

Summary: Intervention & Options

Department /Agency: Business, Enterprise & Regulatory Reform	Title: Impact Assessment of Companies (Disclosure of Addresses) Regulations 2008	
Stage: Initial	Version: 26/02/08	Date: 26 February 2008
Related Publications: Implementation of the Companies Act 2006;		

Available to view or download at:

<http://www.>

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

What protection should be given to addresses filed at Companies House.

Company law requires various addresses to be included in information filed for the public record, including the home addresses of officers. The Companies Act 2006 provides power for special treatment of certain addresses.

What are the policy objectives and the intended effects?

The protection provided to addresses balances:

- the availability of finance, including trade credit, to a company is affected by its directors' records;
- the integrity of the public record;
- risks to those at an address; and
- risks that protected information may leak into the public domain

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

Various alternatives for the different levels of protection have been considered. The preferred option balances the conflicting objectives. Its key elements are:

- a director may apply for his home address not to be disclosed to a credit reference agency (CRA) if he is at risk from violent objection to the activities of a company of which he is a director;
- the Registrar will provide a daily bulk service to CRAs but will first require evidence of compliance with conditions for protection of the information and the purposes for which it will be used.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? the 2014

Ministerial Sign-off For consultation 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:

..... Date:

Summary: Analysis & Evidence

Policy Option: preferred option	Description: Balance of conflicting objectives
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Those whose costs may be affected include vulnerable directors, the CRAs who have access to other directors' home addresses and the CRAs who don't satisfy the regulations to have access to directors' home addresses. These costs are dependant on future consultation outcomes.
	One-off (Transition)	Yrs	
	£ To be completed		
	Average Annual Cost (excluding one-off)		
	£ To be completed		
Total Cost (PV)			£ To be completed
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The affected group will be the 15,000 directors that will not have to re-apply for a Confidentiality Orders every 5 years. Assuming 3,000 directors a year, will not have re-apply, at an average cost of £100 each in current prices. The annual average benefit will be £300,000. The benefit will last indefinitely.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 300,000		
Total Benefit (PV)			£ 2,100,000
Other key non-monetised benefits by 'main affected groups' CRAs continue to be able to assess credit-worthiness of companies; low risk of directors' home addresses being leaked into the public domain			

Key Assumptions/Sensitivities/Risks 15,000 directors need to re apply for a Confidentiality Order every 5 years. Assuming on average 3,000 directors apply each year for a Confidentiality Order at a cost of £100. The average annual benefit is £300,000. The total benefit will £2,100,000 assuming a 7 year time period.

Price Base Year 2008	Time Period Years 7	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 2,100,000
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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 known	
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 £0	Small £0	Medium £	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of £	Decrease of £	Net Impact	£		

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[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.]

Current Position

1. Companies are required to file the “usual residential address”, ie the home address, of all their directors and secretaries. This information is needed for:

- the identification of the individual and thus to enable the discovery 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’ credit-status, etc.
- checks under money-laundering rules and regulations;
- enforcement of other legislation;
- 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. 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 and to the UK economy. The creditworthiness and probity of a company’s directors is 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.

3. 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 specified public 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.

4. 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 information centres. In addition, Companies House supply the entire database of company directors – a one-off “snapshot” followed by daily updates transmitted electronically - to 8 companies, including Dun & Bradstreet and Experian. These use the 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.

5. The fees charged by Companies House for its services are calculated on a cost recovery basis.

6. In general, once information is on the public record it is available to the public from Companies House indefinitely. In any event, once information has appeared on the public record at Companies House, it will subsequently be available from secondary sources.

Position from 1 October 2009

7. In provisions that will come into force on 1 October 2009, The Companies Act 2006 provides that for every director a company files:

- 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 Registrar may only disclose protected information to specified public bodies and to Credit Reference Agencies subject to conditions to be specified in regulation. .

For company secretaries, only a service address is required. .

8. The Act also provides for Regulations to provide for regulations requiring the registrar not to disclose the address of particular directors to credit reference agencies; the regulations may make provision as to who may apply for this treatment and how. The regulations may also provide for the removal of any addresses, not just directors' home addresses, from the public record at Companies House.

Options

Applications for special treatment of addresses

9. Two options were considered for a company director's home address not to be disclosed by the Registrar to a credit reference agency: the current regime for Confidentiality Orders, which provides for company officers' addresses not to be on the public record (see paragraph 3 above) and a variant under which the risk is a result of violent objection to the activities of a company of which he is a director.

10. The basis of the 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. The extra protection will be only that the address 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.

11. Noting the differences underlying the old and the new regimes, the preferred option is that the grounds for the extra protection for a director should be linked to the activities of a company of which he is a director but that all holders of Confidentialiy Orders that are valid on 30 September 2009 should automatically be entitled to the higher protection.

12. A similar approach will apply to applications for addresses on the public record to be removed: the grounds will 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. This is a stiff criterion as addresses on the public record at Companies House are also available from secondary sources which will not be affected by an address's removal from the public record.

Conditions for disclosure by the Registrar

13. Companies House usually works on the basis of accepting information from companies in good faith and does not enter into decision making in respect of the performance of his functions. Under this approach, Companies House would accept the statement of compliance as sufficient evidence. There are no costs for either Companies House or the CRAs associated with this approach

14. Alternatively, Companies House could adopt a strict approach. Under this, applicants for the information would be required to show that they have robust procedures in place for handling protected information and controls in place to prevent it being released accidentally. Companies House could also seek additional evidence from any CRA to verify that they are indeed intending to use the information for the prescribed purpose and might also check the information provided against publicly available sources.

15. This approach would increase costs for Companies House and both CRAs and public authorities applying for directors' home addresses to be disclosed to them. Nevertheless this is the preferred option as it will ensure that any leaks result from human error or deliberate intent; not from inadequate systems.

16. Companies House will disclose individual directors' addresses in response to individual requests. One option would be for this to be the only form of disclosure. In which case, the number of requests from CRAs might be thousands each day. This would avoid the additional data security risk inherent in providing data in bulk. But it would be expensive for both Companies House and the CRAs to operate on this basis and it would make it more difficult to operate the strict approach to security proposed in paragraphs 14 and 15. Companies House have discussed this option with the current customers of their bulk service. They argue that this is not a viable option as commercial credit-reports are dependent on mass information.

17. The preferred option is therefore a daily bulk service to those credit reference agencies that meet the specified conditions. The likelihood is that only fewer than 10 credit reference agencies—broadly speaking the established ones - would be interested in a bulk service. Signing up for bulk is quite an involved process, with a fair bit of work to ensure that the technical, financial and other interfaces are right. The existing bulk service is not secure. A more secure service would involve daily updates, rather than daily provision of the complete record. This would be in addition to responses to request for the provision of an individual director's home address; this would be through some form of encrypted e-mail service.

Consultation

The February 2007 consultation document

18. Last year, DTI consulted over the proposal that credit reference agencies be permitted:
- to use protected information only to vet applications for credit or applications that can result in the giving of credit or the giving of any guarantee, indemnity or assurance in relation to the giving of credit;
 - to meet any obligations contained in the money laundering regulations.

23 respondents commented on this proposal. The only one to disagree was the Direct Marketing Association who proposed an alternative based on the assumption that the agencies already have the information. 22 agreed credit reference agencies should have access (ABPI &

BIA, Bisnode, CBI, Computershare, Deloitte Touche, DLA Piper, Experian, FLA, Grant Thornton, ICAEW, ICAS, ICM, ICSA, IOD, Jordans, KPMG, Law Society, Law Society of Scotland, Neal, Prudential, PWC, RBS): of these, 4 sought restrictions so that not all those registered under Consumer Credit Act have access (Jordans; ABPI & BIA; Experian; Bisnode). 1 considered there should be more restrictions on their use of the information (ICAS), while 5 considered they should be able to use it for other purposes. The other purposes proposed were:

- Money Laundering Regulations 2003 (Institute of Credit Management)
- ongoing administration of facilities for permitted uses to (a) (Experian)
- statistical analysis of credit risk assessment (Finance Leasing Association, Direct Marketing Association)
- Crime and fraud investigation and detection (Finance Leasing Association and Experian)
- No restrictions on use (Bisnode).

July 2007 Draft Regulations

19. Draft Regulations put on the BERR website in July 2007 included a schedule with the conditions for disclosure to credit reference agencies. These Regulations do not require any person to do anything. These required a CRA to have in place and maintain appropriate procedures:

- a) to ensure that an independent person can investigate and audit the measures it maintains for security of addresses disclosed to it; and
- b) for ensuring it complies with its obligations under the Data Protection Act 1998.

They also provided that the only purposes for which the information may be used would be:

- c) vetting applications for credit or the giving of any guarantee, indemnity or assurance in relation to the giving of credit; or
- d) meeting any obligations contained in the Money Laundering Regulations or the FSA's money laundering rules.

The Regulations also specified the grounds under which an application may be made for a director's home address not to be released to any CRA and for any address to be removed from the public record.

20. These Regulations were generally welcomed. CRAs argued that the proposed purposes were too narrow as their main service is assessment of companies' credit-worthiness. They wish also to be able to continue to assess whether a director has a conflict of interest and to provide information to the police to provide information to the police.

Recent Developments

21. Over the past few months, Companies House has been talking to key customers – especially company secretarial service providers, formation agents and credit reference agencies – about the detailed implementation of the new Act. They have signalled that they see the treatment of directors' home addresses as the single most problematic issue facing them. Issues include:

- a) the question of which companies should be entitled to receive the data as CRAs.
- b) the relationship between the Companies Act and the Data Protection Act.

The policy has been reviewed in the light of the newly raised press profile of data security.

22. The fees charged by Companies House for its services are calculated on a cost recovery basis.

Affected Groups

23. Those affected are:

- (a) directors of UK companies. All will be indirectly affected as the Regulations set the conditions for disclosure of their home addresses. Those put at risk of violence or intimidation by the activities of a company of which they are a director will be directly affected by the regulation of the process for applying for their home address 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. Assuming 3,000 directors a year, will not have re-apply for a Confidentiality Order, at an average cost of £100 each in current prices. The annual average benefit will be £300,000. The benefit will last indefinitely. For our purposes we have assumed the average annual benefit will last for 7 years. Hence the total monetised benefit will be £2,100,000. There will be a non-monetised benefit for all other directors of their home addresses not being made available to CRAs that do not satisfy the conditions in the Regulations. (In addition, to the benefit, provided by the Companies Act 2006, of their home address not being on the public record.)
- (b) others whose addresses were entered on the public record at Companies House between 1 January 2009 and 30 September 2009 for whom it will be possible to apply for the address to be removed from the public record. Fewer than 50 such applications are expected. The benefits will be non-monetised.
- (c) 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.
- (d) the CRAs that wish to have access to directors' home addresses and which satisfy the conditions – there are probably fewer than 10 such agencies. The cost to them is likely to be higher than at present. ;
- (e) CRAs that are registered under the Consumer Credit Act 1994 but which do not satisfy the conditions in the Regulations – there are probably more than 14,000 such agencies. This is the converse of the benefit to directors – see group (a) above.
- (e) others wishing to see information entered on the public record at Companies House between 1 January 2009 and 30 September 2009 and which is removed from this record. This is the converse of the benefit to those at these addresses – see group (b) above. and
- (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

24. 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 £xx,000 a year.

25. 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.

Competition Assessment

26. There is a risk that conditions for disclosing addresses to CRAs 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 CRA's procedures for securing information, compliance with the Data Protection Act 1998, and purposes for which the information will be used.

Small Firms Impact Test

27.

Human Rights

28. 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 b specified public authorities and CRAs. This was considered to be compatible with Article 8 ECHR (right to private and family life). The Department will be mindful of this consideration in drafting the conditions for disclosure.

Other Tests

29. 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 minority 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	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	No	Yes/No
Sustainable Development	No	Yes/No
Carbon Assessment	No	Yes/No
Other Environment	No	Yes/No
Health Impact Assessment	No	Yes/No
Race Equality	No	Yes/No
Disability Equality	No	Yes/No
Gender Equality	No	Yes/No
Human Rights	Yes	Yes/No
Rural Proofing	No	Yes/No

Annexes

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