

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: COMPANY FILING REQUIREMENTS

Additional information on the register

Section 94: Option for companies to keep information on central register

626. The Companies Act 2006 (“CA 2006”) requires companies to keep and maintain private registers containing the details of directors, directors’ residential addresses, members and secretaries. The Act also contains a new requirement to keep and maintain a register of people with significant control.
627. **Section 94** gives effect to Schedule 5 which amends the CA 2006 to give private companies the option of keeping the information on the registers of members, directors, directors’ residential addresses and secretaries on the register under section 1080 of the CA 2006 (“the public register”) instead, and no longer keeping and maintaining these private registers. Equivalent provisions in relation to the register of people with significant control are in Schedule 3.

Schedule 5: Option to keep information on central register

628. **Schedule 5** inserts new provisions into the CA 2006 containing provisions to enable private companies to only keep certain information on the public register instead of in a private company register.

Part 1 – creation of the option

Register of members

629. **Paragraph 3** inserts a new Chapter 2A into Part 8 of the CA 2006. The provisions in new Chapter 2A (new sections 128A to 128K) set out the rules which allow private companies to keep information on the public register instead of the register of members.
630. New section 128B provides that a private company may elect to keep its register of members on the public register. All members must assent to the election (subsection (2)). Notice of an election must be given to the registrar:
- i. On incorporation, with the documents required to be delivered on incorporation and any additional information that would otherwise be required to be entered in the register of members (subsection (4)); or
 - ii. Post-incorporation, with a statement that all members have assented to the election and, if the company had kept any overseas branch registers, that these have been discontinued.

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631. The company must provide all the information that must be contained in the register of members at the date of the election that is current at that date, that is, particulars of the members as at the time of the notice (subsections (5) and (10)). It must provide any updated information in the event of any change in the details in the register of members between the time the election is delivered to the registrar and the time the election takes effect (subsection (6)). If the register of members is rectified, the company must update the public register as well (subsection (7)). It is an offence for a company not to comply with this duty (subsections (8) and (9)).
632. New section 128C provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).
633. New section 128D sets out the effects of an election on a company's obligations to maintain a register of members. During the period an election is in force, a company does not have to maintain a register of members (subsection (2)). A company must continue to keep the register that it was required to hold prior to the election ("the historic register"), but it need not update that register to reflect subsequent changes whilst the election is in force (subsection (3)). The current rights in the CA 2006 for a person to inspect and require copies of the register of members continue in respect of the historic register (subsection (5)). The company must place a note in the historic register that an election is in force and that up to date information about the members can be found on the public register (subsection (6)). A company that does not place such a note in the historic register commits an offence (subsection (7)).
634. New section 128E imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise be put onto the register of members (subsection (2)). However, subsection (3) provides that the company does not have to deliver information relating to the date a person becomes a member of the company where this date will be the date of registration by the registrar (under the amendments to section 1081 contained in paragraph 31). In this case, the company must indicate to the registrar that the date to be recorded is the date of registration (subsection (5)). It is an offence for a company not to comply with this duty (subsections (6) and (7)).
635. New section 128F provides a right for a person who has inspected or requested a copy of material on the public register that would otherwise be on the register of members to ask the company to confirm that all the information the company is required to deliver has in fact been delivered (subsection (1)). It is an offence for a company not to respond to this request (subsections (2) and (3)). This is the equivalent to the rights of a person to obtain information about the state of the register in section 120 of the CA 2006.
636. New section 128G provides a power to the court to order rectification of the material on the register. The court may act where a person has either been included, or not included, as a member of the company without sufficient cause; or where the company has failed, or has unreasonably delayed, in notifying the registrar that a person has become, or ceased to be, a member of the company (subsection (1)). This is equivalent to the power of the court to rectify the register of members in section 125 of the CA 2006.
637. New section 128H provides that the public register is prima facie evidence of material that would otherwise have been on register of members if an election had not been made (subsection (1)). This is equivalent to section 127 of the CA 2006. Section 127 still applies to information sent in as part of the election (subsection (2)).
638. New section 128I sets out the time limit for claims against the company in relation to material that has, or has not been delivered to the registrar. This is equivalent to section 128 of the CA 2006.
639. New section 128J deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)). The withdrawal is effective

on registration by the registrar (subsection (3)). On withdrawal, the obligations in Chapter 2 of the CA 2006 to maintain a register of members apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election, a company must enter in its register of members all the information relating to matters that are current that is required to be contained in the register. The company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a member during the election period). The company must note on the register of members that an election has been withdrawn and that information about members in the period when the election was in force can be found on the public register (subsection (6)).

640. New section 128K gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

Register of overseas members

641. [Paragraph 4](#) provides that a company cannot keep information about its members on the public register if it is also keeping an overseas branch register.

Register of directors and register of directors' residential addresses

642. [Paragraph 7](#) inserts new sections 167A to 167F into the CA 2006 setting out the rules which allow private companies to keep information on the public register instead of the register of directors and/or the register of directors' residential addresses.
643. New section 167A provides that a private company may elect to hold the register of directors and/or the register of directors' residential addresses on the public register.
644. New section 167B provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).
645. New section 167C provides that, during the period when an election is in force, a company does not have to keep a register of directors and/or the register of directors' residential addresses.
646. New section 167D imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise have to be notified to the registrar under section 167 (subsection (2)). It is an offence for a company not to comply with this duty (subsections (4) and (5)).
647. New section 167E deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)), which takes effect on registration by the registrar (subsection (3)). On withdrawal, the obligations in sections 162, 165 and 167 to maintain a register and notify the registrar of changes apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election a company must enter in its register all the information relating to matters that are current that is required to be contained in the register. However, a company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a director during the election period).
648. New section 167F gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

Register of secretaries

649. **Paragraph 12** inserts new sections 279A to 279F into the CA 2006 setting out the rules which allow private companies to keep information on the public register instead of the register of secretaries.
650. New section 279A provides that a private company may elect to hold the register of secretaries on the public register.
651. New section 279B provides that an election takes effect when it is registered by the registrar. An election remains in force until either a company ceases to be a private company or withdraws the election (subsection (2)).
652. New section 279C provides that, during the period when an election is in force, a company does not have to keep a register of secretaries.
653. New section 279D imposes a duty on the company, whilst an election is in force, to deliver information to the registrar that would otherwise be notified to the registrar under section 276 (subsection (2)). It is an offence for a company not to comply with this duty (subsections (4) and (5)).
654. New section 279E deals with the withdrawal of an election. A company must give notice of withdrawal to the registrar (subsection (2)), which takes effect on registration by the registrar (subsection (3)). On withdrawal, the obligations in sections 275 and 276 to maintain a register of secretaries and notify the registrar of changes apply to the company (subsection (4)). Subsection (5) provides that, on withdrawal of an election a company must enter in its register all the information relating to matters that are current that is required to be contained in the register. However, a company is not required to enter information relating to the period when an election was in force that is no longer current (for example, the details of a person who has ceased to be a secretary during the election period).
655. New section 279F gives the Secretary of State the power to make regulations to extend the option to public companies (subsection (1)). Regulations are subject to the affirmative resolution procedure (subsection (2)).

Part 2 – related amendments

656. **Paragraphs 11 to 34** make a number of consequential amendments which result from the changes made to CA 2006 in Part 1 of the Schedule.
657. The amendment made to section 1068 enables the registrar to require a document delivered in or following an election to keep the register of members on the public register to be delivered electronically.
658. The amendment to section 1081 requires the registrar to annotate the public register to show the date of registration of the following information:
- i. the date a person is registered as a member;
 - ii. the date when membership of a limited company increases from one member; and
 - iii. the date a person ceases to become a member and the date when a company becomes a single member company (where this information is not provided by the company).

Section 95: Recording of optional information on register

651. This section inserts new section 1084A into the Companies Act 2006 to give a power to the Secretary of State to make regulations to enable companies voluntarily to deliver certain categories of information to the registrar of companies. This information, which will be additional to the information that companies are statutorily required to deliver

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to the registrar, will then be made publicly available by the registrar in accordance with section 1080 of the Companies Act 2006.

652. Regulations made under new section 1084A may include requirements on companies in relation to keeping this optional information up to date and the consequences if companies fail to do this. The regulations will be subject to the affirmative resolution procedure.