

**DIRECTORS' HOME ADDRESSES: SUMMARY OF RESPONSES TO THE  
CONSULTATIVE DOCUMENT URN 01/1140**

**1 General**

The Department received a total of 88 responses to its consultative document on Directors' Home Addresses. The responses came from a broad spectrum of interested parties including individuals; companies, both small and large; and organisations representative of different sectors as well as some of those listed as competent authorities in the draft regulations. Some of the responses were sent either in total or partial confidentiality.

In general, the majority of respondents welcomed the proposals although many had reservations of one kind or another. Amongst these, the most prevalent was that the proposals did not go far enough and would only be of limited scope. Some of those who responded positively thought that the regulations should be applied more widely than it was indicated they would be in the consultative document. A number of these supported the proposals of the Company Law Review which recommended that all directors and company secretaries be given the option of filing a service address as their publicly available address at Companies House.

Amongst those who were supportive of the regulations, there was general disappointment that records currently held at Companies House would not be expunged and that the draft regulations would, therefore, be of limited value other than in respect of new directors and those directors who move house after the granting of a Confidentiality Order. There was a corresponding concern that it would take a long time before any benefits would be seen by existing directors. It was also pointed out that details of residential addresses would still be available elsewhere, for example, on electoral registers.

There was concern that the draft regulations made no reference to the disclosure of residential addresses in a company's Register of Members and in its annual return. Accordingly, if a director or secretary had disclosed their residential address on the share register of any company of which they were an officer, or to which they may later be appointed, the information would remain readily available on its Register of Members. [Comment by DTI - although members of a company are required to supply an address, this address does not have to be the usual residential address; it may be a service address.]

Some respondents suggested that it should be possible for a company, or a group of companies, to be able to file a group 'corporate application' for all of its officers where threats derived from the sector in which the group as a whole operated (see also sections 4 and 5 below).

Some of those who were, in principle, opposed to the regulations pointed out that public disclosure of the home addresses of the controllers behind a limited company was part of the price to be paid for the benefit of limited liability. Also, it was thought that rogue directors would exploit any loophole to avoid giving home address details if this were an option, possibly on the most tenuous grounds. It was

also mentioned that residential addresses were vital for accurate identification and reporting of matters of legitimate public interest, including detection of wrongdoing.

Other points made were that without directors' home addresses being verifiable against a credit reference agency's records, credit and other services may be refused, thereby hampering a business. It was also mentioned that aggrieved creditors and other victims of a company's wrongdoing would suffer from the proposals (see section 2 below), which, it was suggested, would increase administrative burdens, but offer little real protection for the company director who had a genuine fear of attack.

The Government requested comments on the approach set out in the consultative document and, in particular, on the following proposals.

**2 Paragraph 2.6: A partial Regulatory Impact Assessment is set out at Annex C. We invite comments on this draft.**

Only a small number of respondents commented on the Regulatory Impact Assessment. Some mentioned that, without knowing the fee for an application, it was difficult to comment.

A few respondents pointed out that for a small, recently incorporated company, directors' guarantees, (and, therefore, their home addresses) would normally be required before the company was granted credit. This information would be essential to a creditor if the company should default on its debts, and would enable the creditor to seek payment or redress direct from the directors themselves. The proposals, however, would affect the rights of a creditor to have access to the home address of a company director for the purposes of granting credit, the prevention of fraud and enforcement of validly obtained judgments. It was emphasised that creditor access to the private address of the individual concerned was necessary for effective enforcement procedures. Without it, it was stated, bankruptcy would be the only remaining option that could be enforced by the creditor.

The assessment of a director's credit worthiness would be much more difficult resulting in possible delay or, indeed, a decision not to extend of credit to a director. It was mentioned that the regulations would also impact on businesses generally where a director applied for credit on his own behalf or agreed to give a personal guarantee.

It was suggested that there was considerable over simplification of the reasons why people search the public record for directors' details. Some respondents stated that, although it was acknowledged that credit reference and customer validation were important, commercial entities, professional advisers and business information providers/analysts also carried out searches for many other reasons. Searchers or users of information would waste resources, overheads and time by locating a service address. The impact could be significant, for example, for large volume searchers or in critical legal/commercial deals which were often time critical.

It was also mentioned that the resources and costs burdens relevant to a company's registers, records and company secretarial functions were not reflected. Not just individual companies but many others including professional advisers (especially those assisting companies with their secretarial functions) and secretarial software suppliers would be affected.

One respondent mentioned that there was a limited number of large-scale commercial users of Companies House bulk data feeds (Information Providers) who purchased the data and resold it, for legitimate needs, to the public, as well as some of the Competent Authorities listed in the draft regulations. It was claimed that the regulations would give the Registrar, as a supplier of data, an unfair advantage over Information Providers.

Another point made was that a prospective director, who was not a director of an existing company and who wished to apply for a Confidentiality Order would need to follow procedures involving the purchase of an off-the-shelf company; this would incur greater expense than otherwise. There was also concern that the procedure for making an application, including the possibility of making an appeal, would involve a significant delay before an applicant knew whether a Confidentiality Order had been granted.

**3 Paragraph 5.2: Is it appropriate to apply to Limited Liability Partnerships the same benefits and similar Regulations as those proposed in this Consultative Document?**

All 25 respondents who addressed this question agreed that the same benefits and similar Regulations should be applied to Limited Liability Partnerships (LLPs). It was pointed out that limited liability partners faced potentially the same problems as directors and secretaries of limited companies and should, therefore, share the same rights and responsibilities. It was anticipated that LLPs would be increasingly used as the vehicle for small and medium sized businesses; if the same benefits were not applied to LLPs then its attractiveness as a business entity might be reduced.

**4 Paragraph 6.3: We welcome comments on prioritisation. Is it necessary to prioritise, and if so, have consultees suggestions as to how this might be accomplished?**

In general, most respondents to this question were in favour of prioritisation and some took the opportunity to put their own sector forward as a candidate. Some respondents considered that there should be a fast-track approach but only for certain applications while there was both support for, and disapproval of, a sectoral approach in, more or less, equal measure.

Some respondents thought that it would be inappropriate for certain sectors to have pre-determined rights to confidentiality but that some sectors should be given priority. If applications were to be fast-tracked by generic category, then this should not lead to Confidentiality Orders being granted as a matter of routine.

A number of respondents suggested that vulnerable companies should be allowed to make a single application on behalf of all directors; others suggested that a single application be allowed on behalf of all the directors of companies within a group of companies where one might be vulnerable.

A small number of respondents thought that each application should be assessed on its own merits as a sectoral approach would allow unscrupulous directors to take advantage of the system.

Some respondents considered that prioritisation would lead to inequity and that no large company should be required to disclose the home addresses of any of its officers. Others reiterated their support for the Company Law Review's proposal that all directors and company secretaries be given the option of filing a service address as their publicly available address at Companies House.

**5 Paragraph 6.7: Annex B is a draft application form. We invite consultees to comment on its design and content.**

Of the respondents who commented directly on the application form, two stated that they thought that it was satisfactory and therefore did not need to be amended.

Some respondents mentioned that a drawback with the current wording of the application form was that it did not explicitly cater for the situation where someone was, or intended to become, a registered officer of a company which did not engage in one of the listed activities but was still at risk due to the company being within the same group as other companies that did engage in such activities. It was proposed that an application on the basis of such linkages should be expressly provided for in section I of the form. In section I 'Support Industry for the Above' should be made a discrete category.

Some respondents also suggested that it would be beneficial if an application for a Confidentiality Order could be made for all the UK companies of a group and which would apply to all registered officers who were from time to time appointed to such companies. The facility for a corporate application would be a much simpler and cleaner option than individual applications. One respondent mentioned that it would be normal for a company to want to file applications for all its directors. The form might cater for this so that the decision-making process only needed to consider the grounds in respect of the company and the decision reached could then apply to all the directors concerned. It was considered that this change in approach could reduce the paperwork and administration, and ensure consistent decisions were made in respect of all the directors of a company.

One respondent mentioned that it would be helpful if the term 'Police' could be defined (for example, local police, Special Branch or the NPOIU at Scotland Yard) so that it was clear with whom proposed applications might be discussed.

It was also suggested that it would be helpful if an explanation of the rationale for the six levels of risk could be given as there were doubts about the practicality of having this number of levels shown on the form; the nuances between each level would be lost. It would also be helpful to have stated the definitions of each level of

risk. For example, it might be more practicable to think in terms of specific, high-risk (1), general, high-risk (2), moderate risk (3) and low or no risk (4).

**6 Paragraph 6.10: Should the fact that a Confidentiality Order is in operation be signposted on the public record? We are of the view that this is undesirable but would be interested to hear views.**

About three-quarters of all respondents who addressed this question agreed that a Confidentiality Order should not be signposted on the public record. The most common reason given for this was that it would draw attention to the fact that a Confidentiality Order was in place and highlight both the director/secretary and the company. Not all, however, agreed that this would necessarily compromise the company officer's personal security since a home address would not appear on the public record. Some respondents pointed out the potential for risk to be transferred to the service address.

It was also mentioned that service addresses should not be signposted on the records of a non-risk company where an at-risk director may have another directorship.

Others were in favour of Confidentiality Orders being signposted on the public record for reasons of transparency and accountability. Interested parties would thereby be made aware that should they wish to track down an individual director, this would have to be done via an authorised person. If not flagged, confusion could arise for credit reference agencies when assessing those directors. Moreover, flagging a Confidentiality Order, or indicating that an address was a service address rather than a home address, would save needless searching or enquiries at the service address and would therefore save the time and expense of legitimate enquirers. If the existence of a Confidentiality Order were omitted from the public record, the fact that a service address was being used would, it was thought, become readily apparent to those engaged in nefarious activities. It was suggested that it would be far more advantageous to legitimate enquirers by knowing the true position at the outset than it would be disadvantageous to those intent on mischief.

**7 Paragraph 6.11: We propose that a Confidentiality Order should last for 5 years and that beneficiaries should then re-apply. Is 5 years about the right life span of a Confidentiality Order?**

About two thirds of all respondents who answered this question agreed that five years was about the right life span for a Confidentiality Order; some of these respondents also mentioned that it should not be shorter and that Companies House should be responsible for triggering reminder notices for renewal.

It was also mentioned that there was little point in carrying out a review where the original threat had dissipated during the lifespan of the Confidentiality Order and that the renewal process should be simpler than the initial application; the presumption should be that the Confidentiality Order would continue in force.

Only two respondents considered that 5 years was too long a period without review before re-application. Another respondent considered that it was not possible to fix a time period for the duration of a Confidentiality Order which would be appropriate for all circumstances and put forward three years for the life span, with the possibility of renewal.

Of those who thought that five years was too short, some thought that ten years would be better while others thought that a Confidentiality Order should be permanent as this would reduce the amount of bureaucracy as well the chances for errors to occur.

**8 Paragraph 6.13: Service addresses should be a physical location in the EEA; registered offices may be used but not Post Office Boxes. What are consultees' views?**

About half of those who responded to this question were, more or less, in agreement with the proposals put forward in the consultative document; that is, that service addresses should be a physical location in the EEA and that registered offices may be used but not Post Office Boxes.

Others disagreed on some of these points. Some respondents suggested that a service address which had a physical location could itself become a target. Some thought that if the service address were to be the registered office, then this would place employees of the company at risk. Alternatively, the providers of the registered office would be at risk - any address that was used would put the occupants at risk. For this reason it was also considered that the use of Post Office Boxes should be permitted.

One respondent questioned the practicality of a director using one service address for all directorships. This respondent pointed out that an individual might be a director for organisations which were not in anyway connected and suggested that there was no reason why an applicant should not have multiple service addresses provided these were all declared in the appropriate manner.

Two respondents thought that the service address should be in the same country/jurisdiction as that of the registered office of the company, and not anywhere in the EEA. Failure to include such a requirement might result in the service address falling outside the jurisdiction of the courts in the country in which the company was registered. It was also suggested that having a service address anywhere in the EEA would facilitate abuse.

One respondent stated that as there was no requirement for the residential address of a director to be in the EEA, there was no reason for the service address to have to be in the EEA either.

**9 Paragraph 6.17: We suggest that, as a risk of violence or intimidation can continue after the original threat has dissipated, and given that the threat would be reviewed on reapplication after 5 years, there is little to be gained from a review of a Confidentiality Order where ostensibly the original threat has been removed, or become diluted during its life. We invite comments on this proposal.**

The vast majority of those who addressed this question were in agreement with the proposition. Respondents agreed that it was difficult to determine precisely when a threat might have been lifted or become negligible and that some directors might continue to need protection after resigning from their office.

It was generally welcomed that there would be a mechanism in place for a Confidentiality Order to be revoked if there were grounds to suspect that the facility was being abused.

One respondent thought that it would be unfair to the individual, if the Secretary of State were to revoke a Confidentiality Order because the company had failed to submit documents to the Registrar. This respondent also suggested that the Order could lapse in relation to a specific company if documents had not been filed in respect of that company within, for example, 60 days of being notified to the director.

**10 Paragraph 6.18: We seek comments on access. In particular should there be any additions to (or deletions from) the list of authorities who have access rights to information on the secure register appearing in Schedule 1?**

Of those who commented on this question only a small number expressed agreement with the list as drafted. Some respondents did not think that the list was specific enough or give sufficient detail about the level of authority required for access; for example, one respondent thought that police constables should not be allowed access without the approval of a senior officer. There was also concern about the extent of the list of competent authorities, particularly the right of private individuals acting in certain capacities, such as insolvency practitioners. It was considered that information in the hands of such a person might accidentally be disclosed to others who had no right to see it. One respondent suggested that anyone who was not a public official should obtain the authority of the DTI as the body (usually) ultimately responsible for regulating such persons.

There was also concern that appropriate security arrangements should be in place for the secure register. Some respondents said that access needed to be monitored and fully recorded and that full justification should be given for inspection by competent authorities.

Of those who agreed with the principle of access being available only to a restricted list of authorities some, but not all, thought that there should not be any right of access, whether through the courts or otherwise, for others. Some respondents suggested that requests from those who were not competent authorities to access the secure register would have to be specific and also that they would have to provide a *bona fide* reason for the enquiry being made. It was

suggested that consideration be given, as an additional safeguard, to a record being kept of all persons who made enquiries about any director on the secure register.

Many thought that the list of bodies able to access the secure register was too narrow and that access should be much more widely available. It was pointed out that there was no reference to access under civil law, even through the Courts. Accordingly, access to the secure register should, at the very least, be available on an order from a District Judge; the applicant should be required to show good reason why such an order should be granted. The rights of those with a validly obtained civil judgment should also be recognised so that the list included "Any person or business who has obtained a valid and enforceable civil judgment". One respondent suggested that, in such circumstances, directors should be notified if such an application were made and be given the opportunity to prevent access if they could show that such access was likely to place them or their organisation at risk.

The following were put forward for addition to the list:

- Any person or business who has obtained a valid and enforceable civil judgment
- Auditors
- Banks
- Company Members (ie shareholders)
- Creditors
- Credit Reference Agencies
- Debt Collection Agencies
- Director General of Fair Trading
- Established Information Providers
- Financial Investigators accredited by the Asset Recovery Agency and the Serious Fraud Office
- Financial Services Authority
- Information Commissioner
- Licensed Private Investigators (due soon under The Private Security Industry Act 2001) who are members of a recognised body and subject to a Code of Conduct and disciplinary procedures
- Liquidators
- Office of Fair Trading officers
- Receivers appointed under the Law of Property Act 1925
- Serious Fraud Office
- Solicitors
- Trading Standards Officers
- Trustees in Bankruptcy
- Weights and Measures Authorities (or Local Authorities)