

What you need to know about the Companies Act 2006

Full implementation delayed until October 2009

November 2007

Most October 2008 changes delayed until October 2009

On 7 November 2007 the Government announced that full implementation of the Companies Act 2006 is being delayed by one year, with the result that the final commencement date is now expected to be **1 October 2009** rather than **1 October 2008**.

Reason for the delay

The Act is being introduced via a staggered timetable. A substantial part, including some of the more controversial provisions relating to directors' duties and the new shareholders' derivative action, went live on **1 October 2007**. The remainder was expected to be phased in on **6 April** and **1 October 2008**, but this timetable has now slipped.

The reason given for the delay is to allow Companies House more time to make the changes to its systems and processes that are required by the 2006 Act. Apparently there is still a great deal of work to be done and the Registrar of Companies was not confident that the changes could be completed by next October. Therefore, in the interests of certainty for business, the Government has decided to delay implementation by putting back the commencement date for most of the provisions due to go live next autumn until the following year.

This means that measures now coming into force on **1 October 2009** include provisions relating to:

- company formation and a company's internal constitution (including the new model articles of association);
- protection of all directors' residential addresses by use of a service address;
- company and business names; and
- a company's share capital (including changes to reductions of capital and share buybacks).

Some 1 October 2008 changes may still go ahead

Some provisions (which do not require changes to Companies House systems and processes) may still go ahead on **1 October 2008**, these include:

- provisions relating to corporate directors and under-age directors;
- general duties of directors in respect of conflicts of interest;
- inspection of register of interests in a company's shares; and
- repeal of current restrictions on financial assistance for the acquisition of shares in private companies, including the "whitewash" procedure.

The Government is seeking views on whether these provisions should be introduced sooner rather than later, taking into account the need to balance the timing of the commencement of deregulatory provisions against the complexity

of phased implementation. A further statement is expected in **December 2007** confirming the final commencement timetable in the light of these discussions.

Changes still happening on 6 April 2008

In its November announcement, the Government indicated that changes scheduled to be introduced on **6 April 2008** would continue as planned, including provisions relating to:

- accounting and reporting requirements for companies;
- audit and auditors; and
- the abolition of the requirement for private companies to have a company secretary.

Impact on your company

The Government set itself a daunting task in opting for a staggered timetable for the Act's introduction in the first place. Delaying implementation of some provisions until 2009 will add further to the complexity of this task and result in additional inconvenience and expense for businesses for an extra year.

We will now have to switch between the 1985 and 2006 Companies Acts for another two years. It will be a challenging exercise for experienced company advisers to find their way round this maze of provisions (including the commencement orders, transitional provisions and adaptations) let alone for a small company director who is more interested in running his business.

The delay will mean that companies will have a tricky decision to take if their articles of association need to be updated in order to benefit from the streamlining provisions

introduced in October 2007, for example, in relation to shareholder meetings and resolutions. Should they update now and then again in 2009 to incorporate the later changes? Or should they opt for the (potentially) cheaper option and make all the changes in one go in 2009, but not enjoy the 2007 changes for two more years?

The delay in the introduction of the streamlined model constitutions for companies and the use of directors' service addresses (protecting against disclosure of their residential addresses) is certainly disappointing. And it is hoped that good sense will prevail so that the restriction on financial assistance by private companies is lifted in October 2008, as this restriction has significant cost implications and can be a real hindrance in deal structuring.

Is it in force?

The [Companies Act 2006](#) received Royal Assent on **8 November 2006**. Some provisions were introduced in **January** and **April 2007**. A substantial part of the Act came into force on **1 October 2007** and more goes live on **6 April 2008**. BERR (formerly DTI) has published a revised [table of commencement dates](#) taking into account the delays just announced.

Link to more briefings on the Act

More briefings are available on the [Companies Act 2006 page](#) on our [website](#).

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