Department for Business, Innovation & Skills

Company Filing Requirements 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 November 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.

	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 qualifying body

Question 1 (paragraph 45)

Do you agree that the requirement to file an annual return is removed and that the system relies on event driven filing?

No. As stated in the consultation document "approximately 210,000 director appointment / termination updates are made by UK companies each year, as direct result of completing their annual return". This demonstrates that the annual return is a simple 'safety net', one that is required on a set date, in a pre-populated format that requires a simple check or amendment if something has been overlooked. The current event driven system (such as for director changes) are not adhered to as there is no compulsion or penalty enforced if the requirement is not met.

Furthermore, the costs (resource and financial) are minimal, as stated in the consultation "98% of companies choose to file their annual return digitally", whether completed by the company or an agent using on-line filing or similar computer based system. Even where an agent, such as a freelance company secretary, is used costs are minimal as they are usually providing other services and this action used a fraction of their time but adds rigour to both company filing and corporate governance generally by ensuring returns are correct, statutory procedures are followed and company records are recorded properly.

In addition, there has been a proposal in the BIS Trust and Transparency consultation in September for companies to disclose a beneficial owners list (for holdings over 25%), the easiest place for which would be to include in the annual return (whether then disclosed publically or not) along with the registered owners.

Finally, the annual return assists those researching companies in knowing that there is one clear place to look for key information, which both saves resources and supports the governments Trusts and Transparency agenda.

Question 2 (paragraph 45)

Do you agree that companies should be allowed to simply check and confirm that their information is up to date once a year?

This on initial reading sounds attractive. As stated in the consultation "over 80% [of companies] have two directors or fewer and five shareholders or fewer" and a large proportion of these businesses will have no changes to directors or shareholders during the life of the company – it would therefore make sense to be able to click a button, similar to checking the pre-populated annual return form and confirm no changes. It would also appear sensible on initial reading to link this to the filing of accounts.

However, some members are concerned that a change to an 'annual' check will lead to confusion if linked to the filing of accounts. For example, the annual return is currently required on a specified date, which provides certainty and can be easily checked by those researching the company. The proposal is to 'confirm... once a year'. In paragraph 32 of the consultation it states that "there will only be one requirement to deliver information on a specified date – annual accounts". However, there is no specified date for filing accounts, but a 9 month deadline after the end of the accounting year. If the annual confirmation is not made with the accounts, would the reminder become due a further 3 months after the accounting deadline or 12 months after the last return/ confirmation was made?

Another issue raised by some members is the reporting period to be covered. Accounts are always made up to a retrospective period, but the annual return is to a current date – the difference could possibly confuse.

Some of the above could possibly be overcome or dismissed as not sufficiently problematic but before changing systems careful consideration needs to be made as to possible consequences.

Question 3 (paragraph 45)

Do you wish to retain the annual return?

Yes, either in its current format or as an annual confirmation subject to consideration of the points made above in Q2, in order to avoid unnecessary confusion and expense. In addition, confirmation that directors' residential addresses are correct and up to date could be added to this process (without disclosing publically).

Question 4 (paragraph 45)

Do you agree that the SIC code should be required at incorporation and maintained as part of an annual check?

We remain to be persuaded that the SIC code serves a useful purpose. However, if it must be retained, then it should remain on annual returns and changes noted therein annually, this process is not time consuming and easily reported by companies. However, the SIC code should not be added to the incorporation process as it is not always known at that stage (i.e. shelf companies).

Question 5 (paragraph 51)

We would welcome views on the impact on companies and on the transparency of the register of aligning filing dates for accounts at both HMRC and CH.

Again on first reading this would seem sensible. However, some members have advised that it is not practical in all circumstances and should not therefore be made mandatory. Some of the following reasons have been cited:

Different account formats are prepared for CH and for tax purposes;

Different filing deadlines apply

Larger companies have different departments preparing and submitting the different accounts

Larger companies often prefer separate filing dates and do not wish to reconfigure or change software systems

If the government joint filing system is improved to facilitate easier and accurate filing to both agencies, then take up by those companies wishing to take advantage of a single filing dates for both HMRC and CH will no doubt increase.

Question 6 (paragraph 60)

Do you agree that for those companies whose directors and shareholders are the same people, the requirement to make their registers available at their Registered Office or SAIL should be removed?

Again on first reading this sounds attractive as many small companies use an agent's address as the registered office and many companies' details never change from incorporation. But on deeper consideration confusion could result. For example, what would happen if a company's directors and shareholders did change after a number of years, would they be then required to start maintaining registers and if so, from when, the date of change or since incorporation? This would result in confusion for those searching for information and the company.

The intention to minimise the burden on companies having to allow access to those wishing to see the company registers is commendable, but in reality small companies rarely receive such requests. It also erodes the requirement to maintain statutory records and governance standards associated with a limited company.

Question 7 (paragraph 68)

Should private companies have the option of holding their registers at CH, in the same way that they are able to nominate a SAIL?

Again the intention to cut red tape for small companies whose details rarely change is commendable. However, the proposals would introduce a two tier system, increasing confusion as to which regulation applies, requires legislative changes and means a loss of control by companies as to who has access to their registers.

As indicated by the consultation the consequences listed under paragraph 66 would create more problems than they solve and require legislative changes to resolve issues over share transfers – it is not clear if this change would affect all companies or just those opting to hold their records at CH, if the latter then share transfers would take affect at different times between companies depending on where their registers where held. The proposal seems to require an unnecessarily complicated legislative change to resolve only a minor burden.

Question 8 (paragraph 74)

Should dates of birth be suppressed in part, or in full?

With regards to the avoidance of identity theft, the majority of respondents believe that dates of birth should be suppressed in part only to aide identification where several directors are listed with the same name (or same person with several entries).

It has been suggested in the past that each director be issued with a unique identification number (similar to a company number) to avoid duplicated entries for the same person and remove the need to rely on the date of birth as a unique identifier. The difficulties of introducing such a system for existing directors are acknowledged, but after the initial 'pain' of removing duplicate entries, the system would be much simpler in the future.

Question 9 (paragraph 79)

Should the Statement of Capital requirements be changed, as set out above?

Generally members were supportive of the proposal to simplify the Statement of Capital obligations, although some were reticent as whether the annual return requirements should be included. The main point here is that the anomalies noted in a press release dated 9 September 2009 and identified by ICSA Software, a subsidiary of ICSA concerning the disclosure requirements in relation to the amount paid and unpaid on each share (whether on account of nominal value of those share or by way of premium), are removed[1].

Question 10 (paragraph 82)

Should the statement of capital on formation requirements be the same as the other statement of capital requirements throughout the Act?

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[1] *See enclosed ICSA guidance note Statement of Capital.*

We believe so. However, we would make the point that the suggested wording in paragraph 79 is retrospective and the formation is forward looking so any wording therein needs to be in the future i.e. 'the aggregate amount **to be** paid/unpaid on those shares'

Question 11 (paragraph 87)

Do you think companies should only have to supply a statement of capital on a specified date if they have not updated their information within the year?

We believe that an annual disclosure in the annual return acts as a safety check and is not overly onerous and aides researchers and transparency.

Question 12 (paragraph 89)

Should we amend S. 555 to rely on Articles of Association to provide information on allotment of shares?

Again on first reading this proposal would appear to remove the requirement of duplicate information, but would need in depth review of the consequences before implementing. The intention behind the question is not totally clear. If this is referring to the submission of prescribed particulars and rights of shares on allotment then, where a company has a complicated share structure, it would seem appropriate to refer to the Articles of Association for the details of the all classes and types shares and just list the details of the allotment made on the appropriate form.

Question 13 (paragraph 101)

Do you agree that companies with subsidiaries must include a total number of subsidiaries? If not, why?

This would seem a reasonable proposal for certain companies. However some group structures are particularly complicated and gathering up to date lists whenever they provide information about themselves could prove onerous (option 1). Similarly, the number of subsidiaries can change between the accounts and the annual return date (option 2). The simplest option would be to have one annual list accurate at a particular date.

We would make the point that the question refers to the 'total number of subsidiaries' yet the consultation documentation (and question 14) refers to the list of subsidiaries required in the accounts and companies opting to submit a list with the annual return but then forgetting to do so. We would not support a proposal where companies must list their subsidiaries in their accounts, but would support a list being made up to a specific date and listed in one place i.e. the annual return or their website. If companies are forgetting to do the former this is an area where CH needs to act as a regulator and enforce the requirement.

Question 14 (paragraph 101)

Do you agree that the information must always be included in the accounts?

As mentioned above the list should be in one place on one date, perhaps the company should be able to choose whether this is the accounts, website or the annual return (the last option could be enforceable by CH).

Question 15 (paragraph 108)

Are there any notices that should not be sent electronically?

Fines and notifications regarding strike off should, as the consultation states, remain as hard copy notifications. Some have cited problems with existing governmental electronic systems (mainly HMRC communications) and until improved should not be the only form of notification/ communication.

Question 16 (paragraph 108)

Do you agree that the email address should be made available to other public authorities, specified in law?

Communication by email has become an accepted norm, however there is concern that this should not be the only method of communication for some types of notification (as mentioned about for fines and striking off), unless there is a proof of receipt / reading safeguard built in to the communication. There is also concern over the sharing of email addresses with other specified public authorities and some have suggested that companies should be able to opt in or out of such communication methods, plus sharing of email addresses without such consent may have data protection issues. Furthermore, if a company did agree to this method of communication by 'specified public authorities (set out in law)' the type of communication would also need to be clarified in order to avoid sanctions being imposed for inaction where an email was not received – as mentioned above proof of sending would not be sufficient, proof of receipt and reading the email would also be necessary.

Question 17 (paragraph 108)

Are there any other means of electronic communication that CH should explore?

Perhaps the acceptance of pdf documents electronically.

Question 18 (paragraph 111)

Do you think companies should be able to supply the Registrar with additional information, such as a website, to display on the public record?

The provision of additional information, such as website details, should be optional and not mandatory - it is already relatively easy to find out contact and website information on the internet. It is also wondered whether CH systems can cope with such additional information.

Question 19 (paragraph 114)

Do you think that CH has the balance between upfront validation and verification and quick and effective remedy right?

This issue has been raised by ICSA in previous consultations, and as summarised in our response to the BIS Trust and Transparency consultation earlier in the year:

1.1. One final point we would like to make is an issue that has been raised in previous communications with BIS, HMT and Companies House in 2011. This is the anomaly which has previously come to light with the introduction of web incorporation by Companies House, a policy focused on 'delivering electronic governmental services and encouraging entrepreneurship'. Here, the interpretation and implementation of EU directives and AML so that it is not considered applicable to Companies House are having the counter-productive effect and risk of creating greater levels of fraud, terrorist activity and consequential costs.

Either:

i. Money laundering and terrorist financing is a key prevalent risk, in which case AML regulation should apply equally to public and private bodies where they are exposed to that risk; or

ii. If company formation and related services (provided by company secretaries amongst others) is a low risk industry then both private and public organisations providing such services should not have to comply with, and be supervised for, AML regulations.

The second review of the Financial Action Task Forces ("FATF") global standards on money laundering and terrorist financing issued in June 2011 highlights the fact that there is growing AML concern regarding the use of companies, which makes the Companies House "light touch" web incorporation inappropriate.[2] This illustrates a conflict between the government's desire to 'cut red tape' and encourage entrepreneurialism for smaller enterprises, whilst trying to ensure transparency and trust in UK companies. If there is a real threat from, and desire to, defeat 'tax evasion, money laundering and terrorist financing' then a review of AML procedures via web incorporation at Companies House is necessary.

Finally, we see one of the major benefits for companies of the proposals in this discussion document being the potential for a reduction in the degree to which companies have to go through a full AML procedure every time they deal with a professional advisor. It would be a significant reduction in overall red-tape if they were able to rely on a slightly enhanced process at a Bank or at Companies House and then point to that 'registration' on any future engagement.

Question 20 (paragraph 127)

Do you agree that there should be a requirement for the Registered Office to have a link to the company?

Yes this would seem reasonable in order to avoid fraudulent use of addresses.

Question 21 (paragraph 127)

What criteria do you think should be specified to evidence an 'effective' Registered Office?

The criteria listed in paragraph 122 would seem appropriate provided it was made clear anyone of these individual elements would be sufficient to evidence an 'effective' Registered Office.

Question 22 (paragraph 127)

Do you think replacing an ineffective Registered Office address with a Director's address is a viable approach?

We would be slightly concerned that a director's personal address could become the public registered office address. Private communication by CH to contact the directors at their private addresses would be acceptable to rectify the situation. Companies should be obligated to provide an 'effective' registered office address.

Question 23 (paragraph 138)

Do you agree that the consent to act should be replaced with a simple confirmation that the company holds the consent?

No we do not agree with this proposal. There is little or no 'burden' on companies or directors of having to complete the Registrar's personal authentication process or sending in a

[2] (See pages 5-6 relating to *Recommendation 33* of the consultation found at: http://www.fatfgafi.org/dataoecd/27/49/48264473.pdf).

signature. The requirement in itself is beneficial in that it makes the newly appointed director aware of his obligations as a director. As consent would have to be obtained by the company anyway it makes sense to record this at CH, plus it supports the government's trust and transparency agenda.

Question 24 (paragraph 138)

Should companies be required to provide evidence of a Director's appointment, in the event of a dispute?

If the current system is maintained this would already be on record.

Question 25 (paragraph 146)

Do you agree that there should be an accelerated strike off process particularly in the event of a company hi-jacking an address?

We can understand circumstances where this might be attractive, although a correspondingly quick method to re-instate should be available where mistakes arise. A balance needs to be struck between speeding up the process and allowing companies sufficient time to react and not becoming struck off inadvertently. The two week period to respond to a final notice is perhaps a little short and although followed by a month in the Gazette not everyone would be aware of this process.

Question 26 (paragraph 146)

Are there any potential consequences of an accelerated strike off process that we should bear in mind?

See above answer in Q25.

Question 27 (paragraph 146)

Are there any other circumstances in which an accelerated strike off process would be appropriate?

See above answer to Q25.

Question 28 (paragraph 149)

We would welcome views on the assumptions and estimates used in the costs benefits analyses, particularly where we have not been able to quantify some of the costs and benefits.

No comment.

Question 29 (paragraph 149)

Are there any other costs or benefits that should be included in the analyses?

No comment.

Question 30 (paragraph 149)

We would welcome views on likely take-up of proposals, particularly in relation to company registers and electronic communications.

No additional comments other than those made already.

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.

In conclusion, the aims and intentions behind the consultation are admirable, provided balanced and careful consideration is given to the consequences, resources and legislative changes required to implement them. As with the Trust and Transparency consultation earlier in the year, a balance needs to be made between cutting red tape and encouraging entrepreneurialism whilst maintaining standards, trust and transparency – if the latter is eroded then the UK becomes a target for fraudulent and terrorist activity. As with all changes they need to be proportionate and not penalise the majority to prevent or help a minority.

There is also the issue regarding CH's role. Is it a registry or a regulator? Many contraventions are because the requirements are not enforced or penalties attached. We appreciate that the government wishes to have regard to cost effectiveness of government departments, however, at what price do we risk good regulation, standards and governance. The UK is already one of the cheapest and easiest places in Europe to form a company, a status which has a perception of being regulated, verified and controlled – but if this is not the case in reality, we risk undermining the limited company status and the UK's reputation as a safe place in which to conduct business. This ultimately will be damaging for the UK economy and business.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you check 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** ☐ No

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