



*Companies House*

— for the record —

**As modified by the Companies Act 2006**

## **Directors and Secretaries**

**GBA1**

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# **BERR**

Department for Business  
Enterprise & Regulatory Reform

When reading these guidance notes, you need to be aware of the following:

Some (but not all) of the provisions in the Companies Act 2006 have come into force. Therefore, some provisions in the Companies Act 1985 remain relevant. We have tried as far as possible to make it clear throughout these notes which Act applies. If you would like to find out more you may wish to visit our website at [www.companieshouse.gov.uk/](http://www.companieshouse.gov.uk/) where you can find out which provisions in the respective Acts are in force. Our website also contains a link to the BERR (The Department for Business, Enterprise and Regulatory Reform) website [www.berr.gov.uk/bbf/](http://www.berr.gov.uk/bbf/) where you can find further information. Some provisions in the new Act are subject to transitional arrangements. We will as far as possible explain these in this guidance and give details on our website.

There is one final stage in the implementation of the Companies Act 2006 scheduled for October 2009. We will update any guidance notes affected by those implementations at the time. You may wish also to keep an eye on our website where we will publish more information as the implementation process continues so you can access the most up to date information.

Until October 2009, these guidance notes apply only to companies formed in Great Britain (England, Wales and Scotland). The separate system in Northern Ireland is then scheduled to merge into a single system for the whole of the United Kingdom

## Contents

### Introduction

1. Limited companies: the basics
2. Role of a company director
3. Role and duties of a company secretary
4. What you have to send to Companies House
5. Quality of paper documents
6. Further information

*This is a guide only and should be read with the relevant legislation.*

- Companies Act 2006
- The Companies Act 2006 (Commencement no.3 Consequential Amendments Transitional Provisions and Savings Order 2007
- The Companies Act 2006 (Commencement no.5 Transitional Provisions and Savings) Order 2007

### Introduction

The director, or directors, must manage the company's affairs in accordance with its articles of association and the law. Certain responsibilities apply to all directors, whether executive or non-executive, and to all types of company whether trading or not. The company secretary has a few duties set out in the legislation, and may be given others by the articles or the directors.

Private companies must have at least one director. Public limited companies must have at least two directors and a company secretary. A private limited company does not have to have a company secretary but it can choose to include in its articles a requirement to have one. From 1 October 2008 all companies whether private or public must have at least one director who is a natural person i.e. an individual, and who is at least 16 years old. Any company that had only corporate directors on 8 November 2006 (the day the Companies Act 2006 received Royal Assent) will have until 1 October 2010 to appoint a natural person director.

Any director appointed before 1 October 2008 who has not reached the age of 16 before that date will automatically cease to be a director on 1 October 2008.

If you need more information, contact 0303 1234 500

This guide:

- explains some of the main responsibilities of a company's officers; and
- deals with some of the key requirements in relation to the delivery of documents to Companies House.

The guide will not tell you everything about being a director or secretary, but it will give you a good idea of your responsibilities as they relate to Companies House.

If, after reading this guide, you are in doubt about your responsibilities, you should consider seeking professional advice.

## **Chapter 1**

### **Limited companies: the basics**

#### **1. Do I really need a limited company?**

The majority of businesses are not companies. There are various reasons for having a company, for example, it could involve ownership of property, obtaining investment funds, taxation or contractual relationships. Many businesses function satisfactorily as sole traders or partnerships.

The key point to recognise is that a company is a separate entity:

- this means that it is a legal person in its own right; and
- it is separate from those who own or run it, and has 'limited liability' (unless its owners choose to have unlimited liability).

#### **2. What does limited liability mean?**

Limited liability gives the owners of the company (its shareholders) protection if the company fails.

This means that if a company is put into liquidation, the people who own the company will only be required to pay what they have already paid or agreed to pay towards settling its debts - usually what they have paid or agreed to pay for their shares.

#### **3. How do I set up a limited company?**

There are various methods of incorporating a company. For specific details see our guidance on, ['Company Formations'](#) and ['Company Names'](#).

#### **4. What can I do with an unwanted company?**

If you decide that you do not need a company that you have set up, you should consider putting it into voluntary liquidation. Alternatively you may be able to apply for it to be struck off the register.

Our guides to ['Liquidation and Insolvency'](#) or ['Liquidation and Insolvency \(Scotland\)'](#) and ['Strike-off, Dissolution and Restoration'](#) or ['Strike-off, Dissolution and Restoration \(Scotland\)'](#), will give you more information on these subjects.

## **Chapter 2**

### **Responsibilities of a company director**

#### **1. Can anyone be a director?**

Generally it is up to the members to appoint the people they believe will run the company well on their behalf. The only restrictions that prevent anyone becoming a director are:

- they must not have been disqualified from acting as a company director (unless the court has given them permission to act for a particular company);
- they must not be an undischarged bankrupt (unless they have been given permission by the court to act for a particular company).

From 1 October 2008 any person who has not reached the age of 16 will cease to be a director. Companies House will put a notice on the public register to show that the appointment has ceased. The company will have to amend its register of directors to show that the appointment has ceased. Consequently, if the company is left without an eligible director it will be in default and will need to appoint at least one director.

## 2. What are the Directors' duties to the company?

A director's general duties to the company are, for the first time, set out in the Companies Act 2006 but the relevant provisions are being commenced in two stages. Most of Chapter 2 of Part 10 of the 2006 Act (General duties of directors) was commenced with effect from 1 October 2007, but the sections relating to the duties to avoid conflicts of interest, not to accept benefits from third parties, and to declare an interest in a proposed transaction or arrangement with the company (and related provisions) will be commenced with effect from 1 October 2008. The general duties of directors were previously contained in case law. See the Department of Business, Enterprise & Regulatory Reform website [www.berr.gov.uk](http://www.berr.gov.uk) for further details.

## 3. What responsibilities does a director have towards Companies House?

Every company director has a personal responsibility to deliver statutory documents to Companies House as and when required by the Companies Acts. These include, in particular:

- accounts;
- annual returns; and
- notice of change of directors or secretaries or in their personal details ([Forms 288a, 288b or 288c](#)).

In addition, it is usually the directors who will give notice of a change of registered office ([Form 287](#))

You can notify Companies House of any of the above changes online via WebFiling, using a suitable Software Filing package or by sending paper documents to us by post.

[Chapter 4](#) summarises what a limited company has to send to Companies House.

## 4. What happens if I do not submit accounts or annual returns to Companies House?

As a director of a company Companies House can prosecute for not submitting these documents on time. This is a **criminal offence** and upon conviction the court can fine a director up to £5,000 for each offence. There is a separate, civil penalty imposed on the company for the late filing of accounts.

If Companies House believes that the company is no longer carrying on business or in operation, we can, after writing to the company to check whether that is true, strike it off the register and dissolve it. If this happens all the assets of the company, including its bank account and property, generally become the property of the Crown. Once a company is dissolved you can only restore it to the register by means of a court order. For further details see our guidance, '[Strike-off, Dissolution and Restoration](#)' or '[Strike-off, Dissolution and Restoration \(Scotland\)](#)'.

## **5. Do you really prosecute directors?**

Yes. On average we prosecute more than 1,600 directors each year for failing to deliver accounts and returns to Companies House on time. Persistent failure to deliver statutory documents on time may also lead to the court disqualifying a director from taking part in the management of a company for a specified period.

## **6. What if I deliver the accounts late?**

If a company files its accounts with Companies House late, the company will automatically incur a 'late filing penalty'. The amount depends upon on how late the accounts arrive and whether the company is private or public. These penalties are in addition to any fine imposed by a court - as explained in [question 4](#) of this chapter.

Further information about late filing penalties is available in our guidance on "[Late Filing Penalties](#)" and '[Accounts](#)' available on the Companies House website.

## **7. Are there any other consequences of filing accounts late or not at all?**

Yes. This could affect any future business opportunities as potential customers can search our website which gives free information about which accounts are outstanding. Not filing or filing late could possibly have a consequence on the company's credit rating.

## **8. How can I avoid prosecution and late filing penalties?**

Make sure your company complies on time with all its filing obligations, not only in connection with its accounts and annual returns, but in connection with all other documents required under the Act.

## **9. Isn't my accountant supposed to do all this?**

Your accountant's responsibilities depend on the agreement you have with them. However, the responsibility to deliver accounts and other statutory documents rests entirely with the directors.

You should make sure that your accountants have all the necessary information to prepare your accounts and if necessary to audit them on time. If necessary, chase your accountants. Don't just assume they are getting on with the job. Companies House prosecute the directors not the accountants.

## **10. Why does Companies House need this information?**

In exchange for the benefits of trading with limited liability, companies must deliver certain information about themselves to Companies House. This information is made available for

inspection by the public so that they can make informed decisions about companies that they may wish to invest in or do business with.

## **Chapter 3 Company Secretaries**

### **1. Do I need a company secretary?**

From 6 April 2008 a private company does not have to have a company secretary (unless its articles of association explicitly requires the company to have a secretary). An existing private company that decides to terminate the appointment of their secretary must notify that termination to Companies House on a form 288b. A public company still needs to have a company secretary.

When you appoint a secretary you must notify Companies House of the appointment, any change of details or the termination of the appointment.

### **2. Does a company secretary need any qualifications?**

The company secretary of a private company needs no formal qualifications. The company secretary of a public limited company must be qualified as explained below.

The directors of a public company must make sure, as far as reasonably possible, that the secretary, or each joint secretary, appears to them to have the knowledge and experience to carry out the functions of company secretary. In addition, the secretary must meet one or more of the following qualifications:

- be a member of any of the following bodies:
  - the Institute of Chartered Accountants in England and Wales;
  - the Institute of Chartered Accountants of Scotland;
  - Association of Chartered Certified Accountants;
  - the Institute of Chartered Accountants in Ireland;
  - the Institute of Chartered Secretaries and Administrators;
  - the Chartered Institute of Management Accountants; or
  - the Chartered Institute of Public Finance and Accountancy;
- have held the office of company secretary of a public company for at least 3 out of the 5 years immediately before their appointment as secretary;
- be a barrister, advocate or solicitor called or admitted in any part of the UK; or
- be a person who appears to the directors to be capable of carrying out the functions of company secretary, because that person holds, or has held, a similar position in another body or is or was a member of another body.

### **3. What is the role of a company secretary?**

While the legislation does not generally specify the role of the company secretary, the company secretary might normally undertake the following duties:

- (a) Maintaining the statutory registers.
- (b) Ensuring that the company files statutory information promptly. See [Chapter 4, 'What you have to send to Companies House'](#), for more information.
- (c) Providing members and directors with notice of meetings.
- (d) Providing members with proposed written resolutions and auditors with any passed resolutions. For more information see our guidance on '[Resolutions & Meetings](#)'.
- (e) Sending copies of resolutions and agreements to Companies House.
- (f) Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings.
- (g) Keeping, or arranging for the keeping, of copies of all members' resolutions (passed other than at general meetings), and minutes of all proceedings and general meetings.
- (h) Ensuring that people entitled to do so can inspect company records.
- (i) Custody and use of the company seal. Companies no longer need to have a company seal, but if they do, the secretary is usually responsible for its custody and use. (You can buy company seals from legal stationers and company formation agents).

As the secretary is an officer of the company, they may be criminally liable for defaults committed by the company. For example failure to file - in the time allowed - any change in the details of the company's directors and secretary, and the company's annual return.

#### **4. Does a company secretary have any powers?**

No, but they are able to sign most of the forms that companies need to submit to Companies House.

#### **5. What rights does a company secretary have?**

They depend on the terms of his or her contract with the company.

### **Chapter 4 What you have to send to Companies House**

Company directors and secretaries are responsible for submitting information to the Registrar. There are over 200 forms that companies can file. The following information deals only with the most common forms and documents that companies will use. You can submit most of the following information online via WebFiling or electronically using a suitable Software Filing package. For more information please visit our website [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).

## 1. Accounts

All companies, whether trading or not, must keep accounting records: and all limited companies (and some unlimited companies) must submit accounts for each accounting period to Companies House.

Generally, accounts prepared by the directors must include:

- a directors' report (with a business review if the company does not qualify as small);
- an auditors' report (unless the company is a small, dormant or not-for-profit public-sector company exempt from audit);
- a profit and loss account (or income and expenditure account if the company is not trading for profit);
- a balance sheet signed by a director;
- notes to the accounts; and
- group accounts (if appropriate).

*Quoted public companies must also prepare a directors' remuneration report.*

Not all companies need to submit these to Companies House: there are different rules for small, medium-sized, unquoted and quoted companies.

**Note** - this guide cannot go into the detailed information that these documents must contain - for this see the Companies Act 2006 and the relevant regulations.

Our guidance on , '[Accounts and Accounting Reference Dates](#)', provides more information on preparing and filing accounts and about exemptions from filing, but cannot go into the detailed information that these documents must contain - for this you need to look at the relevant legislation. You may also consider consulting an accountant for advice.

You can submit audit-exempt accounts, abbreviated accounts and dormant company accounts (DCA) online. If a company is able to submit accounts online, the balance sheet must contain the company authentication code in place of the director's signature required on paper accounts. For more information on availability and registration details please visit our website [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).

Directors are personally responsible for preparing accounts and submitting to Companies House. Failure to do so may result in a **criminal conviction** and record for the director(s) and will result in financial penalties for the company.

## 2. Annual returns (Form 363)

Every company must deliver an annual return to Companies House at least once every 12 months. It has 28 days from the date to which the return is made up to do this. All companies must pay an annual document-processing fee of £30 with the annual return (or £15 for users of our Software Filing or WebFiling services).

Do not confuse the annual return with the annual accounts as they are different documents both of which you must file at Companies House.

There is a change to the information you must give about the company shareholders for annual returns with a made up date of 1 October 2008 or later. For more information about the changes to the annual return, refer to our '[Annual Return](#)' guidance.

To help you meet your filing requirement we will send a letter to your company's registered office to remind you when your annual return is due. It advises on how to file the form electronically by using our Software Filing or WebFiling services as this is the easiest option. If you do not have the facility to file online you can order a paper copy of the annual return from our Contact Centre on 0303 1234 500.

**Please note:** Currently, a small proportion of companies on the register are unable to use our WebFiling Service. For more information please visit our website [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

If you file the annual return late or not at all, the company and its director(s) and secretary can be prosecuted.

### **3. Change of accounting reference date - Form 225**

Every company has an accounting reference date, which is the date by reference to which the company's financial year is determined. It must prepare accounts for each financial year. You can change the accounting reference date by using a change of accounting reference date form ([Form 225](#)). For more information, see our guidance on '[Accounts and Accounting Reference Dates](#)'.

### **4. Change of registered office - Form 287**

All companies must have a registered office: it is the 'home' of the company to which all official documents, notices and court papers have to be sent. The address must be a physical location, not just a post office box. This is because people have the right to visit your office to inspect certain registers and documents, and to deliver documents by hand.

You can change your registered office address by sending a completed Form 287 to Companies House. The change only becomes legally effective when we have registered the form. A person may validly serve any document on the company at the previously registered address for 14 days after the registration of the form.

### **5. Change of directors and secretary and their details - Forms 288a, 288b or 288c**

You must notify any change of a company's directors or secretaries to Companies House.

- Form 288(a) is for the appointment of an officer;
- Form 288(b) is for the termination of an officer's appointment (resignation, removal, death etc); and
- Form 288(c) is for a change in details of an officer, for example, a change of name or new residential address.

You must submit all changes to directors' and secretaries details within 14 days of the change. You can notify Companies House of any of the above changes online via WebFiling or by using a suitable Software Filing package.

## **Electronic delivery of directors' details and registered office address:**

### **The Registrar's PROOF (PROtected On-line Filing) Scheme**

Company directors hold an important position in a company: they have power to make purchases and enter into credit arrangements on behalf of the company. Similarly, the registered office address is important because it is the address to which we will send all official communications.

Records held at Companies House are sometimes used to check the legitimacy of a company and its directors before credit or loans are made therefore it is important that the records are correct. **Companies are vulnerable to fraud if the wrong people get themselves on record as company directors or a bogus registered office address is filed.**

In order to combat fraudsters posing as legitimate directors, Companies House offers companies a fully electronic and secure system for notifying changes of directors and changes to the registered office address. If you opt to only notify these electronically, they will be protected by electronic codes and we will not accept notices from your company delivered in any other format.

In order to take advantage of this service you will first need to register through our WebFiling service for a security code and an authentication code to enable your company to file electronically. To find out more about this please visit our web site at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

You will then need to complete an 'Opt-in' form (PR1) and agree to the terms and conditions so that any change of directors or change of registered office address are **only** accepted by Companies House if they are delivered by the secure electronic method and never on a paper form. The 'Opt-in' form and terms and conditions are available from our web site or by calling 0303 123 4500. The completed form must be posted back to Companies House.

This service is voluntary; you may opt-out at any time and we will revert to accepting notices from your company delivered electronically or on paper forms.

## **6. Allotments of shares - Form 88(2)**

You must submit this form to Companies House within one month of the allotment of shares. You can submit the information online via WebFiling, using a suitable Software Filing package or by sending paper documents to us by post.

Our guidance on '[Share Capital](#)' gives more information about this.

## **7. Resolutions**

You must send copies of certain types of special resolutions, unanimous and ordinary resolutions to Companies House within 15 days of them being passed by the company - our guidance on '[Resolutions](#)', ([CA 1985](#) or [CA 2006](#)) gives more information about this.

## 8. Mortgages and charges

You must send details of every mortgage or charge created by the company and requiring registration to Companies House within 21 days of its creation. See our guidance on ['Company Charges and Mortgages'](#) or ['Company Charges \(Scotland\)'](#).

### Chapter 5

#### Quality of paper documents

##### 1. What happens to documents sent to Companies House?

We scan the documents and forms you deliver to Companies House to produce an electronic image. We then store the original documents, and the electronic image is used as the working document.

When a member of the public views the company record, they see the electronic image reproduced on-line. So it is important not only that the original is legible, but that it can also produce a clear copy.

This chapter lays down a few quality guidelines to follow when preparing a document for filing at Companies House.

##### 2. What happens if my documents do not meet the guidelines?

Section 707B of the Companies Act 1985 allows Companies House to reject documents delivered electronically that it cannot capture electronically, giving a notice saying why they are unacceptable. You must deliver an acceptable copy within 14 days of the notice (otherwise we treat the original as not having been delivered).

##### 3. How should documents be set out?

Every paper document delivered to Companies House must state in a prominent position the registered number of the company, and must comply with any requirements specified by the Registrar relating to the legibility of that document.

Briefly, documents should be on A4 size, plain white paper between 80gms and 100gms in weight with a matt finish. Text should be black, clear, legible, and of uniform density. Letters and numbers must not be less than 1.8mm high, with a line width of not less than 0.25mm.

#### When you fill in a form:

- use black ink or black type;
- use bold lettering (some elegant thin typefaces and pens give poor quality copies);
- don't send a carbon copy;
- don't use a dot matrix printer; and
- remember- photocopies can result in a grey shade that will not scan well.

### **When you complete other documents, please remember:**

- the points already made relating to completing forms;
- to use A4 size paper with a good margin;
- to supply them in portrait format (that is with the shorter edge across the top);
- to include the company number in the top right-hand corner of the first page.

**Important:** coloured ink can drop out (disappear) when a document is scanned to produce an image. To prevent this - **always use black ink to complete and sign all documents.**

## **4. What are the most common problems to avoid?**

### ***Glossy accounts***

If you are producing colour-printed glossy accounts, or accounts that contain photographs, please save them for your shareholders and others who will appreciate them. We still need black on white with a matt finish. A typed unbound version or printer's proof is ideal, provided it has the necessary signatures.

### ***Members' lists***

Our requirements on document quality also apply to the lists of shareholders that accompany annual returns and allotment forms.

If these are computer prints, it is essential that the print quality is good. We have particular problems with lists printed on green-lined computer paper. We can handle members' lists on paper up to 14.5" x 12".

We will accept documents delivered on certain types of computer-generated microfiche (comfiche) on a black master - as an alternative to paper - provided we can duplicate them on our diazo machines.

We accept large members' lists on CD-ROM, DVD-ROM and floppy disk. We may also be able to accept magnetic tape for very large listings.

## **5. Can I find out more about this?**

For further guidance on print requirements contact 0303 1234 500

## **Chapter 6 Further information**

### **1. How do I send information to Companies House?**

The safest and most secure way to send statutory information to Companies House is to use our online filing services. For more information and registration details please visit our website [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

You may deliver documents to Companies House by hand (personally or by courier), including outside office hours, bank holidays and weekends to Cardiff, London and Edinburgh.

You may also send documents by post or by the Document Exchange Service (DX). If you send documents, please address them to:

<b>For companies incorporated in England &amp; Wales:</b>	<b>For companies incorporated in Scotland:</b>
Companies House Crown Way Cardiff CF14 3UZ  DX33050 Cardiff 1	Companies House 37 Castle Terrace Edinburgh EH1 2EB DX ED235 Edinburgh 1  LP-4 Edinburgh 2

If you are sending documents by post, courier or Document Exchange Service (DX) and would like a receipt, Companies House will provide an acknowledgement if you enclose a copy of your covering letter with a pre-paid addressed return envelope. We will barcode your copy letter with the date of receipt and return it to you in the envelope provided.

**Please note:** an acknowledgement of receipt does not mean that a document has been accepted for registration at Companies House.

Companies House sends an automatic e-mail acknowledgement for every submission made via WebFiling and an additional e-mail indicating whether the submission has been accepted or rejected.

**Please Note:** Companies House does not accept accounts or any other statutory documents by fax.

## 2. Can I file documents in other languages?

Usually, you must file documents sent to Companies House in English. The exceptions are detailed below. If the registered office of the company is situated in Wales however, you need only send the Welsh accounts without a certified translation into English if you so choose.

Companies can deliver the following documents in other languages if the document is accompanied by a certified translation into English:

- resolutions and agreements affecting a company's constitution;
- contracts relating to the allotment of shares for a consideration other than cash;
- for companies included in accounts of larger EEA or non-EEA groups, the group accounts and parent undertaking annual report; and
- charge instruments (or copy charge instruments).

In addition companies may also file voluntary certified translations of any document subject to the First Company Law Directive disclosure requirements. These are:

- constitutional documents such as the memorandum and articles of association;
- directors appointments, changes in particulars or terminations;
- accounts, reports and annual returns;
- notification of any change in a company's registered office;
- winding up documents;
- share capital documents (public companies only);
- documents relating to mergers and divisions (public companies only); and
- documents relating to overseas companies.

The voluntary translation must relate to a document delivered to Companies House on or after 1 January 2007. Voluntary translations can only be filed in an official language of the European Union and must be accompanied by Form 1106.

### **3. Where do I get forms and guidance?**

This is one of a series of Companies House guidance which provides a simple guide to the Companies Act.

Statutory forms and guidance are available, free of charge from Companies House. The quickest way to get them is through this website or by telephoning 0303 1234 500.

Forms can also be obtained from company law stationers, accountants, solicitors and company formation agent.

## **how to contact us**

Contact Centre: 0303 1234 500\*  
Mini-com: 029 2038 1245  
[enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

\*For training and quality purposes  
your call may be monitored

### **Cardiff:**

Companies House  
Crown Way, Cardiff CF14 3UZ  
Fax: 029 2038 0900

### **Edinburgh:**

Companies House  
37 Castle Terrace, Edinburgh EH1 2EB  
Fax: 0131 535 5820

### **London:**

Companies House  
21 Bloomsbury Street, London WC1B 3XD  
Fax: 029 2038 0900