

Companies House changes – no pain, no gain!



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The latest stage of the Small Business, Enterprise and Employment Act 2015 (the SBEE Act) was implemented on 30 June 2016 when confirmation statements replaced the familiar annual return. The SBEE Act is a new regime intended to streamline compliance processes for businesses and increase corporate transparency in the UK. In this briefing, we summarise some of the key changes charities should be aware of.

Purpose of the SBEE Act?

The SBEE Act implements the Fourth EU Money Laundering Directive (2015/849) and its main purpose is to:

- reduce red tape for small companies;
- make the UK a trusted and fairer place to do business by increasing transparency; and
- improve the quality of information available through the public register.

At first sight, the current changes add to, rather than reduce, administrative red tape for charitable companies, particularly when having to create their People with Significant Control (PSC) registers and getting to grips with the new confirmation statements which have replaced the annual return, but in the long run they should lead to a more streamlined and robust reporting process.

Is my Charity affected?

All UK companies and LLPs are affected and will see their Companies House filing requirements change. Accordingly, some charities will be affected, namely:

- Charitable companies (typically companies limited by guarantee).
- Trading subsidiaries of charities (companies limited by shares).

Scottish Charitable Incorporated Organisations (SCIO), Charitable Incorporated Organisations (CIO), and charities incorporated by statute or royal charter are currently exempt.

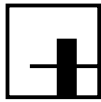
What are the changes?

Confirmation statement

With effect from 30 June 2016, the requirement for charitable and other companies to file an annual return has been replaced with a requirement for them to file a 'confirmation statement' at least once a year. The new form CS01 replaces the old form AR01. Form CS01 is divided into two sections: the [first](#) to be completed when the company is confirming that it has filed all information that it is required to file in respect of certain matters; and the [second](#) when the company is notifying any changes that have occurred.

When a company files its inaugural confirmation statement, it will for the first time be required to include information taken from its PSC register. The first confirmation statement must also contain a statement of capital (unless the company has already filed one after 30 June 2016).

The new form CS01 cannot be used to advise Companies House of changes to directors or company secretaries, the registered office address or single alternative inspection location. These must be notified separately either before or at the same time as the confirmation statement is filed.



The due date for a company's first confirmation statement is 12 months from the date of its last annual return (or, for new companies that were not due to file their first annual return before 30 June 2016, 12 months from the date of their incorporation) and it must be filed at Companies House within 14 days of the end of that period. Companies House has said that it will send an email alert or reminder letter to a company's registered office when its first confirmation statement is due for filing.

Companies can file more than one confirmation statement in any year if they wish to do so. However, the annual filing fee - £13 for online filing and £40 for paper filing (which is the same as the fee for filing the annual return), will be payable only once. Where a company files more than one confirmation statement, the due date for the next one will be 12 months from the day after the confirmation date in the last-filed confirmation statement.

Companies House has issued [guidance](#) about the new confirmation statement.

PSC Register

Perhaps the most controversial change introduced by the SBEE Act is the requirement for UK companies to keep a statutory register of any persons with significant control (PSC) over the company. This came into force on 6 April 2016, with a requirement to file the details of PSC's annually to Companies House with effect from 30 June 2016. In most cases this will form part of the first confirmation statement. The PSC Register is now available to search free of charge. It will take up to 12 months for the PSC Register to be complete, because confirmation statements are filed throughout the year, with each company's filing date based on the anniversary of its incorporation. Companies incorporated on or after 30 June 2016 will need to file the information that would be required to be included in their PSC registers at Companies House on incorporation.

The PSC Register is intended to increase transparency and make it easier to define and identify those with substantial control of business practices.

It is important to note that only individuals can have significant control. A person will be deemed to have significant control, and will need to be recorded on the Register if he or she possesses:

- Directly or indirectly, more than 25% of the shares in the company.
- Directly or indirectly, more than 25% of the voting rights in the company (note that for guarantee company charities where the trustees are also the members it will have to list its trustees if there are three trustees but not if there are four).

- The right to appoint or remove a majority of directors.
- The right to, or actually exercises, significant influence or control over the company.
- The right to, or actually exercises, significant influence or control over a trust or firm that is not a legal entity which in turn meets one of the above conditions.

Statement of capital

Until now, a statement of capital needed to be provided every year on the annual return. With effect from 30 June 2016, this no longer applies. Instead it can simply be shown on the confirmation statement that there have been no changes for that year. Only where there have been changes made during the year will a full statement of capital be required. Also, the statement of capital has been simplified. Previously, when a company filed a statement of capital it was required to include details of the amount paid up and unpaid on each share. Now the statement of capital need only show the aggregate amount, if any, unpaid on all of the company's issued shares.

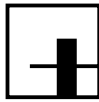
Maintenance of statutory registers centrally at Companies House

The SBEE Act has introduced provisions enabling private companies to elect to maintain certain of their statutory registers on the central register at Companies House, and thereby dispense with having to maintain their own registers. These provisions came into force on 30 June 2016. The registers affected are the register of members, the register of directors, the register of secretaries, the register of director's residential addresses and the PSC register.

However, by doing this, full dates of birth (including the day of the date of birth) for directors and people with significant control, and their usual residential addresses, will be shown on the public register (whereas otherwise this information, whilst recorded by Companies House, would not be published). Losing this protection is likely to be a cause for concern for many individuals because of the risk of identity theft and other security issues.

Companies that elect to maintain their registers centrally will need to notify any changes to Companies House promptly rather than waiting until they file their annual confirmation statement.

Companies can elect in and out of holding their information solely on the central public register, but information once included on the public register will not be removed if the company subsequently opts out of holding its registers centrally.



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What changes have still to happen?

With effect from October 2016, it will not be possible to appoint corporate directors, although there will be some limited exceptions. Any charitable and other company with an existing corporate director will need to take action, either explaining how they meet the conditions for exemption or notify the Registrar that the person has ceased to be a director.

Conclusion

The initial compliance aspects of the new regime, particularly establishing the PSC register and submitting the first confirmation statement, may seem to over-complicate matters for charities, but in the long-run there will be greater transparency and the existing reporting requirements will be reduced.

Our Charities Team

Our charities team is well known for providing bespoke, high quality advice to our clients. With an understanding of the specific challenges faced and the different regulatory regimes under which they work, we draw on experience and expertise from across the business to create a multidisciplinary team which provides quality, rounded and incisive legal advice.

In our regular bulletins, we aim to provide key information about issues affecting the charity sector, as well as commentary and guidance on new and existing legislation.

If you would like further guidance on the implementation of any aspect of the Small Business, Enterprise and Employment Act 2015, please contact our Charities team or speak to your normal Shepherd and Wedderburn contact.

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