



Department for Business, Innovation & Skills

**Company & Business Names Consultation: Red Tape Challenge**

**Response form**

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 22 May 2013.

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Please tick the box from the list of options below which best describes you as a respondent. This allows views to be presented by group type.

X*	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
X*	Other (please describe) Professional Member Institute

### Question 1

**Do you think all regulations relating to names should be repealed?**

**Please give reasons for your answer.**

No. Some regulation to protect business owners from others using similar names (often to defraud or exhort payment for use of the name) is still required. The public also need some protection from misleading names. The area of company names does need reform, as it has become over-complicated, following amendments introduced in the statutory instruments under the Companies Act 2006 ("CA2006") which do cause companies considerable problems. However, there is a public

interest requirement to ensure that certain names and words are not used. One area of concern is the protection of parent company names within a group, where substantial reputation and goodwill has been established. The prevention of opportunists registering names associated with institutions with national and international subsidiaries is necessary so as to prevent confusion, extortion and illicit gain.

## Question 2

**Do you think regulations relating to names should be retained but reduced and simplified?**

**Please give reasons for your answer.**

Yes, the regulations should be retained but simplified and reduced where necessary and for the reasons stated in question 1 above and below.

## Question 3

**Do you think the list of “sensitive” words should be reduced?**

**If so, which words would you recommend for removal and why?**

Yes, the list of sensitive words could be reduced provided care is taken. The changes suggested to remove ‘National’ words (e.g. England, Ireland, Scottish, Welsh) and those referred to in paragraph 51 (Chamber, Discipline, International, Oversight, Register and Sheffield) seem sensible if the risk to the public of their misuse is considered to be low. As the consultation states if removed, any company falsely suggesting a link to government, through the use of a ‘national’ word, would be caught under primary legislation ([s.54 CA2006](#)), so protection would still exist.

As both a royal charter body and an institute we would strongly recommend the retention of the words, Charter, Chartered and Institute. Along with these words we would also robustly support the retention of the following: Accredited, Bank, Charity, Insurance, Police and University, as misuse of these words poses a high risk to the general public.

The requirements for the use of the sensitive word “Group” give problems in practice under the guidance in Companies House notes GP1 which states:

“To use the word ‘group’ in your proposed name the company should be in a parent/subsidiary relationship with 2 or more companies. You should normally meet this condition on first registration or upon change of name. If you decide to resubmit your application please provide the appropriate confirmation including the names of at least 2 companies in the group.”

The requirement to have the parent/subsidiary relationship at the time of registration of the company cannot be met in practice, because before registration the company has no legal existence and cannot enter into the required relationship until after registration. In the case of the use of the word “Holding” in a name the parent/subsidiary relationship requirement instead needs to be met on or within 3 months of registration. There used to be a similar undertaking in respect of a “Group” company and members would like to see this reinstated.

Some respondents have opined that there needs to be some flexibility in individual cases. For example, there should be no problem with King Street Properties Limited which might own a property in King Street. Our members have commented that Companies House is normally very helpful in this regard.

## Question 4

**Do you think the list of words on the “same as” list should be reduced?**

## **If so, which words would you recommend for removal?**

Yes, the list of the words on the 'same as' list could be reduced with care. This is the area that causes companies the greatest problems and requires careful reform. A balance is required between making the system less restrictive and complicated, yet protecting a corporate group's identity.

Some of the words suggested for removal in paragraph 59 (Exports, Great Britain, Imports, Northern Ireland, United Kingdom, Wales (and their Welsh and Gaelic equivalents) would seem reasonable candidates for removal. However, there have been some concerns over the removal of Group, Holdings, International and Services with regards to the identity protection within large groups. Such groups feel it is already a challenge to protect corporate identity and if the 'same as' rules are further reduced, objections will increase. Although it is recognised that a process exists to object to a company registration, this is often lengthy, costly and an administrative and reputational burden.

Another concern is that the current list is restrictive and causes difficulties with incorporations, name changes/ swaps and restorations as names cannot be 'grand-fathered'. Despite paragraph 8 of the Company & Business Names (Miscellaneous Provisions) Regulations 2009 (SI 2009/1085) allowing a company in the same group to give consent, problems still occur. For example, under the old rules an unrelated company could be formed by another party with a name that was acceptable at the time, but is regarded "same as" under the new rules. Thus, where a company within a group now wishes to perform a name swap with another company in that group, it is no longer permitted to do so under the current rules, as even though both names may have been on the register for many years, under the new rules the name cannot now be registered as it is regarded as the "same as" that of the unrelated company.

Other issues concerning the "same as" rule are the use of the word "s" at the end of words intended to catch plural versions of names. For example, in SI2009/1085, Sch 3, under paragraph 6 of the schedule, it says the letter "S" at the end of the name is ignored. However, this not only catches plural words but also the last letter of a set of initials which is not meant to signify a plural word or words ending with the letter "s".

The problem with some of the above is that the process is controlled by a computer programme. Previously issues like this could be discussed with Companies House and resolved and members have been asked that this facility be reinstated. It has been suggested that re-applying the rules from the Companies Act 1985 would be preferable to those introduced by CA2006 (and related SIs) which cause unnecessary delay and cost. One suggestion which would benefit group companies, whilst simplifying the registration process and reducing the administrative burden of the Registrar, would be to allow the latter discretion to swap names within a group upon the provision of a supporting parent undertaking, confirming non-objection. This would be in addition to the current non-objection undertaking that can be provided by a company with a similar name but unrelated to the group wishing to conduct a name swap.

## **Do you have any other comments that might aid the consultation process as a whole?**

**Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.**

We do not consider that there is an apparent need to make major changes. The main issue causing concern is with regards to the rules regarding "same as" names which are controlled by a computer program without the ability for manual intervention. On occasions where Companies House can intervene manually, members have found this to be a very helpful, prompt and expedient method of dealing with a query. Furthermore formation of a company is not delayed (unless there are other legal issues that exist). The ability to liaise directly with a person at the point of registration is strongly supported by companies.

The regulations have moved the onus onto individuals/companies to monitor names - despite it being easier and more efficient to monitor at the point of registration. The costs involved in changing a company name at a later date is expensive as stationery, signs, websites, client communications, etc need to be made as a result. Furthermore the cost to an existing company needing to defend that name can be high. If protection at the point of registration is not given to companies, the unintended consequence would be the creation of a new industry which reviews similar name registrations and alerts companies, thus increasing costs for companies.

**Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.**

Please acknowledge this reply Yes

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

**Yes** please do.  **No**

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