



Law Society  
of Scotland

# Consultation response

Corporate transparency and register reform: powers  
of the registrar

February 2021



## Introduction

---

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Banking, Company and Insolvency Law Sub-committee welcomes the opportunity to respond to BEIS and Companies House's consultation on *Corporate transparency and register reform: powers of the registrar*.<sup>1</sup> We have the following comments to put forward for consideration.

## Response to questions

---

### ***A risk-based Approach***

**Q1. Do you agree that the querying power should be exercised on a risk-based approach? If you disagree, please explain your rationale.**

Yes, but this risk-based approach should be limited to (a) contradictory information and (b) potential criminal practice.

### ***Querying power: potential scenarios***

**Q2. Are there specific circumstances under which you consider the querying power should be exercised? Please give reasons for your answer.**

This power has the potential to cause companies a large compliance burden. It is therefore necessary that it is only used sparingly. Thus identifying contradictions in the public register is important, and necessary for the operation of the register. However, the registrar should not be able to query information which can be reconciled, but such reconciliation is unusual. In such a case, a third party is likely to assume that this reconciliation is correct, and proceed on that basis, as should the registrar. Accordingly, scenario one should not be an example of the power being exercised.

In respect of criminal activity, it is important to note that the public register is not likely to be an end in and of itself. If it is linked to law enforcement activity, then it is necessary. However, scenarios two and three go

<sup>1</sup> <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform-powers-of-the-registrar>

above and beyond this, and so should not be capable of being queried. In particular, evidence of a link to the registered office goes above and beyond the general requirements for registered offices. It is, perhaps, arguable that there should be a stronger link, but that is not proposed generally here.

If frequent changes of registered offices are linked to suspicious activity, then legal requirements to have links to registered offices, or prohibitions on changing registered office more than X times over the course of period Y should be explored. Giving the registrar an ability to investigate such activity is out of step with the general legal framework. Similarly, there is no requirement to choose a name for a specific reason. As such, any power to let the registrar enquire as to the reason for a choice of a name, or a choice to incorporate, is incongruous with UK company law.

### ***Application of the new querying power to company names***

#### **Q3. In what circumstances do you think the power should be used in the context of company names? Please provide reasons for your answer.**

This power should be used sparingly. The idea that a company “might” be used to facilitate crime is not enough – any company or person “might” be. Similarly, there should be some materiality to the crime. The other categories listed are also vague and provide the registrar with considerable powers.

There are already powers to direct a company to change its name if too similar to an existing name (CA 2006, s67), and if the use would constitute an offence (CA 2006, s53). There are also powers to object to the name of a company under CA 2006, s69. It is unobjectionable to extend these powers to *ex ante* checks, although that should not delay incorporation – the proposal to use the company number as the name is sensible.

#### **Q4. Do you agree that this is an appropriate use of the querying power? Please provide reasons for your answer.**

It is noted that this power does not sit neatly with the role of the Company Name Adjudicator. Proceeding with two separate regimes is unnecessarily burdensome. Either these powers should be held by the Adjudicator, or the Adjudicator’s powers should be moved to the registrar.

Such a power is only appropriate if there is more than merely a potential for wrongdoing. It should be limited, as per above, to a contradiction or evidence of wrongdoing.

#### **Q5. Is it appropriate to place the onus on the company and/or the applicant to demonstrate that a name is being registered or was registered in good faith?**

No. Name choice is currently very flexible, and this power will dramatically alter that. As such, it should be for the registrar to prove that one of a finite categories of specific issues arises.

**Q6. Do you agree that the “sensitive words and expressions” regulations should be amended to capture circumstances such as that described above?**

Yes, the circumstances identified are clear attempts to circumvent laws and mislead.

***Other company name loopholes***

**Q7: Do you agree that we should close this gap in the way we propose? Are there any other gaps that we should consider?**

Yes, an *ex ante* mirror to the *ex post* name remedies is inherently sensible. However, mechanisms need to be in place to ensure that delays (eg to incorporation) are minimised whilst this one issue is being clarified.

***The querying process and annotation of the register***

**Q8. What sanctions do you consider are most appropriate to incentivise compliance with the new requirement to respond to a query raised by the Registrar?**

The registrar should only be able to raise queries on contradictions, rather than generally. The registrar will also have to ensure that they do not use this power in a manner which results in a statutory timescale being missed (eg for registration of charges or filing of accounts) for any inconsistency which is legally explicable.

The problem with this reform is that the register is mostly an *ex post* register – ie details of the company legally change and are then notified to the registrar after the fact – so under current law, directors and shareholders change, shares are issued, and the register is told afterwards. The only exceptions to this currently are registered name, registered office and a change to the objects of the company. New powers in respect of the verification of directors’ identities add to this list of legal effect documents. The most meaningful sanction would be to delay the legal effect of any such notification until information is provided. That would provide an effective incentive for companies to process filings and help improve the structural integrity of the register.

***Legal effect documents***

**Q9. Do you agree that the removal of most documents which have legal effect by virtue of registration at Companies House should be a matter for the courts?**

Yes. Removal of any document should be a matter for the courts. The effect of certain documents should be able to be undone, and such documents annotated, but it is important to be able to see all the information and documentation that has been filed against a company.

**Q10. We propose that the Registrar should be able to remove certain filings which in future, will give legal effect such as director appointments. Do you have any views on whether the Registrar should have any other role in respect of legal effect filings?**

As per above, all filings should appear. However, these could be annotated by the registrar to note the progress of verification. This would also provide a public record of the registrar's response times for the use of such querying powers.

***What information will be published?***

**Q11. Do you agree that the evidence provided as a result of the Registrar's queries should not be published unless it comprises information that would normally be published? Please give reasons for your answer.**

Yes. The documents should be filed upon receipt, with a "progress" annotation, which should be updated. Once Companies House have received sufficient information this should be reflected on the annotation, but the information does not need to be filed.

***Transparency on the use of the querying power***

**Q12. The Registrar will provide an explanation about why the query is being made. What other information would you expect the query to contain?**

It will also need to explain why the query has to be made. Especially when holding up legally effective documents, it is necessary for the registrar to use this power sparingly.

**Q13. What kinds of evidence do you think it would be appropriate for the Registrar to request in support of a response to a query?**

That depends on the nature of the request. In respect of name changes, evidence that the company is connected to the relevant company or has their permission should suffice. When faced with contradictions, an explanation or updated filing to reflect the true situation should suffice. When faced with alleged illegality, this shows the necessity of limiting the powers of the registrar: it is neither possible nor fair to require someone to prove that they are not doing something illegal. As such, the burden for the registrar should be high, and the burden for the company should be low.

**Q14. What guidance on the Registrar's use of the querying power would you expect Companies House to publish?**

An exhaustive and finite list of circumstances in which the registrar will have such power, timescales in which such power must be exercised, how the company can satisfy a query under such power, the legal effect of the filing pending satisfaction, and time limits on the registrar to respond should all be covered by guidance.

***Complaints***

**Q15. Do you agree that complaints should be handled using the same process as the current Companies House complaints process? If not, please include reasons for your answer.**

Yes, so long as it is adequately resourced. It is important to note that exercise of these powers can have considerable larger practical implications than the registrar's current powers. As such, it is important that any disputes are timeously resolved.

***Removal of information***

**Q16. Do you agree that the Registrar should have greater powers to remove information? Do you have suggestions for other approaches we could take?**

No, information should require a court order for removal. However, it should be possible for the registrar to annotate the filings, and that annotation should be able to be added and removed by the registrar.

***Rectification of registered office address***

**Q17. Do you agree that the Registrar should close this loophole or are there circumstances where remaining at the default address, or moving to the default address more than once, is warranted?**

No. The law does not currently require a strong link to the registered address and this legislation should not change that. There should be powers to ensure that a company does not revert its address to one that has previously been objected to, but any bigger change is a fundamental change to the operation of company law.

Consider a UK company which operates entirely outside the UK. It is entirely legal for its registered office to be a firm of solicitors, or some other address that the company otherwise has no link to. How would such company comply with requirements to prove to the registrar that there is a link? If it is intended that there should be such a link, then the Companies Act 2006 should be changed to reflect that.

**Q18. Do you agree that the amount of time a company (or other entity) can be defaulted to the Companies House address be limited to a specified period, e.g. 12 months?**

Yes, so long as the company is aware, then it should not be a problem to have a time limit on the default address.

**Q19. What action do you consider should be taken if a company remains at the default address for longer than 12 months?**

A fine on the same scale as late filing of accounts seems to be sensible.

***Speeding up processes***

**Q20. Do you agree that it is appropriate to reduce the 28-day period? If not, what period do you consider is appropriate and why?**

If the annotation scheme is introduced, then a shorter period for annotation would be sensible (14 days, or even 7), with a longer period for removal (as it is more drastic and should take more evidence).

**Q21. Do you agree that Companies House should have the ability to remove the name or address of the affected individual while a response is awaited from the company?**

It should be possible to annotate the filings, potentially to redact/obscure such material.

***Power to require delivery by electronic means***

**Q22. Do you agree that the power to require (or mandate) delivery by electronic means should be conferred from the Secretary of State to the Registrar?**

The power is important but we consider that mandating delivery by electronic means is not yet appropriate as not everyone has access to electronic means. This is perhaps a particular consideration in the context of the pandemic where there are limited “back-up” options to access venues such as libraries or to borrow equipment from a friend or family member in order to comply with an electronic request.

***Rules governing company register***

**Q23. We intend to remove the requirement for companies to keep and maintain their own Register of Directors. Do you have any concerns about this approach?**

No, making the public register the constitutive register is inherently sensible.

**Q24. What impact would changes to the requirement to keep any of the registers in the list above have?**

If the public register becomes the constitutive register then there should be no need for private registers. However, a number of those registers remain the legal basis for registration.

**Q25. We may also consider further changes to the election regime for private limited companies which was introduced in 2016. How useful is the election regime for private limited companies?**

Very useful. Companies holding private registers was necessary prior to the register becoming freely publicly available. Now that it is, there is no argument for internal registers to be the legal basis for company law matters.

**For further information, please contact:**

Carolyn Thurston Smith

Policy Team

Law Society of Scotland

DD: 0131 476 8205

[carolynthurstonsmith@lawscot.org.uk](mailto:carolynthurstonsmith@lawscot.org.uk)