

COMPANY
LAW

**DIRECTORS' HOME
ADDRESSES**

A CONSULTATIVE DOCUMENT

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Department of Trade and Industry

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OCTOBER 2001

URN 01/1140

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1 FOREWORD BY MELANIE JOHNSON MP, MINISTER FOR COMPETITION, CONSUMERS AND MARKETS

1.1 The requirement for company directors to disclose their usual residential address, on the publicly available record maintained at Companies House and at the company's Registered Office, has been with us since 1917. The degree of accountability and transparency that it brings is an important feature of corporate activity. It serves a useful purpose to the benefit of creditors, shareholders and others, and helps to highlight the duties and obligations of company directors charged with running an organisation whose debts they may have no personal responsibility for. But increasingly there have been signs that the benefits of having this information available to all has been abused by a few. Events at Huntingdon Life Sciences and other companies directly or indirectly associated with the pharmaceutical, biotechnology and certain other research-based industries, have made it apparent that the information available on the public register provides an easy route for animal rights activists to obtain, at a stroke, the home addresses of directors of all such companies. Directors and their families have been subject to violence and intimidation, sometimes of a distressing and terrifying nature. The Government strongly deplores and regrets this development and believes that, in the circumstances it is essential to respond and remove the requirement for public availability of home addresses in certain specific circumstances.

1.2 Earlier this year the Government introduced measures to combat the activities of extremist animal rights protestors and other activists seeking to harass, intimidate or in some cases assault directors and employees of Huntingdon Life Sciences and other companies conducting research or supplying contract services. This move was a mark of the Government's determination not to allow a few individuals to threaten an industry which is vital: because of its role in bringing forward innovative and increasingly more effective medicines: vital as a major UK employer; vital for the inward investment that Research & Development brings to the UK and vital to our export sales in world markets.

1.3 The Government's measures included provisions in the Criminal Justice and Police Act 2001 amending the Companies Act 1985, which will allow directors, company secretaries and, in the case of overseas companies, permanent representatives, who consider that the public availability of their usual residential address creates a serious risk of violence or intimidation to apply for a Confidentiality Order. The granting of a Confidentiality Order will remove the requirement for the public record to display the director's home address. Instead, the public record will show a service address. The residential address will still have to be disclosed to Companies House but it will be held on a separate, secure register with access limited to designated authorities such as law enforcement officers.

1.4 The provisions introduced by the 2001 Act are to be put into effect by Regulations which we hope to introduce into Parliament soon. These regulations are the subject of this consultative document. We believe it is

right to consult to ascertain views from a wide spectrum of interests, and to determine whether the Regulations have been properly drafted. We also believe that there is a strong public interest in implementing these Regulations as quickly as possible so that persons at risk can take advantage of the protection they afford. That is why the consultation period is shortened.

1.5 We believe that these measures will be an important step in offering protection to those who are at serious risk of violence or intimidation. We would welcome your views on the issues raised in this document, and on the draft Regulations.

MELANIE JOHNSON

October 2001

2 INTRODUCTION

2.1 The Criminal Justice and Police Act 2001, which obtained Royal Assent in May 2001, amended the Companies Act 1985 by inserting new sections¹ which allow a present or prospective director, or company secretary, or permanent representative² to apply to the Secretary of State for Trade and Industry for a Confidentiality Order. The effect of a Confidentiality Order will be to disapply the requirement for the director's usual address to be available for inspection on the public record. The Secretary of State will grant a Confidentiality Order if she is satisfied that the public availability for inspection of particulars of a director's usual residential address "creates or is likely to create, a serious risk that he or a person who lives with him will be subjected to violence or intimidation". (Section 45 of the Criminal Justice and Police Act 2001).

2.2 Once a Confidentiality Order is granted, a service address will replace the director's usual residential address where it would have otherwise appeared on company documents filed after the date that the Order came into force (see paragraph 6.4 below). In addition, the register of directors maintained by Companies House will also reflect the service address rather than the usual residential address. The director's private address would still have to be provided to Companies House but this would be kept on a separate, secure register, with access limited to certain law enforcement and other agencies listed in Schedule 1 to the draft Regulations. For the avoidance of doubt, the existing historic records held at Companies House will not be expunged or otherwise deleted. Company records are kept in a variety of formats at Companies House – electronically as images, on CD roms, microfiche and on paper, and it is not practicable to remove all earlier references to a director's home address. Moreover, information from Companies House is regularly provided to, and stored by, information providers, so the information on directors' current home addresses is already in the public domain.

2.3 The measures on directors' home addresses were introduced at the Committee stage of the then Criminal Justice and Police Bill. This was as a direct response to concerns that directors of companies targeted by animal rights activists were at risk of violence and intimidation, and that information available at Companies House was one of the ways in which the animal rights activists were able to discover home addresses. The Government decided that such directors should have the protection of not having their residential address open to public view. However, the legislation is not restricted to directors of companies targeted by animal rights activists: all directors who are at serious risk of violence or intimidation will be eligible to apply for a Confidentiality Order.

¹ Section 45 of the Criminal Justice and Police Act 2001 introduced sections 723B to F into the Companies Act 1985.

² A permanent representative means, in this case, a representative of an overseas company with a branch in the UK. For convenience, the generic title of directors is henceforth used to denote these three categories.

2.4 The amendments to the Companies Act 1985 introduced by the Criminal Justice and Police Act 2001 state the criteria for a Confidentiality Order, and provide for Regulations which will set out the detail of how the measures will work in practice. It is these Regulations (set out in Annex A) which are the subject of this consultative document. We would welcome comments, both on the policy set out in this consultative document and on the Regulations themselves. The Regulations will be debated in both Houses of Parliament before they can come into effect.

Deadline for comments

2.5 Given the high level of public interest in bringing these measures into operation as quickly as possible, the period for consultation is necessarily short, as the intention is to lay the Regulations before Parliament as soon as possible after it resumes sitting. We would therefore welcome replies, preferably by e-mail, by **9th November**. Replies should be sent to:

Consultation on Directors Home Addresses
Company Law and Investigations Directorate
Department of Trade and Industry
Room 507
1 Victoria Street
London SW1H 0ET

Telephone: 0207215 0403 Fax: 0207215 0234
E-mail: cca.comments@dti.gov.uk

Further copies of this document can be obtained from the Department's website: www.dti.gov.uk/cld/ or by request (telephone 0207215 0409).

Costs, savings and benefits

2.6 A partial Regulatory Impact assessment is at Annex C, setting out the possible costs and benefits to business. We would welcome comments on the contents of the draft.

Open Government

2.7 Your response to this consultation exercise may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquiries outside the UK, or published by any means, including on the Internet.

3 PREVIOUS CONSULTATIONS

3.1 There have been two recent consultations on the issue of directors' home addresses. In 1997 the Department issued a consultative document which proposed that companies should no longer be required to record in their own registers the home address of directors and company secretaries. Further, that whilst they would still be required to provide the home address of directors and secretaries to the Registrar of Companies, they could request, on payment of a fee, that this information be kept off the public register by furnishing the Registrar of Companies with an alternative service address for the public record. The home address would still be maintained but kept on a separate, secure register which would be accessible only to public authority regulators and the police. Responses to this document were mixed, with some responses being strongly in favour of the proposal whilst others were strongly opposed. In March 1998, following consideration of the responses, the then Minister of State, Ian McCartney, announced that there would be no change to the existing law.

3.2 The second, more recent, consultation on this issue arose in the context of the Company Law Review. In its final report published in July 2001, the independent Company Law Review recommended that all directors be given two options. A director could, as now, file only the residential address which would be kept on the public register. Alternatively, a director could file both a service address and residential address: the service address would be placed on the public record and the residential address placed on a separate, secure register to which access would be restricted to certain public authorities. Other parties such as members or creditors should have a right to apply to the Court for access to a director's residential address. The Review also recommended that the requirement for company secretaries to file their residential address be abolished. Ministers have not yet taken a view on these recommendations from the Company Law Review.

3.3 Ministers did consider the Company Law Review proposals in the context of both the original decision to include a section in the Criminal Justice and Police Act 2001, and in the considerations that led to the draft Regulations at Annex A. The present view, however, is that the provisions should be implemented to offer protection to those who are at serious risk from violence or intimidation and there are no current plans to widen the scope to any other class or category of director. However, future Companies legislation will provide the opportunity for a further change to the law if Ministers consider this necessary in the light of experience.

4 GUIDANCE

4.1 The Department intends to issue guidance to assist directors in considering whether they would be eligible to apply for a Confidentiality Order, and to assist them in completing the application form. It is anticipated that this guidance will be available soon, and in any event when the draft Regulations are laid before Parliament.

5 LIMITED LIABILITY PARTNERSHIPS

5.1 Under the Limited Liability Partnerships Act 2000 and Regulations made under that Act (the Limited Liability Partnerships Regulations 2001, SI 2001/1090), there is a requirement for the members of LLPs to file at Companies House their usual residential address. It is intended that the LLP legislation will be amended so as to provide that the protection offered to directors of companies will also be offered to members of LLPs, i.e. that members who are at serious risk of violence or intimidation will be able to apply to the Secretary of State for a Confidentiality Order. It is proposed that the amendments to the LLP legislation will, so far as is possible, reflect the substance of the draft Regulations at Annex A amending the Companies Act 1985. It is proposed that the necessary amendments will be introduced as quickly as possible after the Regulations amending the relevant Companies Act provisions have been introduced.

5.2 We would welcome the views of consultees on the issues arising from the application to LLPs of provisions similar to those set out in the draft Regulations at Annex A.

6 PRINCIPAL ISSUES

Summary

6.1 The draft Regulations are at Annex A. In brief, the Regulations set out how an application for a Confidentiality Order is to be made, how the Secretary of State will come to a decision on an application, what the effect of a Confidentiality Order will be, how long an Order will remain in force and how it may be revoked, and what rights those whose application for a Confidentiality Order is rejected have by way of appeal. The Regulations also provide for the fee to be paid on application. The Regulations further describe the regime that will apply for access to the secure register of home addresses, and describes those public authorities which will have access as a right. The Regulations also set out the offences and penalties for knowingly or recklessly submitting false information in an application for a Confidentiality Order, and for disclosing confidential information in contravention of the Regulations. Some of the more important issues are discussed separately, below.

Applications

6.2 Those seeking to benefit from a Confidentiality Order will need to submit an application form to Companies House (a draft form is at annex B). The application form will have to be accompanied by the relevant fee, and include a service address for the public register and a list of all companies of which the applicant is or proposes to be a director (see also paragraph 6.4). The form will be processed and an assessment of risk undertaken. This may involve submitting the form to the police for advice on the risk assessment. Additionally, advice of a generic nature of risk may be provided by the police in advance.

Applications for a Confidentiality Order – a sectoral approach ?

6.3 We have considered whether the Regulations should specify, given the origins of these measures in the context of action by animal rights extremists, that any particular sector or industry should have a predetermined right for its directors to be granted a Confidentiality Order, or be afforded any particular priority. As the Secretary of State's discretion on whether to grant a Confidentiality Order cannot be fettered, the Regulations do not include specific reference to any particular groups. We will however endeavour to apply a fast track procedure for those who urgently require the benefit of the protection offered by these new measures. For example, certain sectors, companies or directors could be designated in advance and applications from them treated as priority cases. The Police could provide guidance on classes of risk of a generic nature in advance. We would welcome comments on the prioritising of applications.

Effect of a Confidentiality Order

6.4 Once a Confidentiality Order has been granted the Secretary of State through Companies House will notify the applicant. The applicant will need to

inform all the companies of which he/she is a director so that each company can update its own records and ensure that the private address of the director is removed to a secure part of the register. Each company will then need to inform Companies House that changes have been effected. To facilitate this, Companies House will include the relevant forms necessary for the company to file changes of circumstances at Companies House with notification to the applicant that the Confidentiality Order has been granted. The service address will be recorded on the existing 288c form whilst the private address must be filed at Companies House on a newly created form. This step – the company notifying Companies House of the service and private address of a director – is necessary because the effects of confidentiality only operate on documents filed after the granting of a Confidentiality Order.

6.5 An application can be made by an individual who is not at the time of the application a director of any company but who proposes to become a director. Where such an applicant is granted a Confidentiality Order they will, on appointment, need to inform the company so that the company will keep their private address secure and record the service address on the company's publicly available register. The company will also need to send to Companies House form 288a (particulars of new director) which will record the service address, and a new form (723SR) so that Companies House can record the director's private address on the secure register.

6.6 As far as the Register of Directors is concerned, Companies House will, as soon as they are notified of a change of particulars under Section 288, amend the information on this record to reflect the new (service) address for the director.

Assessment of risk

6.7 As explained earlier, the primary legislation requires the Secretary of State to determine whether or not a director should be granted a Confidentiality Order. Normally, this will involve taking into account the views of the Police. The application form, a draft of which is at Annex B, is designed to provide the Department and the police with reasonable information on which an assessment can be made. It may be necessary for more information to be requested, but the expectation is for this to be the exception, rather than the rule. It is clearly in the interests of those who wish to benefit from the provisions to produce, in the first place, the necessary evidence that they are at serious risk of violence or intimidation if their home address continues to be available on the public register. We would invite comments on the content of the application form.

Application Fee

6.8 A fee is payable when an application is made. The fee may include recovery of the costs of processing an application, together with a contribution to the cost of establishing the systems necessary to deliver the service. At present, Companies House operates relatively open systems with low access security, and a confidential register would require the development of a new

secure system. Part of the fee may be used to contribute towards the costs incurred by the police in providing an assessment of risk. If the fee does not accompany the application form for a Confidentiality Order, the Secretary of State will reject the application and return it to the applicant. Where the application for a Confidentiality Order is considered but rejected, or where the application is withdrawn, the fee will not be returned.

Appeals

6.9 Although it would be possible for the Regulations to be silent on the question of appeals from unsuccessful applicants, which would have left judicial review as the only remedy, the draft includes provision for the possibility of appeal, based essentially on a point of law. Clearly, it is up to applicants to put forward their arguments for a Confidentiality Order in their application. However, it seems appropriate for arrangements to be put in place to provide a route for appeal where the applicant believes that the law has been applied incorrectly. Regulation 5 sets out the grounds for making an appeal to the courts: an unsuccessful applicant may appeal within 21 days to the High Court on the grounds that the Secretary of State's decision not to grant a Confidentiality Order is unlawful, irrational or unreasonable, or has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

Disclosure of Confidentiality Order

6.10 We would welcome views on whether the fact that a Confidentiality Order has been granted should be disclosed on the company's own register and/or the annual return filed at Companies House, and/or the Register of Directors. More specifically, should the fact that a service address is being used be flagged in some way? The interests of transparency would seem to be served by such disclosure, and there are good arguments that those who need a director's home address for law enforcement or insolvency related purposes, should know from the outset that a particular address is in fact a service address and that a private address exists on a secure register to which they have rights of access. Against that, the whole thrust of these measures is to offer directors who are at serious risk of violence or intimidation a form of privacy, and to advertise the fact that they are benefiting from a service address might be considered by some to be strange. (Of course in some cases it will be obvious that service addresses are precisely that, and not residential addresses). It could also lead to activist groups using the publicly available record for an entirely novel and undesirable purpose. It is also possible that a beneficiary of an Order who is a director of several companies, may not wish those who search the public record for information on the non-targeted companies to know about the Confidentiality Order. The same argument might apply if the reason for the Confidentiality Order was personal, rather than linked to a particular company's activity. There might also be practical difficulties with enforcing a requirement for the existence of a Confidentiality Order to be disclosed at the company's Registered Office. This leads us to conclude that there should be no indication on the public

record that a Confidentiality Order has been granted, but we welcome views on this point.

Duration of Confidentiality Order

6.11 There would be little attraction for those who are benefiting from a Confidentiality Order and for those administering the process, for the period of an Order to be so short as to require repeat applications every year or so. Equally, in many circumstances, there must be a reasonable expectation that after a certain number of years the risk of violence or intimidation will diminish. A lifetime exemption from the normal requirements seems inappropriate, and it is proposed that after a certain period the beneficiary of a Confidentiality Order should be obliged to apply for reassessment. The proposal is that this requirement should be after five years: a shorter time does not look justifiable on grounds of cost to the applicant, and resource to those involved in the assessment process. Any change in the risk profile might well become apparent after five years, and a requirement for reassessment after five years looks a proportionate and reasonable compromise. It is proposed that the Confidentiality Order should denote the date on which it expires and that it would be the responsibility of the director concerned to apply for a renewal of the Confidentiality Order before it expired so that the public record would continue to show a service address. In the event that a director did not make such an application, or the application was late (ie after the five year period of the original Confidentiality Order had expired), the Registrar would have the power to place the director's home address back on the public register. (See also Revocation - paragraph 6.15 below.) We invite comment on the duration of a Confidentiality Order.

Service Address

6.12 A service address should be an address which would accept communications and the receipt of notices or other processes, so that documents served at the service address, for example, in connection with court proceedings, would be regarded as being properly served. The service address would be publicly accessible. It must be in the EEA³. We propose to require that beneficiaries of a Confidentiality Order should be required to supply one service address only in respect of all the companies of which they are a director. This will remove the possibility of duplication of entries on the Directors' register at Companies House, and the consequent risk of confusion. It will also assist all searchers to identify individuals with certainty given that the address, along with other key information, will enable the entries to be matched with greater certainty.

6.13 We have considered whether there should be any types of service address that should be prohibited— such as a company's Registered Office, or a PO Box number (although in many cases it is possible to establish the address of a person using a PO Box address). We have decided to allow any address, provided that it is an address which has a physical presence (which

³ European Economic Area

would rule out PO Box numbers). The purpose of the service address is to offer an alternative to the director's home address, not an alternative to the company's Registered Office or business address, although it will be open to an applicant to use the Registered Office as the service address. The service address should be an address which is capable of receiving recorded and registered mail, and signing for it and it will not be a defence for a director to claim that items of mail were not received if an effective service address was not set up to fulfil this function. The situation is rather different where a completely fictitious or non-existent service address is supplied. The only conclusion to be drawn by the provision of such an address is the deliberate attempt by a director to avoid the obligations and responsibilities under company law. Here, the Regulations set out the enforcement action that may be taken (Revocation action and/or prosecution). Comments on these proposals would be welcome.

Company Registers

6.14 As explained earlier, the applicant will need to inform all of the companies of which he/she is a director that a Confidentiality Order has been granted. Each company will then need to ensure (a) that they create a separate, secure register to keep details of the director's home address and (b) that they amend the publicly available register to record the service address. The company will have to notify Companies House that these changes have been recorded by filing, very much as at present, form 288c for an existing director or form 288a if the particulars relate to a new director. These forms will show the service address. The company must also send to Companies House a new form (723SR) which will enable Companies House to record the director's home address on the secure part of its register. (Companies House will have sent these forms in blank to the applicant with the notification that a Confidentiality Order has been granted). Where a Confidentiality Order is in force, it will be important that company secretaries observe these new measures so as not to disclose a director's private address on the publicly available part of their company's register. It is also their responsibility, as at present, to ensure that Companies House is notified of relevant changes of particulars of directors.

Revocation of Confidentiality Order

6.15 The Regulations set out the circumstances under which a Confidentiality Order may be revoked. An applicant would not be entitled to the continuing privacy afforded by a Confidentiality Order if it was subsequently discovered that the original application was false in some material respect. This would include supplying an entirely fictitious service address, as well as providing materially misleading or false information on which an assessment of risk would be based. The Regulations set out the process which would be undertaken in such an event, providing for the opportunity for the affected director to make representations before a decision was taken on whether revocation was appropriate

6.16 Included in the draft Regulations is the power for the Secretary of State to invoke the revocation process where the company fails to submit documents to the Registrar after a Confidentiality Order had been granted. We describe earlier (paragraph 6.4) the sequence of events once a Confidentiality Order is granted. Clearly it is in the interests of the applicant to ensure that the service address appears on the public record as soon as possible once a Confidentiality Order has been granted and that the secure register at Companies House records the private address. But if this information is not filed a sanction must be available for the Secretary of State to be able to revoke the Confidentiality Order.

6.17 We have also considered whether the Confidentiality Order should be revoked in circumstances where it appears that the original grounds for granting it no longer apply, for example if a company stopped undertaking the work which was the cause of the risk or where a director resigned from a targeted company. The difficulty with this approach is that the risk to the individual may continue after the company has stopped undertaking the work against which there were protests, or after the director has resigned from the company. It would also be difficult to make an objective assessment of whether the risk had diminished. Given that a re-assessment is due after five years, we are not minded to introduce a provision such that a change of circumstances would lead to a Confidentiality Order being revoked, but we would welcome comments on this point.

Access to Secure Register

6.18 The Regulations set out a list of law enforcement officers, regulators, insolvency practitioners and others who will have automatic rights of access to information held on the secure register holding directors' private addresses. Although permitted in the amendments to the Companies Act, the Regulations make no provision for any other person to apply for access to the secure register. The whole rationale for these measures is to afford protection and privacy for directors at serious risk of violence or intimidation, and it is difficult to justify access, even through the Courts, for creditors, shareholders or other interested parties. It is acknowledged that in its proposals, the Company Law Review recommended that access via a Court Order should be permitted, but the Company Law Review proposals envisaged a regime of privacy available to all directors, not just those directors who were at serious risk of violence or intimidation. Views on the list of authorities entitled to inspect information on the secure register, and on access would be welcome.

Offences

6.19 The Regulations set out definitions of offences in two specific areas: the making of a statement which is knowingly or recklessly false in a material particular viz. the details in the application form; and in respect of unauthorised disclosure of relevant information viz. the information contained on the secure register at Companies House or in the secure part of a company's register. The first offence is intended to discourage applications made on false pretences; the second offence is aimed at keeping the

information held on the secure register confidential and similar offences can be found in the context of disclosure of confidential information in the Companies Act and in the Financial Services and Markets Act. (It will also be an offence for a company to disclose a residential address where a Confidentiality Order is in force).

Company Secretaries; directors, secretaries and permanent representatives of overseas companies

6.20 As indicated in paragraph 2.2 secretaries of companies registered under the Companies Act may also apply for a Confidentiality Order; so may directors, secretaries and permanent representatives of overseas companies. An individual is a permanent representative of a company to which Section 690A applies, and he is authorised to represent the company as a permanent representative for the business of one or more of its branches in Great Britain.

DRAFT

STATUTORY INSTRUMENTS

2001 No.

COMPANIES

The Companies (Particulars of Usual Residential Address)
(Confidentiality Orders) Regulations 2001

Made ... [_____] 2001

Laid before Parliament [_____] 2001

Coming into force.. [_____] 2001

21/09/01

The Secretary of State, in exercise of the powers conferred on him by sections 723B to E of the Companies Act 1985^(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations, of which a draft has been laid before Parliament in accordance with section 723F(5) of that Act and approved by a resolution of each House of Parliament:

Citation, commencement and interpretation

1.-(1) These Regulations may be cited as the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2001.

(2) These Regulations shall come into force on [_____] 2001.

(3) In these Regulations—

“the 1985 Act” means the Companies Act 1985;

“beneficiary of an order” means an individual in relation to whom a confidentiality order is in force;

“competent authority” means any authority specified in Schedule 1 to these Regulations;

“service address” means an address specified in an application made under section 723B(1) of the 1985 Act or, in relation to a beneficiary of an order, that address or any change in that address, being in any case an address which satisfies the requirements of regulation 10; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of England or Wales under or by virtue of the Banking and Financial Dealings Act 1971^(b).

(a) 1985 c.6; sections 723B to E were inserted by section 45 of the Criminal Justice and Police Act 2001 (c.16).

(b) 1971 c.80.

PART 1

Applications for confidentiality orders under Section 723B of the 1985 Act

2. –(1) An application for a confidentiality order shall be made to the Secretary of State.

(2) An application for a confidentiality order shall:

(a) be in such form and contain such information and be accompanied by such evidence as the Secretary of State may from time to time direct;

(b) specify each company of which the applicant is or proposes to become a director, secretary or permanent representative and shall specify the service address for each such company;

(3) The Secretary of State may from time to time direct different information or evidence be provided for different cases or categories of application.

(4) The Secretary of State may require any information or evidence supplied by an applicant to be verified in such manner as he may direct.

(5) The Secretary of State may require any application to be supported by a statement by any company to which the application relates that that company wishes a confidentiality order to be made in respect of the applicant together with the statement of the reasons for that wish.

(6) At any time after receiving an application and before determining it, the Secretary of State may require that any applicant supply additional information or evidence including the supply by a company of a statement complying with paragraph (5).

(7) Each application shall be accompanied by a fee of £[____], and the Secretary of State may reject any application without considering it unless it is accompanied by such fee.

(8) An applicant may withdraw his application, by notice delivered to the Secretary of State, at any time before the Secretary of State makes a decision on the application, and the Secretary of State may retain the fee paid in respect of that application.

Referral of questions for the purposes of the determination an application

3. – (1) The Secretary of State may, in respect of any application or category of applications, refer to a relevant body any question relating to an assessment in the case of such application or category of applications of the nature and extent of any risk of violence or intimidation considered by the applicant to arise in relation to the applicant, or any person living with him, by virtue of the availability for inspection by members of the public of particulars of his usual residential address.

(2) The Secretary of State may also refer to a relevant body any question as to the nature or extent of any risk of violence or intimidation likely to arise in relation to any applicant or category of applicants or person living with them as a result of their involvement in the activities of a particular company or category of companies or a particular sector of commerce or industry.

(3) The Secretary of State may accept any answer to a question referred in accordance with paragraph (1) or (2) as providing sufficient evidence of the nature and extent of any risk relevant to an applicant or any person living with him for the purposes of any determination under section 723B(3) or (4) of the 1985 Act.

(4) In this regulation, “relevant body” means any police force and any other person whom the Secretary of State considers may be able to assist in answering a question referred to that person under paragraph (1) or (2).

Notification of the outcome of an application

4. The Secretary of State shall send the applicant at his service address notice of his decision under section 723B(3) or (4) of the 1985 Act, and such notice shall be given within ten working days of the decision being made.

Appeal to the High Court on a Point of Law

5. – (1) An applicant who has received notice under regulation 4 that his application for a confidentiality order has been unsuccessful may appeal to the High Court or the Court of Session on the grounds that the decision:

- (a) is unlawful;
- (b) is irrational or unreasonable; or
- (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(2) An applicant must bring an appeal within 21 days of his being notified of the decision or, with the Court’s permission, after the end of such period, but only if the Court is satisfied:

- (a) where permission is sought before the end of that period, that there is good reason for the applicant being unable to bring the appeal in time; or
- (b) where permission is sought after that time, that there was a good reason for the applicant’s failure to bring the appeal in time and for any delay in applying for permission.

(3) On appeal the court may make such order confirming, quashing or varying the original decision as it thinks fit.

PART II

Duration and renewal of a confidentiality order

6. – (1) Subject to paragraph (3), a confidentiality order shall remain in force for the period of five years from the date on which it is made unless revoked earlier under regulation 7.

(2) Where the beneficiary of a confidentiality order (“the existing order”) makes an application under section 723B(1) of the 1985 Act for a further confidentiality order (“the new order”) before the expiry of the existing order (“the expiry date”) and the Secretary of State decides before the expiry date to make a new order under section 723B(3) of the 1985 Act, the new order shall come into force on the expiry of the existing order.

(3) Where the beneficiary of an existing order makes an application under section 723B(1) of the 1985 Act for a new order at least 28 days before the expiry date and the Secretary of State has not made a decision under section 723B(3) or (4) of the 1985 Act before that date, the existing order shall continue in force until:-

- (a) the Secretary of State makes a decision under section 723B(3) of the 1985 Act and the new order is made; or
- (b) the application is dismissed under section 723B(4) of the 1985 Act.

Revocation of a confidentiality order

7. – (1) The Secretary of State may revoke a confidentiality order at any time if he is satisfied that:

- (a) the beneficiary of the order, or any other person, in purported compliance with any provision of these Regulations, has furnished the Secretary of State with false, misleading or inaccurate information;
- (b) the registrar has not received, within the period of 28 days beginning with the date on which the beneficiary of the order was notified under regulation 4 of the Secretary of State’s decision, in relation to each

company of which that beneficiary is a director, secretary or permanent representative, the form or return prescribed in relation to:

- (i) section 288(2)(b) of the 1985 Act in respect of the change in the particulars of the beneficiary's usual residential address or service address required to be kept by the company pursuant to section 288(1) of that Act;
 - (ii) paragraph 7(1)(b) of Schedule 21A to that Act in respect of any alteration in the particulars of the beneficiary's usual residential address or service address required to be delivered by the company to the registrar pursuant to paragraph 1(1) of that Schedule; or
 - (iii) section 692(1)(b) of that Act in respect of an alteration in the particulars of the beneficiary's usual residential address or service address required to be delivered by the company to the registrar pursuant to section 691(1)(b)(ii) of that Act;
- (c) the registrar has not received, within the period of 28 days from the occurrence of any change in the particulars of the beneficiary's usual residential address or service address, in relation to each company of which that beneficiary is a director, secretary or permanent representative, the form or return prescribed in relation to:
- (i) section 288(2)(b) of the 1985 Act in respect of the change in the particulars of the beneficiary's usual residential address or service address required to be kept by the company pursuant to section 288(1) of that Act;
 - (ii) paragraph 7(1)(b) of Schedule 21A to that Act in respect of any alteration in the particulars of the beneficiary's usual residential address or service address required to be delivered by the company to the registrar pursuant to paragraph 1(1) of that Schedule; or
 - (iii) section 692(1)(b) of that Act in respect of an alteration in the particulars of the beneficiary's usual residential address or service address required to be delivered by the company to the registrar pursuant to section 691(1)(b)(ii) of that Act; or

(d) any address purporting to be the service address of a beneficiary of an order which has been notified to the registrar under any provision of the Companies Acts does not comply with all the requirements of regulation 10.

(2) If the Secretary of State proposes to revoke an order under this regulation he shall send the beneficiary of the order notice.

(3) The notice must:-

- (a) state the grounds on which it is proposed to revoke the order;
- (b) inform the beneficiary that he may, within the period of 21 days beginning with the date of the notice, make representations to the Secretary of State; and
- (c) state that if representations are not received within that period, the order will be revoked at the expiry of that period.

(4) If the beneficiary makes representations as to why the order should not be revoked within the period specified in paragraph (3), the Secretary of State shall have regard to the representations in determining whether to revoke the order, and shall send the beneficiary notice of his decision, and such notice shall be given within ten working days of the decision being made.

(5) Any communication by the Secretary of State in respect of the revocation or proposed revocation of a confidentiality order shall be sent to the beneficiary at his service address or his usual residential address.

Access to confidential records

8. – (1) Subject to the provisions of this regulation, no person may inspect, copy or otherwise have access to confidential records.

(2) A competent authority is entitled to inspect and take copies of confidential records and may require an extract from any such record.

(3) Any information which may by virtue of these Regulations be disclosed to a competent authority may be disclosed to any officers or servants of the authority.

(4) Any person, or representative of an agency or regulatory authority, entitled to have access to confidential records in accordance with this regulation may be required to produce such evidence of his entitlement as the registrar may request.

Disclosure of relevant information

9. – (1) Subject to paragraphs (2), (3) and (4), relevant information must not be disclosed by a competent authority or by any person obtaining information directly or indirectly from a competent authority.

(2) Regulation 9(1) does not prevent the disclosure of relevant information which is made for the purpose of facilitating the carrying out of a public function and “public function” includes:-

- (a) any function conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
- (b) any function conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
- (c) any similar function conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
- (d) any functions exercisable in relation to disciplinary proceedings;
- (e) any function exercisable in relation to the investigation of any criminal offence or for the purposes of any criminal proceedings.

- (3) Regulation 9(1) does not prevent the disclosure of relevant information where the disclosure:-
- (a) facilitates the creation and maintenance of the confidential records and the provision of facilities for the inspection and copying of these records; or
 - (b) is by the registrar of any relevant information included in any document delivered to the registrar under any provision of the Companies Acts which, pursuant to section 707A of the 1985 Act, is required to form part of the records of the registrar which may be inspected or copied under section 709(1) of that Act.
- (4) Regulation 9(1) does not prevent the disclosure of relevant information if the information is or has been available to the public from other sources.

(5) In this regulation-

“disciplinary proceedings” means disciplinary proceedings specified in Schedule 2 to these Regulations;

"enactment" includes:

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation;

“relevant information” means information, relating to the usual residential address of a beneficiary of an order, which has been obtained:

- (a) by the registrar and consists of confidential records; or
- (b) after the order came into force, by any company of which that beneficiary is a director, secretary or permanent representative.

"subordinate legislation" has the meaning given in the Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.

Service addresses

10. – (1) Where an individual holds, or proposes to hold, office as a director, secretary or permanent representative of more than one relevant company;

- (a) the service address specified by that individual in relation to each such company must be the same, and that address shall have effect for all offices held, or proposed to be held, by that beneficiary of an order or that applicant for a confidentiality order; and
- (b) any change in that address shall be notified by that individual to each such company.

(2) A service address must be at a place at which service of documents is capable of being effected by physical delivery other than a PO Box Number.

(3) A service address must be situated within a state within the European Economic Area, and “a state within the European Economic Area” means a state which is a member of the European Communities and the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein.

Form and Delivery of Notices etc

11. – (1) Any notice:

- (a) by the Secretary of State under regulation 4, 7(2) or 7(4); or
- (b) to the Secretary of State under regulation 2(8);

and any representations made to the Secretary of State under regulation 7 shall be in legible form.

(2) Electronic communications made be used for the delivery of any document by or to the Secretary of State under the provisions of these Regulations provided that such delivery is in such form and manner as to comply with the requirements of Schedule 3 to these Regulations.

Company registers

12. – (1) Where a confidentiality order is in force in relation to an individual who is a director or secretary of a company subsections (3) and (5) of section 288 shall not apply in relation to so much of the register kept by the company under that section as contains particulars of the usual residential address of that individual.

Amendments of enactments

13. The enactments mentioned in Schedule 4 to these Regulations shall have effect with the amendments specified being amendments supplemental and consequential on the making of these Regulations.

Offences and penalties

14. – (1) Any person who in an application under section 723B makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence.

(2) Any person who discloses information in contravention of regulation 9 shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) shall be liable:

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; and

(b) on summary conviction, to imprisonment not exceeding six months, or to a fine not exceeding the statutory maximum or to both.

SCHEDULE 1

Regulation 1

COMPETENT AUTHORITIES

the Secretary of State.

the registrar and the Registrar of Companies for Northern Ireland

an inspector appointed under Part XIV of the Companies Act 1985, section 94 or 177 of the Financial Services Act 1986^(a) or regulation 22 of the Open Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996^(b).

any person authorised to exercise powers under section 44 of the Insurance Companies Act 1982^(c), section 447 of the Companies Act 1985, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989^(d).

any person exercising functions conferred by Part VI of the Financial Services and Markets Act 2000^(e) on the competent authority under that Part.

a person appointed to make a report under section 166 of the Financial Services and Markets Act 2000.

a person appointed to conduct an investigation under section 167 or 168(3) or (5) of the Financial Services and Markets Act 2000.

an inspector appointed under section 284 of the Financial Services and Markets Act 2000.

the Department of Enterprise, Trade and Investment in Northern Ireland.

the Scottish Office.

the Scottish Ministers.

the Welsh Office.

the Treasury.

HM Customs and Excise.

the Commissioners of Inland Revenue.

the Bank of England.

the Lord Advocate.

^(a) 1986 c.60.

^(b) SI 1996/2827.

^(c) 1982 c.50.

^(d) 1989 c.40.

^(e) 2000 c. 8.

the Director of Public Prosecutions and the Director of Public Prosecutions in Northern Ireland.

any designated agency or transferee body within the meaning of the Financial Services Act 1986.

the Secret Intelligence Service.

the Security Service.

the Occupational Pensions Regulatory Authority.

the Chief Registrar of Friendly Societies and the Registrar for Credit Unions and Industrial and Provident Societies for Northern Ireland.

the Friendly Societies Commission.

the Charity Commission.

an official receiver appointed under section 399 of the Insolvency Act 1986^(a).

a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986.

any police constable.

any procurator fiscal.

an overseas regulatory authority within the meaning of section 82 of the Companies Act 1989.

^(a) 1986 c. 45

SCHEDULE 2

Regulation 9

DISCIPLINARY PROCEEDINGS

Disciplinary proceedings relating to the exercise by a barrister, solicitor, auditor, accountant, valuer or actuary of his professional duties

Disciplinary proceedings relating to the discharge of his duties by an officer or servant of-

- (a) the Crown;
- (b) the Financial Services Authority;
- (c) the body known as the Panel on Takeovers and Mergers;
- (d) the Charity Commissioners for England and Wales;
- (e) the Director General of Fair Trading;
- (f) the Competition Commission;
- (g) the Insolvency Practitioners Tribunal in relation to its functions under the Insolvency Act 1986^(a);
- (h) the Occupational Pensions Board in relation to its functions under the Social Security Act 1973^(b) and the Social Security Acts 1975 to 1986^(c);
- (i) the organs of the Society of Lloyd's being organs constituted by or under the Lloyd's Act 1982^(d) in relation to their functions under Lloyd's Acts 1871-1982^(e) and the bye-laws made thereunder of the Society of Lloyd's;
- (j) the National Lottery Commission in relation to their functions under the National Lottery etc. Act 1993^(f).

^(a) 1986 c. 45.

^(b) 1973 c. 38.

^(c) 1986 c. 50; see s. 90(2).

^(d) 1982 c. 14.

^(e) 34 Vict c. xxi, 1&2 Geo V c. lxii, 14&15 Geo VI c. viii, 1982 c.14.

^(f) 1993 c.39.

SCHEDULE 3

Regulation 11

NOTICES

[This Schedule has not been drafted in detail as yet, but when complete will cover areas such as:

1. The forms which are able to be delivered by electronic communications
2. The definitions of the technical terms used in the approval document
3. The approved form of delivery of the information [e.g. the Website/Email address for delivery, envelope format where applicable, form of characters to be used].
4. The approved manner of document authentication in respect of the company, individual officers and corporate officers]

SCHEDULE 4

Regulation 12

AMENDMENTS TO ENACTMENTS

- 1 In section 288, insert after subsection (2):
For the purposes of subsection (2) the making of a confidentiality order in relation to a director or secretary is a change in the particulars contained in the register in respect of the usual residential address and in respect of the address specified pursuant to regulations made under section 723C(7).
- 2 In section 289, insert after subsection (1)(b):
“(c) in the case of an individual in relation to whom a confidentiality order has been made, an address pursuant to regulations made under section 723C(7)”
- 3 In section 290, insert after subsection (1):
“(1)A the particulars to be kept by a company under section 288 in respect of a secretary shall include in the case of an individual in relation to whom a confidentiality order has been made, an address specified pursuant to regulations made under section 723C(7)”.
- 4 In section 691 insert after subsection (4):
“(5) At any time when a confidentiality order is in force in relation to a director or secretary, references in the list referred to in subsection (1)(b)(i) to the usual residential address of that director or secretary are to be references to the address specified in relation to that individual under regulations made under section 723C(7) and any requirement to make a return of those particulars under this or the next following section is to have effect accordingly.

(6) Where subsection (5) has effect in relation to any director or secretary the company shall:-
 - (a) on the making of the confidentiality order deliver a return to the registrar in the prescribed form containing particulars of the usual residential address of that individual; and

(b) where any change to that usual residential address takes place deliver a return to the registrar in the prescribed form containing particulars of that change, and any such return shall be delivered to the registrar within 21 days of the making of the order or the change as the case may be.

5 In section 692 insert after subsection (3):

“(4) The making of a confidentiality order in relation to a director or secretary shall be treated as an alteration in the particulars contained in the list of the directors and secretary for the purposes of subsection 1(1)(b).”

6 Insert after section 723F:-

“723G Revocation and cessation of confidentiality orders

(1) Where:-

(a) a confidentiality order is revoked pursuant to section 723B(9); or

(b) a confidentiality order ceases to be in force through expiry of time, those events are, for the purposes of section 288(2), a change in the particulars contained in the register kept by the company under section 288(1) in respect of the usual residential address of the director or secretary in relation to whom the order was made.

(2) If, following the revocation or cessation of a confidentiality order referred to in subsection (1), the registrar has not received, within 28 days of the occurrence of the change in particulars resulting from such revocation or cessation, the form prescribed in relation to section 288(2)(b) in respect of the change in the particulars of the usual residential address, then the registrar may record and keep the particulars of the usual residential address of the individual in relation to whom that order was made and which are contained in the confidential records, as part of the records that the registrar is required to keep under section 707A which may be inspected or copied under section 709(1) of the Act.

(3)-(a) where any event described in subsection (1) occurs in respect of a confidentiality order made in relation to a director, secretary or permanent representative of an overseas company, that event is, for the purposes of

section 692 and paragraph 7 and 8 of Schedule 21A an alteration of the particulars contained in any return made to the registrar under those provisions relating to the usual residential address of that director or secretary;

(b) if, following the occurrence of an event described in subsection (a) above, the registrar has not received within 28 days of that occurrence a return of the alteration in the particulars arising from the occurrence of that event, then the registrar may record and keep the particulars of the usual residential address of the director, secretary or permanent representative in relation to whom the confidentiality order was made and which are contained in the confidential records, as part of the records that the registrar is required to keep under section 707A which may be inspected or copied under section 709(1).

(7) In Schedule 21A insert at the end of paragraph 1:

“(6) At any time when a confidentiality order is in force in relation to a director, secretary or permanent representative, references in the particulars about the company specified in paragraph 2 and particulars about the branch specified in paragraph 3 to the usual residential address of that director, secretary or permanent representative are to be references to the address specified in relation to that individual under regulations made under section 723C(7) and any requirement to make a return of those particulars in this Schedule is to have effect accordingly.

(7) Where sub-paragraph (6) has effect in relation to any director, secretary or permanent representative the company shall:

- (a) on the making of the confidentiality order deliver a return to the registrar in the prescribed form containing particulars of the usual residential address of that individual; and
- (b) where any change to that usual residential address takes place deliver a return to the registrar in the prescribed form containing particulars of that change, and any such return shall be delivered to the registrar within 21 days of the making of the order or the change as the case may be.

(8) In Schedule 21A insert after paragraph 8:

“8A-For the purposes of paragraphs 7 and 8 the making of a confidentiality order in relation to a director, secretary or permanent representative shall be treated as an alteration in the particulars relating to the usual residential address of that individual for the purposes of paragraph 1(1)(a) and (b).”

DRAFT**This form will not appear on the public record****723B****Companies House logo**

**Usual Residential Addresses:
Application for Confidentiality
Order**

*Please complete
typescript or bold
capital letters*

Note: This form may be referred to the police for them to assess risk. If you make false or reckless statements on this form you will be liable for criminal prosecution

For Official use
(Please leave blank)

(For UI Number)

PART A: Details of Applicant

Surname _____
Forename(s) _____
(In full)

Date of
Birth

Usual
Residential
Address

UK Postcode

An address capable of accepting service of process on the individual's behalf.

Proposed
Service
Address

If there is not enough space in this section please continue on a separate sheet

Part B: Details of Company Directorships Give a full list of all companies of which you are director, secretary or permanent representative and LLPs of which you are a member registered in England, Wales, Wales or Scotland. Also include in the list the names of any overseas companies that have branches or places of business registered in Great Britain of which you are the named representative. If you are applying in anticipation of becoming a director of a company only if a confidentiality order is granted, enter that company name in the "principal company box" and tick this box

NOTE: A beneficiary of a Confidentiality Order must ensure each of the companies of which he is a director, secretary or permanent representative and LLPs of which he is a member, registered in England and Wales or Scotland, send to the Registrar of Companies notification, in the prescribed form, of the same service as

Full name of Company	Registered Number	Place of Incorporation	Service of process
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This form will not appear on the public record

Part C: Reasons for Application *NOTE: Making a statement that is false or reckless in a particular is an offence for which you may be prosecuted. If convicted, on indictment you will be to a term of imprisonment of up to two years or to a fine or both or on summary conviction, to a imprisonment of up to six months or to a fine of up to £5,000 or both. Particulars entered on this form may be submitted to the police or other relevant authority for valuation*

Indicate the sector in which the principal company is engaged in respect of which a confidentiality order is claimed: (Tick appropriate box)

Section I

- | | |
|---|--|
| <input type="checkbox"/> Animal Research Sector | <input type="checkbox"/> Biotechnology Sector |
| <input type="checkbox"/> Animal Products Sector | <input type="checkbox"/> Environmental Sector |
| <input type="checkbox"/> Defence Sector | <input type="checkbox"/> [Support Industry for the above |
| <input type="checkbox"/> Other Sector | |

Section II *Please give the full reason for your application for a Confidentiality Order here. In support of your application include in this statement any supporting evidence you may have, for example, any relevant police crime numbers. If you have ticked the "Other Sector" in section I above, it is vital that you provide a full explanation here in support of your application.*

If there is not enough space in this section please continue on separate sheet.

NOTE: Before the Secretary of State decides whether to grant a Confidentiality Order you may be asked to provide additional information or evidence

Number of continuation sheets (if any) for Part C II

Signed

Date

If you have completed section II of Part C above, another serving director or secretary of [any] [the principal] company named in Part B above must support this application for a Confidentiality Order by completing Section III overleaf.

This form will not appear on the public record

Section III *If section II of Part C has been completed this application for a confidentiality order be supported by a statement by [any] company named in Part B of this application. This statement to confirm that the company wishes a confidentiality order to be made in respect of the applicant give reasons for that wish.*

If there is not enough space in this section please continue on separate sheet.

Number of continuation sheets (if any) for Part C III

Signature

Date

Name

(in block capitals)

When completed please send this form to:

Tear Off Acknowledgement Slip

Please enter the name and address in the box opposite for confirmation of the receipt of:

- The Confidentiality Order application form
- Associated continuation sheets
- Registration fee of £xxx

This form will not appear on the public record

PART D: For Official Use Only

Police or other relevant authority risk assessment

Police to tick appropriate boxes and attach report. Box 1 = high risk, box 6 = [low] [no] r

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1	2	3	4	5	6

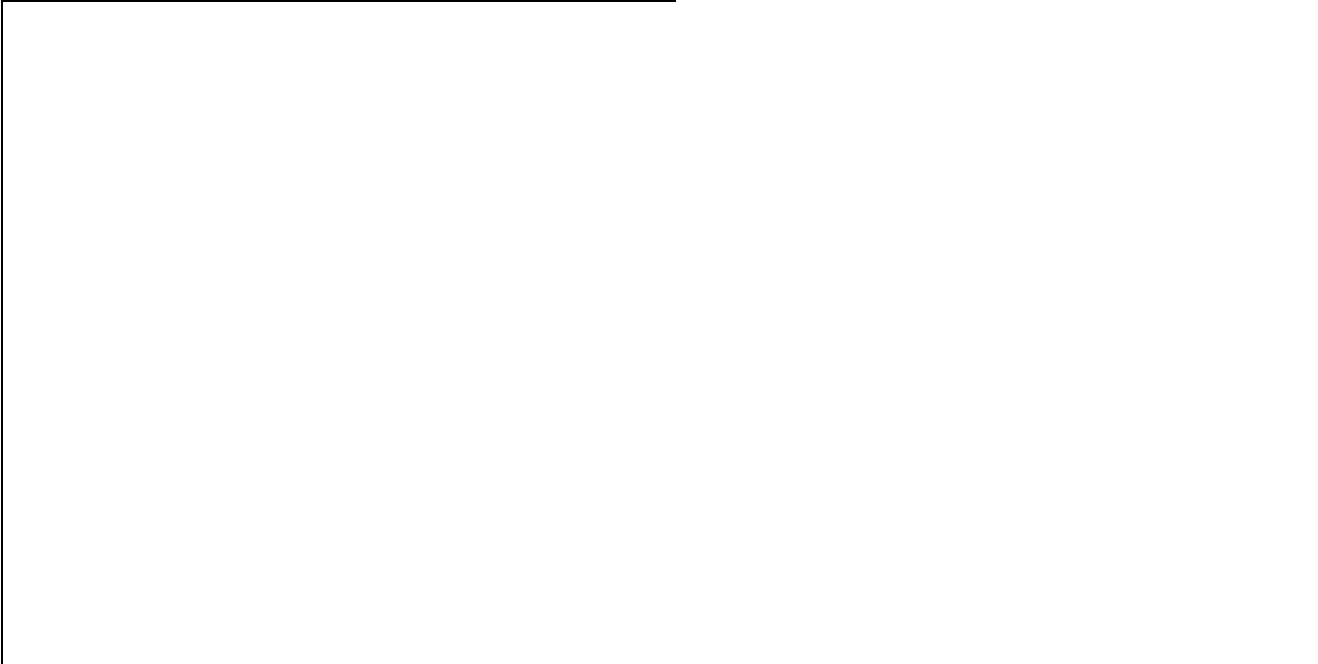
Police recommendation: Grant Order Refuse Order

Signed	<input style="width: 95%;" type="text"/>	Date	<input style="width: 95%;" type="text"/>
Rank and number	<input style="width: 80%;" type="text"/>	Official stamp	<input style="width: 80%;" type="text"/>

Conclusion on behalf of Secretary of State:

Grant Order/Refuse Order *(Delete as appropriate and give reasons in the box below)*

UI Number	<input style="width: 80%;" type="text"/>
------------------	--



Signed

Date

Official
Stamp

DRAFT REGULATORY IMPACT ASSESSMENT

Purpose And Intended Effect Of The Regulation

1 The purpose of the Regulations is to set out the way in which the amendments to the Companies Act 1985, introduced by section 45 of the Criminal Justice and Police Act 2001, will be implemented. The Regulations describe the procedures for applying for a Confidentiality Order, the effect of such an Order and the provisions relating to access to the secure register.

Options

2 The Regulations will implement the policy objective of affording a degree of protection for company directors (and company secretaries and permanent representatives of oversea companies) at serious risk of violence or intimidation if their home address remains on the public record. At the time that decisions were made to introduce the necessary amendments to the Companies Act 1985, that is during the passage of the Criminal Justice and Police Bill through Parliament, the alternative option proposed by the Company Law Review – of making the primary provisions available to any director who applied – was considered. Ministers took the view however that, on the grounds of transparency, only a narrow scope for disapplying the existing requirement for home addresses to be available on the public record should be introduced

Benefits

3 The specific benefits arising from the Regulations are that they describe the mechanisms and consequences of a Confidentiality Order, and thus put into practical effect the intention behind the primary legislation. The real and ultimate benefit is to those directors who are successful in applying

for an Order, as it will afford to them a degree of protection against the risk of violence or intimidation if their home address continues to be available for public inspection. Neither the Act or the Regulations extend to the expunging of existing records. Thus the legislation will provide immediate protection only for those directors who move address after obtaining a Confidentiality Order, and to new directors. Over time, there will be more discernible benefits to all directors who have obtained an Order.

Costs

4 There are two principal cost issues:

- i) the cost of applying for a Confidentiality Order; and
- ii) the additional time cost of those who access information from Companies House on directors' home addresses (either directly or indirectly) and who broadly fit into two groups; those seeking information for law enforcement or other regulatory purposes, and those who request this information for credit reference/customer validation purposes.

5 In respect of i), amendments to the Companies Act 1985 introduced by section 45 of the Criminal Justice and Police Act 2001 permit the Secretary of State to charge a fee. This will cover the cost of each application, and in addition all expenses incurred in setting up and administering the system of implementation are recoverable through the application fee (an implementation cost). The fee would include a contribution towards the costs of the police carrying out assessments of risk. It follows that the application fee will be set at a level which seeks to reflect the likely costs of setting up the necessary systems at Companies House and administering the system, and the costs of the police in providing assessments of risk. The fee is chargeable on application, irrespective of whether the applicant is ultimately successful. There is no provision for a partial refund of an application fee paid by an unsuccessful applicant. This is

justified on the basis that once the system is set up, most of the expense will fall to processing applications, irrespective of the final outcome.

6 In respect of ii), costs will arise from the additional time and process for those who frequently access the public record either directly through Companies House or indirectly through information providers (who download information from Companies House). It is obvious that law enforcement and other regulators need to access information on directors' home addresses on a regular basis, sometimes with a degree of urgency. The Regulations permit access to the secure register by designated authorities which will include law enforcement and other regulatory bodies, other Government Departments and insolvency practitioners. Systems will be put in place to provide rapid access where the occasion demands; otherwise a process of application for access will be introduced. Both will need to be protected by suitable verification safeguards. This will inevitably delay the passage of information to a degree but because of the fast-track procedures, we do not expect this to have any significant impact on the effectiveness on the part of those users. It is not possible to estimate the cost of any additional burdens placed upon those with a right of access to the secure register. The other main users of information on home addresses - credit reference agencies and financial institutions - utilise the information available on the public register as part of their usual credit validation checks and, where appropriate, to assist towards their "know your customer" obligations.

7 This group of users will not have access to the secure register of home addresses. It is difficult to quantify the full extent in time and process that this inability to access information will cost. It will depend in part on what alternative measures are put in place by this sector to obtain this information. Some have argued that this will have a consequential effect on the cost of credit; and effect the speed at which decisions on credit are made. It seems unlikely to have any effect on credit decisions themselves. Companies in most other EU Member States do not have to disclose their directors' home addresses and we are not aware that this raises any particular barrier to the

accessibility to credit. In summary, we do not consider that these measures will have any significant cost implications for the supply of finance.

8 It should be noted that the views of consultees are being sought on the question of whether service addresses should be flagged as such. In other words, should Companies House's register of directors and other records indicate those directors who have been granted Confidentiality Orders and therefore indicate that their address is a service address, not a home address? If such a system is not introduced, some costs may fall on users of address information who do not realise that an address is a service address and treat it as a home address.

Impact on Small Business

9 The measures introduced by the amendments to the Companies Act 1985 and by these Regulations are not obligatory, but provide a degree of privacy which is available to all company directors where the criteria is met. They are likely to be of particular benefit to directors of companies, large and small, in particular sectors. As to the effect on small business, the Regulations potentially affect small companies in two ways: the cost of an application for a Confidentiality Order if a director of a small company wishes to apply for an Order; and any additional potential cost imposed on small business by credit reference agencies through the latter's inability to access information on home addresses from the secure register (or through not matching an applicant for credit with his service address, particularly if the credit company mistakes a service address for a home address). We do not consider this to be significant.

Results of Consultation

10 The Department did not consult specifically on the proposals which were introduced following the Second Reading of the Criminal Justice and Police Bill. However, there were earlier consultations on the broader question of whether all directors should be permitted to file a service address rather than a home address for the public record. In 1997 the Department issued a consultative document which proposed, amongst other possible reforms, that companies should no longer be required to record in their own registers the home addresses of directors and company secretaries. In addition, whilst companies would still be required to provide the home address of directors and secretaries to the Registrar of Companies they could request, on payment of a fee, that this information be kept off the public register by furnishing the Registrar of Companies with an alternative service address for the public record. The home address would still be maintained but kept on a separate, secure register which would be accessible only to public body regulators and the police. In March 1998, following consideration of the responses to the consultation document, the then Minister of State, Ian McCartney, announced that there would be no change to the existing law.

11 The Company Law Review also looked at the question of directors' home addresses, and its final Report recommended that all directors be given the option of filing only their residential address, to be kept on the public record, or filing a service address and a residential address, thereby mirroring the 1997 proposal. The Review also recommended that the requirement for company secretaries to file their residential address be abolished. Ministers have not yet considered these recommendations in detail.

Recommendation

12 The intention behind the amendments to the Companies Act 1985 was not to open up the possibility of a large number of company directors seeking

to avoid the existing regime of transparency and accountability. The intention was to permit a small number of directors who were at genuine and serious risk of violence or intimidation if their home address remained on the public register, to apply for a service address to be substituted on the public record whilst still providing a home address accessible for law enforcement purposes. The Regulations, together with further guidance which the Department may issue from time to time, implement the mechanics and effect of that policy.

Enforcement, Sanctions, Monitoring and Review

13 The offences outlined in the Regulations create a criminal sanction where an applicant knowingly or recklessly provides a statement which is false in a material particular (eg in the making of the application and which would include supplying a false service address), or where information relating to the secure register is disclosed without authority. These measures are consistent with the existing sanction on the provision of false information to Companies House under section 5 of the Perjury Act 1911, and with the provisions in relation to the disclosure of confidential information under section 449 of the Companies Act 1985.

14 The Department will monitor the effectiveness of these Regulations and will consider the wider implications arising from the Company Law Review recommendations in due course. The level of the application fee will also be kept under review. However, the fee will need to reflect the fact that Companies House is a Trading Fund and therefore subject to HM Treasury rules on the setting of fees.

THE CONSULTATION CRITERIA

1 Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

2 It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

3 A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

4 Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.

5 Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation

6 Responses should be carefully and openmindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.

7 Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The complete code is available on the Cabinet Office's web site, address www.cabinet-office.gov.uk/servicefirst/index/consultation.htm.

COMMENTS OR COMPLAINTS

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Mr A Dobbie, DTI Consultation Co-ordinator, Room 550, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6509 or email andrew.dobbie@dti.gov.uk

SUMMARY OF QUESTIONS

We would welcome comment on all of the aspects of policy discussed in this Consultative Document, and on the draft Regulations themselves. The following is a summary of specific questions asked in the Consultative Document, but consultees should not feel that they are restricted in responding to these points only.

- 1 Paragraph 2.6: A partial Regulatory Impact Assessment is set out at Annex C. We invite comments on this draft.
- 2 Paragraph 5.2: Is it appropriate to apply to Limited Liability Partnerships the same benefits and similar Regulations as those proposed in the Consultative Document.
- 3 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?
- 4 Paragraph 6.7: Annex B is a draft application form. We invite consultees to comment on its design and content.
- 5 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
- 6 Paragraph 6.11: We propose that a Confidentiality Order should last for 5 years and that beneficiaries should then reapply. Is 5 years about the right life span of a Confidentiality Order?
- 7 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?
- 8 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.
- 9 Paragraph 6.18: We should ask for comments on access. In particular should there be any additions (or deletions) from the list of authorities who have access rights to information on the secure register appearing in Schedule 1?