its handling is subject to the Data Protection Act 1998.

7.7 The 2006 Act provides for regulations to set grounds for applications for a director’s protected information not to be disclosed to credit reference agencies; this higher protection is comparable to that provided by Confidentiality Orders under the 1985 Act.

7.8 Directors’ usual residential addresses filed under the 1985 Act will continue to be publicly available as will various other addresses filed under both the 1985 and 2006 Act, except for those addresses covered by Confidentiality Orders. (The statutory instrument commencing the relevant sections of the 2006 Act has made provision for continued protection for addresses covered by Confidentiality Orders.) The 2006 Act also provides for Regulations to determine the grounds on which an application may be made for an address that is already on the public record to be made unavailable for public inspection; the record of the address will not be destroyed but, as the Act does not provide for its disclosure to any person, will be revealed only under a court order.

Policy

Specified public authorities

7.9 The policy is that the Registrar be able to disclose any director’s usual residential addresses to all those public authorities to whom he may currently disclose the address of any director who holds a Confidentiality Order and also those that currently

use the information about other directors' addresses on the public record, whether obtained directly or indirectly, to carry out their public functions. As regards conditions for disclosure to specified public authorities, the policy is that they should only use the information for their public functions and that, except for the Security Services, any information passed by the authority to a processor must be kept within the EEA. The specified public authority is required to deliver a statement to the Registrar as to its use of the protected information so that the provisions of the Act relating to delivery to the Registrar apply. The policy is that the Registrar may require further information or evidence before authorising disclosure – it is envisaged that this would be used, for example, if the individual making the request on behalf of the authority is not known to Companies House.

Credit reference agencies

7.10 While there are nearly 15,000 credit reference agencies registered under the Consumer Credit Act 1994, probably fewer than ten undertake assessments of companies' credit-worthiness. These assessments are valuable to the companies concerned, other companies including their prospective customers (which include many public authorities) and suppliers, and to the UK economy. The creditworthiness and probity of a company's directors are particularly relevant for those companies that have few directors: there are approximately 2.5million companies with 3 or fewer directors. One credit reference agency advises that its customers searched approximately a million companies a year; they also conducted searches on other businesses where the sole proprietor or a partner is also a company director.

7.11 The policy is that the conditions for disclosure to credit reference agencies should:

- (a) restrict the purposes for which an agency may use the information to
 - providing assessments of financial standing;
 - compliance with money laundering rules;
 - checking for conflicts of interest;
 - conducting checks for the prevention and detection of crime and fraud; and
 - passing the information to someone to whom the Registrar may disclose it direct. (The power to make regulations specifying the conditions must be in accordance with section 243. Therefore the conditions do not allow an agency to pass the information to any other person.)
- (b) require the credit reference agency to carry on business in the EEA and to keep the information within the EEA, and
- (c) require the credit reference agency to have appropriate procedures to ensure both compliance with the Data Protection Act 1998 and for the independent investigation and audit of its security procedures.

The policy is that the Registrar may rely on statements by the credit reference agency but that he may also seek additional evidence and information to verify that the credit reference agency is indeed intending to use the information only for the prescribed purposes and has robust procedures in place for handling protected information. With regard to statements of fact made by a credit reference agency, the statement will be subject to section 1112 which provides for an offence of making a false statement.

Applications for higher protection

7.12 The objective is to minimise the risk of the usual residential addresses of directors of sensitive companies being obtained by those who may make them targets for violence or intimidation. The policy is that the grounds for an application that a director's home address not be disclosed to credit reference agencies should be that there is a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation as a result of the activities of a company of which he is a director. In addition, all holders of Confidentiality Orders that are valid on 30 September 2009 should automatically be entitled to the higher protection. (This is dealt with in the relevant Commencement Order.) Following discussions with the security services, the policy is also that employment by one of the security services or the police should also be grounds for higher protection.

Addresses to be made unavailable for public inspection

7.12 The policy is that the approach should be similar to that for applications for higher protection. The grounds will be that the activities of a company are such that continued appearance of the specified addresses on the public record at Companies House will lead to a risk of violence or intimidation to those at the addresses. It will only be possible to apply for the removal of addresses filed after 1 January 2003. This is because it may not be possible to remove information from non-electronic records without serious risk of damage to the integrity of the public record. All records filed after 31 December 2002 are kept electronically; previously they were kept in various ways including on microfiche.

Consultation

7.13 In February 2007, the Department of Trade and Industry sought views on proposals relating to the disclosure of addresses in its consultative document "Implementation of Companies Act 2006". The proposed approach was generally supported. In the light of the responses, draft regulations were prepared. These were placed on the BERR website in July 2007 together with summaries of the responses to the consultation and the Government's response. An email alert was sent to over 700 individuals and organisations who had asked to be kept informed of Companies Act 2006 developments. These draft Regulations were generally welcomed. Credit reference agencies argued that the proposed purposes were too narrow as their main service is assessment of companies' credit-worthiness. They wished also to be able to continue to assess whether a director has a conflict of interest and to provide information to the police.

7.14 Revised draft regulations, which took account of the comments on the previous draft, were placed on the BERR website on 2 May 2008. In addition to the email alert to the usual 700 individuals and organisations, a substantive email was sent to those who had commented on the previous draft Regulations, representatives of the proposed specified public authorities, and the holders of current "bulk" contracts with Companies House (see paragraph 7.4). The main differences between these draft Regulations and those published in July 2007 were in draft Schedule 2, which sets the conditions for permitted disclosure. Further changes were made in the light of comments. However some credit reference agencies and various other organisations expressed concern that credit reference agencies will no longer be able to pass information regarding directors'

usual residential addresses to any of their clients who are not themselves able to obtain the information from Companies House; these clients include banks and leasing companies.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is twofold.

- First, by 1 October 2009 Companies House will have introduced systems to protect directors' usual residential addresses including consideration of applications for disclosure from specified public authorities and credit reference agencies.
- Second, public authorities who are not specified in the Regulations will no longer have access to any directors' usual residential addresses. Those that are specified will have to satisfy the conditions in these Regulations; they will only be able to obtain this information from either Companies House or a credit reference agency.

9. Contact

Anne Scrope at the Department for Business, Enterprise and Regulatory Reform, tel: 0207 215 2194 or e-mail: anne.scrope@berr.gsi.gov.uk, can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Business, Enterprise & Regulatory Reform	Title: Impact Assessment of Companies (Disclosure of Addresses) Regulations	
Stage: final	Version:	Date: 12 November 2008
Related Publications: Implementation of the Companies Act 2006 - a consultative document, February 2007; draft Regulations; & government response		

Available to view or download at:

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

Contact for enquiries: Anne Scrope@berr.gsi.gov.uk

Telephone: 0207 215 2194

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

Under the Companies Act 2006, no director's home address (as such) will be placed on the public record. The Registrar of Companies will be able to disclose this information only to specified public authorities and credit reference agencies (CRAs) under conditions to be specified in regulations. The regulations are also needed to set the rules for applications for a director's home address not to be provided to CRAs and, noting that information on the public record otherwise stays there indefinitely, for addresses already on the public record to cease being publicly available.

What are the policy objectives and the intended effects?

- the records of a company's directors should be able to affect decisions on the provision of finance to companies, including trade credit;
- access to an address filed with the Registrar of Companies should not put at risk those who live at the address;
- public authorities should be able to use all directors' home addresses for their public functions; and
- third parties should be able to rely on the integrity of the public record..

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

The main questions were:

- what should be the conditions for disclosure of directors' home addresses (see paras 8-11);
- How the Registrar discloses addresses (see para 12);
- Which public authorities should have access to directors' home addresses (paras 17-18)
- the grounds for special treatment of addresses (see paras 13-16 & 19)

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? From 2011 as part of the Companies Act 2006 evaluation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

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

Signed by the responsible Minister:

Mr Ian Pearson

Date: 17 November 2008

Summary: Analysis & Evidence

Policy Option: Bii	Description: Registrar to provide credit reference agencies with directors' addresses as a bulk product
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition) Yrs	
	£	
	Average Annual Cost (excluding one-off)	
£	Total Cost (PV) £	

Other **key non-monetised costs** by 'main affected groups' public authorities and CRAs will have to adapt their procedures to meet the conditions in the Regulations (CRAs and their clients will also have to adapt to the reduction in information available to them under the 2006 Act).

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Directors with Confidentiality Orders will not have to reapply every 5 years (see para 26(b)).
	One-off Yrs	
	£ 10	
	Average Annual Benefit (excluding one-off)	
£ 900,000	Total Benefit (PV) £ 7.48 million	

Other **key non-monetised benefits** by 'main affected groups' All directors will benefit from their home addresses not being publicly available. CRAs will continue to be able to assess the financial standing of companies; low risk of directors' home addresses being leaked into the public domain..

Key Assumptions/Sensitivities/Risks 3,000 directors pa apply for renewal of a confidentiality order at a fee of £100 and associated costs of £200.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 7.48 million
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	1/10/09
Which organisation(s) will enforce the policy?	Companies House
What is the total annual cost of enforcement for these organisations?	£ not applicable
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ none
What is the value of changes in greenhouse gas emissions?	£ n/a
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase	£	Decrease	£	Net Impact £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary)

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

BACKGROUND

Current Position

1. Companies are required to file the “usual residential address” (ie the home address) of all their directors and secretaries. This information forms part of the register which the Registrar is required to make publicly available. It is used for:

- the identification of the individual and the investigation of links with other companies, including those wound-up;
- the enforcement of statutory obligations on directors;
- the service of documents by any person.

The information is also used, in conjunction with information from other sources, for many other purposes such as:

- assessing companies’ and individuals’ financial standing, including their credit-status, etc.
- checks under money-laundering rules and regulations;
- enforcement of other legislation;
- checking applications for trade and business licences;
- checking links between companies and, in particular, whether a director has a conflict of interest;
- checks on individuals by journalists and members of the public;
- compiling lists for direct mailshots;
- intimidation of individuals, especially directors of companies in sensitive sectors.

Companies include other addresses, but not necessarily the home address, on various documents they must file. These include the addresses of the members of the company and, possibly, of a company’s secured lender.

2. The information that companies file is generally placed on the public record. A significant exception is the home address of a person who holds a “Confidentiality Orders”; these people file a service address for the public record while their home address is only disclosed to competent authorities. Under rules specified in sections 723B-723F and The Companies (Residential Address) (Confidentiality Orders) Regulations 2002 (SI 2002/912):

- Confidentiality Orders are granted to those for whom availability for inspection by members of the public of particulars of the individual’s usual residential address creates, or is likely to create, a serious risk that the individual or a person who lives with him, will be subjected to violence or intimidation;
- the specified competent authorities consist mainly of bodies such as the police, and certain other public sector regulators.

3. In general, once information is on the public record it is available to the public from Companies House indefinitely. It will subsequently be available from secondary sources, although these may be less reliable. The safeguards for personal information in the Data Protection Act 1994 do not apply to data filed for the public record. Rather the public record held at Companies House, including the home addresses of most directors', is available to the public over the net and through visits to its information centres. In addition, 8 companies, including Dun & Bradstreet and Experian have contracts (referred to as "bulk contracts") with Companies House for the supply of the entire database of company directors, including the addresses of all those that do not hold Confidentiality Orders, through a one-off snapshot followed by daily updates transmitted electronically. These companies use this information in their preparation of reports on companies. The availability of finance to many companies, particular small and new companies, depends heavily on this process.

4. The fees charged by Companies House for its services, including the provision of information on its public record, are calculated on a cost recovery basis.

Position from 1 October 2009

5. In provisions that will come into force on 1 October 2009, the Companies Act 2006 ("the 2006 Act") provides that every company must file for each director who is an individual:

- a service address and the country of residence, for entry on the public record;
- the home address (or a statement that it is the same as the service address): this information is "protected information".

The company must supply this information on the appointment of a director and in the event of any change to it. The service address and country of residence must also be provided in the company's annual return. For company secretaries, only a service address is required.

6. The 2006 Act's provisions mean that, from 1 October 2009, directors' home addresses will no longer be placed on the public record (except if a director gives his home address as his service address). Therefore directors' home addresses, as such, will no longer be publicly available or provided by Companies House, for example as part of the current "bulk contract" to credit reference agencies,. The 2006 Act also provides that the Registrar may disclose protected information only to specified public authorities and to Credit Reference Agencies subject to conditions to be specified in regulations. The 2006 Act also provides for Regulations to set grounds for applications for a director's protected information not to be disclosed to credit reference agencies; this higher protection is comparable to Confidentiality Orders under the 1985 Act.

7. Directors' home addresses filed under the 1985 Act (except those covered by Confidentiality Orders) will continue to be publicly available as will various other addresses filed under both the 1985 and 2006 Act. The 2006 Act also provides for Regulations to determine the grounds on which an application may be made for an address that is already on the public record to be made unavailable for public inspection.

OPTIONS

What should be the conditions for disclosure of directors' home addresses?

8. The policy objective is to protect directors' home addresses from inadvertent disclosure and from disclosure to any one who is not permitted access by the 2006 Act. The Act provides that the regulations may specify the conditions for Registrar to disclose protected information to a specified public authority or a credit reference agency "in accordance with this section". This means that the conditions must not provide for the recipient to pass on protected information to anyone to whom the Registrar may not disclose it. In considering the conditions for the registrar to disclose protected information, the principal concern has been to ensure that the recipient properly protects the information and only uses it for approved purposes.

9. As regards disclosure to specified public authorities, the 2006 Act provides that the Registrar may disclose the protected information of all directors to them. The **preferred option** is that the specified authority may use this information for its public functions. So that the information also benefits from the protection of individuals with regard to the process of personal data and on the free movement of that data, the Regulations also require the public authority to keep the information within the EEA. (There is an exception from this last condition for the Security Services.)

10. As regards disclosure to credit reference agencies, under the 2006 Act they will continue to have access to the home address of only those directors whose addresses under the 1985 Act are publicly available. The 2006 Act defines a credit reference agency as "a person carrying on business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose". While

there are nearly 15,000 credit reference agencies registered under the Consumer Credit Act 1994, probably fewer than 10 undertake assessments of companies' credit-worthiness. This is useful to the companies concerned, other companies including their prospective customers and suppliers, and to the UK economy. The creditworthiness and probity of a company's directors is particularly relevant for those companies that have few directors but the number of companies with more than 3 directors is very small. One credit reference agency advises that its customers searched approximately a million companies a year; they also conducted searches on other businesses where the sole proprietor or a partner is also a company director.

11. In the light of the responses to their consultations, the **preferred option** is that this information should be disclosed to credit reference agencies only for the following purposes:

- providing assessments of financial standing;
- compliance with money laundering rules;
- checking for conflicts of interest;
- conducting checks for the prevention and detection of crime and fraud; and
- passing the information to someone to whom the Registrar may disclose it direct.

The Government believes that fewer than 10 credit reference agencies registered with the Office of Fair Trading will be able to satisfy these conditions.

How the Registrar discloses protected information?

12. The protection for directors' home addresses would be strongest if the Registrar were only to disclose the protected information of individual directors, ie not to provide a bulk service with the protected information. The credit reference agencies advise that this approach would make using the information for the permitted purposes prohibitively expensive. At present, this information is publicly available and this has given rise to concern over its use for purposes which, in future, will not be permitted and by persons who will no longer have access to it. As this concern will be addressed by the other restrictions on access to this information, the **preferred option** is that conditions for release of protected information to credit reference agencies should enable them to get it in bulk provided that other conditions for the protection of the information are met. These conditions are that:

- the credit reference agency keeps the information within the EEA; and
- it has appropriate procedures to ensure both compliance with the Data Protection Act 1998 and for the independent investigation and audit of its security procedures.

The Registrar may seek additional evidence and information to verify that the credit reference agency is indeed intending to use the information for the prescribed purpose and has robust procedures in place for handling protected information.

The grounds for special treatment of addresses

13. As previously noted (see paragraph 6), the 2006 Act provides for applications to be made for a director's protected information not to be disclosed to credit reference agencies. This is to minimise the risk of the home addresses of directors of sensitive companies being obtained by those who may make them targets for violence or intimidation. Two options were considered for the main grounds for applications for a company director's home address not to be disclosed by the Registrar to a credit reference agency:

- first, that the disclosure is likely to create a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation, ie the grounds for an address not to be made available for public inspection under the current regime (see paragraph 2 above); and
- second, that there is a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation as a result of the activities of a company of which he is a director.

The difference between these two approaches is that under the first the cause of the risk may be unrelated to the individual's directorships, under the second, only risks arising from directorships are relevant.

14. The basis of the current Confidentiality Order regime is that the address is on the public record if the director is not a holder of such an Order. By contrast, under the 2006 Act, the address on the public record will be a service address for every director, ie no director's home address will be on the public record (unless the director

uses his home address as his service address; in these circumstances, the public record will not reveal that the service address is the home address). The extra protection under the 2006 Act will be that the home address, as such, is not provided to Credit Reference Agencies. These bodies use the information obtained from Companies House together with information from other sources, most notably the Courts, primarily in order to assess companies' credit-worthiness or general financial standing.

15. A Confidentiality Order expires after 5 years: the holder then has to re-apply successfully for the benefit to continue. This approach was rejected for higher protection on the grounds, while a serious risk may lie dormant, it would not be prudent to consider it no longer exists.

16. Noting the differences underlying the old and the new regimes, the **preferred option** is that the main grounds for the extra protection for a director's home address should generally be linked to the activities of a company of which he is a director. Additional grounds should be employment by one of the security services or the police. Furthermore, all holders of Confidentiality Orders that are valid on 30 September 2009 will automatically be entitled to the higher protection. Higher protection, once granted, will be valid indefinitely.

Which public authorities should have access to directors' home addresses?

17. The Government considers that the Registrar should be able to disclose all directors' home addresses to all those public authorities to whom he may currently disclose the address of any director who holds a Confidentiality Order (see paragraph 2 above). The list of specified public authorities differs from the current list of competent authorities because of devolution, machinery of government and name changes since 2002 and so as to exclude those authorities that also have a right to the information because they use it only for functions delegated to them by a Secretary of State.

18. The current public availability of directors' home addresses enables certain other public authorities to carry out their public functions such as licensing. This is particularly necessary where the licenses are granted to companies. The **preferred option** is that such public authorities should continue to have access to protected information in addition to those who currently have access to addresses subject to Confidentiality Orders.

The grounds for an address to be made unavailable for public inspection

19. As previously noted (see paragraph 7), any address filed under the either the 1985 Act or the 2006 Act will continue to be always publicly available. The only exceptions to this are any director's usual residential addresses covered by Confidentiality Orders, all directors' usual residential addresses filed under the 2006 Act (insofar as not provided as a director's service address), and any address that is made unavailable under these Regulations. It is desirable that the approach for this special treatment in these Regulations should be similar to that for applications for higher protection (see paragraph 16). Therefore the **preferred option** is that the grounds be that the activities of the company are such that continued appearance of the addresses on the public record at Companies House lead to a risk of violence or intimidation to those at the addresses. As addresses already on the public record are also generally available from secondary sources, few applications are expected to satisfy these grounds for an address to be made unavailable for public inspection. It will only be possible to apply for the removal of addresses filed after 1 January 2003 as it is not practicable to remove older addresses without serious risk of damage to the integrity of the public record.

CONSULTATION

20. In February 2007, the Department of Trade and Industry sought views on proposals relating to disclosure of addresses in its consultation document, Implementation of Companies Act 2006 (Chapter 2, Section E). The 22 responses broadly supported the proposed approach. In the light of these responses, draft regulations were prepared. These were placed on the BERR website in July 2007 together with summaries of the responses to the consultation and with the Government's response. An email alert was sent to over 700 individuals and organisations who had asked to be kept informed of Companies Act 2006 developments. These draft Regulations were generally welcomed. Credit reference agencies argued that the proposed purposes were too narrow as their main service is assessment of companies' credit-worthiness. They wished also to be able to continue to assess whether a director has a conflict of interest and to provide information to the police.

21. A revised draft of the Companies (Disclosure of Address) Regulations was placed on the BERR website on 2 May 2008. The main differences between the May 2008 draft Regulations and the draft Regulations placed on the BERR website in July 2007 were the changes to the draft Schedule 2. These changes were so that:

- (a) the protected information must be used only within the EEA;
- (b) the permitted purposes for credit reference agencies to include:

- i) providing an assessment of a person's creditworthiness (noting that "person" includes not only individuals but also companies, LLPs and other legal persons); this was instead of the purpose of vetting applications for credit which appeared in the previous draft Regulations;
 - ii) conducting conflict of interest checks;
 - iii) providing information to a specified public authority that has satisfied the conditions for protected information to be disclosed to it;
- (c) protected information will not be disclosed to credit reference agencies while consideration is being given to an application for it not to be disclosed to them;
- (d) the registrar may require public authorities and credit reference agencies:
- i) to provide him with information and evidence so that he may determine whether to disclose protected information to the body making the request;
 - ii) to advise him of any material change to information previously provided;
- (e) the registrar may rely on statements provided by public authorities and credit reference agencies;
- (f) a company may make an application on behalf of any of its directors for protected information not to be disclosed to a credit reference agency;
- (g) the company providing goods or services to the Security Services or the police, etc is not identified as a separate ground for an application (rather, it is one of a company's activities that might result in a person being subjected to violence or intimidation);
- (h) applications are required to include any former name of the applicant which had been notified to the registrar;
- (i) for applications for addresses to be removed from the public record, there is no time limitation on the office held (but, as previously, the application must relate to an address placed on the register on or after 1 January 2003);
- (j) to add the Community Interest Companies Regulator and the Serious Organised Crime Agency to the list of specified public authorities (previously referred to as "competent authorities") in Schedule 1.

In addition, the title of the Regulations was changed - previously, they had been called the Companies (Particulars of Usual Residential Address) Regulations. The conditions for disclosure in the draft Regulations will enable the Registrar not only to respond to requests from a specified public authority or credit reference agency that meets the specified conditions that relate to a specific individual but also to provide them with a bulk product with daily updates.

22. The following commented on the revised draft Regulations: Experian Ltd, Bisnode Ltd, DLA Piper UK LLP, Association of Chartered and Certified Accountants, LM Group Ltd (Riskdisk Ltd), Equifax plc, and representatives of the specified public authorities in Schedule 1. In addition, a late response was received from the British Bankers Association. Most respondents' comments related to Schedule 2, in particular to the purposes for which a credit reference agency may use the protected information. The respondents proposed the following additional purposes:

- (a) to conduct checks for the prevention and detection of crime or fraud. (The Government agree.)
- (b) to conduct conflict of interest checks made necessary by any enactment. (The Government agree.)
- (c) to supply protected information to specified public authorities or another credit reference agency. (The Government agree provided that the recipient meets the conditions for the Registrar to disclose the information to them directly.)
- (d) where required or permitted by Statute. (No provision is needed to cover where the disclosure is required by statute. The Government considers that if the disclosure is not required by statute, then it should be permitted only for the purposes specified in these Regulations.)

Respondents also made some constructive criticism of the drafting. The Regulations were revised to take account of these comments and also to update the list of specified public authorities in line with the recommendations of their representatives.

23. On the other hand, the Government did not agree with the following suggestions:
- (a) that the definition of credit reference agency be changed to cover all those that provide information relevant to the financial standing of businesses. (It is not possible to widen the definition of credit reference agency in s.243(7) of the Companies Act 2006. This definition covers all those agencies that are registered under the Consumer Credit Act 1974.)
 - (b) that credit references be able to supply protected information to their clients. One credit reference agency suggested that this be conditional upon the freely given explicit and informed consent of the data subject; the British Bankers Association argued similarly. (Under the Act, protected information may not be disclosed to anyone other a specified public authority or a credit reference agency.)
 - (c) that credit reference agencies be able to use protected information for statistical analysis where no individual can be identified. (The Government consider that this could bring unacceptable risks to individual.)
 - (d) hat credit reference agencies cannot use the protected information for the purpose of complying with anti-money laundering legislation. (The Government consider such a restriction would not be in the public interest.)that former directors be able to make an application for their address not to be disclosed to credit reference agencies. (The regulations separately provide for an address previously entered on the public record to be made unavailable for public inspection. Addresses so protected will not be disclosed to credit reference agencies.)
 - (e) that protected information may be processed only within the UK and must be used within the UK, rather than anywhere within the EU. (This would not be compatible with our Treaty obligations.)
24. The Office of the Scottish Charity Regulator, the Food Standards Agency, the Gambling Commission, the Gangmasters Licensing Authority, the Health and Safety Executive, the Postal Services Commission, and the Security Industry Authority asked to be added to the list of public authorities to whom the Registrar may disclose protected information if they satisfy the conditions in Schedule 2 of the Regulations. In addition, several public authorities requested that the references to them be updated in the light of devolution or machinery of government changes. The Government has agreed to these requests.

IMPLICATIONS

Affected Groups

25. The provisions in the Companies Act 2006 mean that no directors' home address will be placed on the public record (unless a director provides it as his service address). These addresses can be disclosed, under conditions specified in the Regulations, only to specified public authorities and to credit reference agencies. This means that others, including public authorities that are not specified in the Regulations, those specified public authorities and credit reference agencies that do not satisfy the conditions in the Regulations, and clients of credit reference agencies, such as banks, will no longer be able to discover directors' home addresses either directly from Companies House or through credit reference agencies that includes protected information.
26. The following groups will be affected by the Regulations.
- (a) All directors of UK companies will be indirectly affected as the Regulations set the conditions for disclosure of their home addresses.
 - (b) Directors at risk of violence or intimidation will be directly affected by the regulation of the process for applying for their home addresses not to be disclosed to credit reference agencies. About 15,000 who are expected to hold a Confidentiality Order on 1 October 2009 will benefit from not having to re-apply for higher protection every 5 years (see paragraph 15). Assuming 3,000 directors a year will not have re-apply for a Confidentiality Order, for which the fee payable to Companies House is £100 and the associated costs are estimated to be £200; the annual average benefit will be £900,000. The benefit will last indefinitely. For our purposes we have assumed the average annual benefit will last for 10 years. Hence the total monetised benefit will be £7,480,000. There will be a non-monetised benefit for all other directors of their home addresses not being made available to those credit reference agencies that do not satisfy the conditions in the Regulations. (This will be in addition to the benefit, provided by the Companies Act 2006, of their home address not being on the public record.)
 - (c) Those whose addresses (not just directors) were entered on the public record at Companies House between 1 January 2003 and 30 September 2009 for whom it will be possible to apply for the address to

be removed from the public record. Fewer than 500 such applications are expected. The fee will be calculated on a cost-recovery basis. The benefits cannot be monetised.

- (d) The public authorities specified in the Regulations. These will, in future, have to apply to Registrar of Companies for the disclosure of the home address of any director whether directly or indirectly through a credit reference agency. No cost data is available.
- (e) The credit reference agencies that wish to have access to directors' home addresses and which satisfy the conditions in the Regulations – there are probably fewer than 10 such agencies. Under the Act, the cost to them of pursuing purposes for which they will be able to use protected information is likely to be higher than at present. No cost data is available for this. (In addition, they will have to adapt their procedures so that they only pass protected information to those to whom the Registrar would disclose it directly. These subsequent increased costs will result from the Companies Act 2006, not the Regulations.) The Regulations might also increase their costs by requiring them to keep the information secure; they claim to do so already.
- (f) Companies House, who will enforce the conditions for disclosure of home addresses and for removal of other addresses from the public record.

Costs and Fees

27. The Registrar will continue to set fees on a cost recovery basis. This basis currently applies to Confidentiality Orders, for which the fee is currently £100. A Confidentiality Order has to be renewed every 5 years; higher protection under the new regime will, in general, continue indefinitely. The fee for bulk disclosure of the public record is £24,000 a year; the fee for providing directors' protected information is likely to be higher as it will have to cover costs of encryption.

28. The Regulations under these powers do not impose an obligation on any person other than the Registrar of Companies. Rather they specify the conditions that a person must satisfy in order to obtain special treatment relating to addresses that are required to be filed with the Registrar of Companies by the Companies Act 2006 or its predecessors. The costs for the Registrar of Companies will be a proportion of the costs of operating the regime under the 2006 Act for protection of directors' home addresses. These costs are not yet known.

29. The 2006 Act together with these Regulations will lead to significantly increased costs for those who currently use information about directors' home addresses taken from the public record held at Companies House. Those credit reference agencies and specified public authorities that meet the conditions for disclosure of protected information will incur considerably greater costs both in acquiring and using this information. Other current users will no longer have access to this information. The Government has no data on the likely costs to these bodies.

Competition Assessment

30. There is a risk that conditions for disclosing addresses to credit reference agencies could be a barrier to entry to the business of assessing companies' credit-worthiness. To minimise this risk, the proposed conditions relate only to the agencies' procedures for securing information, compliance with the Data Protection Act 1998, and purposes for which the information will be used.

Small Firms Impact Test

31. Directors' home addresses no longer being publicly available will affect credit reference agencies' ability to provide assessments of companies' financial standing. This will be of particular relevance to small companies. If the Registrar were only able to disclose to credit reference agencies the addresses for directors on an individual basis, this would have greatly increased the costs to lenders, etc of receiving reports on small companies' financial standing. Under the preferred option, credit reference agencies will still be able to obtain most directors' home addresses under a bulk contract. This will minimise the impact of the 2006 Act's protection for directors' home addresses on small firms' ability to secure funding.

Human Rights

32. Part 10 of the Companies Act 2006 provides power for Regulations to specify the conditions under which the Registrar of Companies may disclose directors' home addresses to specified public authorities and credit reference agencies. This was considered to be compatible with Article 8 ECHR (right to private and family life). The Department was mindful of this consideration in drafting the conditions for disclosure.

Other Tests

33. After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon these groups in terms of numbers affected or the seriousness of the likely impact, or both.

Specific Impact Tests: Checklist

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

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

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

Annexes

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