

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Chapter 2: Indications of Company Type Or Legal Form

Section 58: Public limited companies

152. This section replaces section 25(1) of the 1985 Act (and also section 27(4)(b) and (d) in its application to public limited companies). It brings together in a single provision all the alternative statutory indicators of legal status that must be used by a public company as part of its registered name, i.e. “public limited company” or the Welsh equivalent or the specified abbreviations. This section does not apply to community interest companies.

Section 59: Private limited companies

153. This section replaces section 25(2) of the 1985 Act (and also section 27(4)(a) and (c) in its application to private limited companies). It brings together in a single provision all the alternative statutory indicators of legal status that must be used by a private company as part of its registered name, i.e. “limited” or the Welsh equivalent or the specified abbreviations. Certain companies are exempt (see section 61). This section does not apply to community interest companies.

Sections 60 to 62: Exemption from requirement as to use of “limited”

154. These sections replace section 30 of the 1985 Act. Section 30 exempts certain companies from the requirement for their names to conclude with “limited”. Exempt companies are also exempt under the 1985 Act from some of the requirements regarding publication of their name but they still have to disclose their limited status in correspondence. Those currently exempt are those with a licence granted under section 19 of the Companies Act 1948 which have delivered a statutory declaration to the Registrar that the company complies with the requirements for the exemption. These requirements are, in effect, that the company is non-profit-making and its objects are the promotion of commerce, art, science, education, religion, charity or any profession.
155. **Section 60** continues the exemption for companies already exempt so long as they continue to meet the conditions and until they change their registered name. It also provides an exemption for charities and allows the Secretary of State to make regulations exempting other companies. Only private companies may be exempt
156. **Sections 61 and 62**, which replace section 30(2) and (3), specify the conditions that must be met for a company currently exempt to continue to qualify for the exemption: its objects must continue to satisfy the criteria for their exemption and its articles must both preclude distributions of dividends to its members and also, in the event of it being wound up, require its assets to be passed to a body with similar objects. For companies limited by shares benefiting from an exemption under the 1948 Act (or its Northern Irish equivalent), there is a new requirement that the articles prevent a distribution of capital. This is linked to the change in section 63(4) (see below).

Section 63: Exempt company: restriction on alteration of articles

157. This section replaces section 31(1) and (5). It prohibits a company benefiting from an exemption under the 1985 Act or the 1948 Act (or their Northern Irish equivalents) from changing its articles in such a way that it no longer meets the requirements for the exemption. It is an offence to change the company's articles in such a way. Many companies with an exemption under the 1948 Act (or its Northern Irish equivalent) were made to include a provision in their memoranda preventing an amendment to their memoranda or articles without the consent of the Board of Trade (there were a number of variations on this theme). *Subsections (4) and (5)* make provision to remove this administrative burden.

Section 64: Power to direct change of name in case of company ceasing to be entitled to exemption

158. This section replaces section 31(2) to (6). It gives the Secretary of State power to withdraw a private company's exemption from the requirement for its name to conclude with "limited" and to direct it to change its name if it no longer meets the criteria that applied when it was granted the exemption.

Section 65: Inappropriate use of indications of company type or legal form

159. This section replaces section 26(1)(a), (b), (bb) and (bbb) of the 1985 Act. These paragraphs restrict the use of various words, expressions and abbreviations that are indicators of legal status for various types of commercial entity, e.g. p.l.c., community interest company, open-ended investment company, etc. Some of the restrictions apply to the use of the particular indicator at the end of a company's name; some anywhere other than the end of the name; and some anywhere in a company's name.
160. This section provides power to make regulations prohibiting the inclusion in a company's name of specified words, expressions and abbreviations. The only words etc that can be specified in the regulations are those associated with a particular type of company or form or organisation or those confusingly similar to such words and expressions. This section also provides power to require or prohibit the statutory indicators of legal status being used in conjunction with specified other words.