

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Schedule 5: Communications by a company

Part 41: Business Names

1521. The provisions of this Part replace the Business Names Act 1985.

Chapter 1: Restricted Or Prohibited Names

Section 1192: Application of this Chapter

1522. This section partly replaces section 1 of the Business Names Act 1985. It ensures that the restrictions on the use of names in the course of business apply to all persons carrying on business in the UK, other than certain individuals or partnerships (see below). In particular, the restrictions:

- apply to all companies (and not as in the Business Names Act, just to any company capable of being wound up under the Insolvency Act 1986 which trades under a name other than that under which it is registered); and
- apply to any partnership whose members include a company (and not, as in the Business Names Act, only if the name under which such a partnership does business includes names for the corporate partners other than those under which they are registered).

1523. As in the Business Names Act, the restrictions do not apply to individuals if they trade either alone or in partnership under their surnames augmented only by their forenames and/or initials. Sole traders and individuals carrying on business in partnership are also excluded from the scope of the Chapter if the only addition to their name shows the business's previous ownership

1524. The main effect of the wider coverage is that controls apply to all overseas companies carrying on business in the UK. It also removes any uncertainty as to whether the controls apply to business entities other than companies incorporated under the Companies Acts.

Section 1193 to 1196: Sensitive words or expressions

1525. **Sections 1193 to 1195** replace sections 2, 3, 6 and 7 of the Business Names Act 1985. Section 1199 (see below) contains savings equivalent to those currently in section 2(2) of the Business Names Act.

1526. These sections require prior approval for the use of any name for carrying on business for which a company would require approval before it could be registered under it. (Sections 54 to 56, replacing sections 26(2) and 29 of the 1985 Act, apply corresponding restrictions to company names.) The differences between the requirements under these sections and the requirements under the Business Names Act are:

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- Section 1193(1)(a) requires prior approval for names likely to give the impression that the business is connected with Her Majesty's Government in Northern Ireland;
 - Section 1193(1)(c) provides a power for the Secretary of State to specify in regulations the public authorities such that prior approval will be required for names likely to give the impression that the business is connected with it;
 - The definition of local authority in section 1193(2) is brought up to date for Scotland and includes a district council in Northern Ireland;
 - Section 1195(4) provides that the Secretary of State may refuse to consider an application for approval that is not compliant with the statutory requirements.
1527. **Section 1196** provides that approval for the use of a name may be withdrawn in appropriate circumstances.

Section 1197: Name containing inappropriate indication of company type or legal form

1528. This section replaces sections 33, 34 and 34A of the 1985 Act. Rather than making it an offence on the face of the Act to use prohibited words, this section provides that the Secretary of State may by regulations make it an offence to carry on business under names using indicators of particular legal status, or similar words, unless entitled to do so. It complements sections 58 and 59, which control the use of statutory indicators of legal status (eg "ltd." and "p.l.c.") in companies' registered names.

Section 1198: Name giving misleading indication of activities

1529. This section makes it an offence to use a business name that gives so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public. This section complements section 76 which gives the Secretary of State power to direct a company to change its registered name in these circumstances.

Section 1199: Savings for existing lawful business names

1530. This section provides exemptions for those continuing to use a name that was lawful before the Act comes into force. The exemption is both from the requirement for prior approval and from using names that include a protected indicator of company status. It also retains the existing provision for when a business is transferred: providing the name was previously lawful, the business may continue under that name for 12 months even if otherwise it would not be lawful for whoever is now carrying on the business (see *subsection (3)*).

Chapter 2: Disclosure Required in Case of Individual Or Partnership

1531. This Chapter re-enacts for individuals and partnerships the Business Names Act provisions relating to information which must be displayed at places of business and in correspondence. These sections ensure that a business's suppliers and customers can discover the legal identity of the person with whom they are doing business and can serve documents upon it. Section 1203 makes special provision for large partnerships so that not all the partners' names are required in all business documents, provided certain conditions are met.

Section 1200: Application of this Chapter

1532. This section partly replaces section 1 of the Business Names Act 1985. It provides that Chapter 2 applies to:

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- sole traders if they trade under any name other than their true surnames augmented only by their forenames and/or initials. (Section 1208 defines initial to include any recognised abbreviation of a name);
 - partnerships unless their name is the surnames of all its human partners (augmented only by their forenames and/or initials) and the registered names of its other partners.
1533. It also excludes sole traders and partnerships if the only addition to their name shows the business's previous ownership.
1534. This section ensures that the coverage of this Chapter is the same as the Business Names Act except that, unlike that Act, it does not apply to any companies. The comparable requirements for companies are in Part 5, Chapter 6.

Section 1201: Information required to be disclosed

1535. This section replaces section 4(1)(a)(i), (ii) and (iv) of the Business Names Act 1985. It specifies the information that is to be the subject of disclosure under this Chapter (ie names and addresses for service).

Sections 1202 to 1204: Disclosure requirements

1536. **Sections 1202** and **1203** replace section 4(1)(a) and (2) to (7) of the Business Names Act 1985. They are designed to ensure that customers and suppliers:
- of sole traders know the true identity of the person with whom they are dealing and have an address for him/her which is effective for the service of documents relating to the business;
 - of partnerships with 20 or fewer partners know the identity of every partner and the address which is effective for the service of documents relating to the business;
 - of larger partnerships know the address which is effective for the service of documents relating to the business and either the identity of every partner or the address at which they can discover the identity of every partner.
1537. Large partnerships are not permitted to choose which partners' names are included in documents: they must either include the names of all the partners or none (except in the text or as a signatory) (see *subsection (2)(b)*).
1538. **Section 1202** also provides power for regulations relating to the form of a notice giving the trader's or partners' name(s) and address in response to any person who asks for the information in the course of business. For companies' registered names, equivalent provision may be made in regulations under section 82.
1539. **Section 1204** replaces section 4(1)(b) of the Business Names Act 1985 so far as it applies to sole traders and partnerships. It makes provision to enable customers and suppliers to discover the name(s) and the address for service of documents when visiting any business premises of the trader or partners.

Section 1205: Criminal consequences of failure to make required disclosure

1540. This section provides that certain provisions in Part 36 (offences under the Companies Acts) also apply to offences under this Part. It replaces and expands upon section 7 of the Business Names Act 1985 so far as it applies to sole traders and partnerships. It retains the existing offences of failure to comply with the requirements relating to disclosure of name and address in documents and notices.

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Section 1206: Civil consequences of failure to make required disclosure

1541. This section replaces section 5 of the Business Names Act 1985 so far as it applies to sole traders and partnerships. It provides legal rights to anyone who has sustained losses as a result of failure to comply with this Chapter's requirements by a sole trader or partnership.

Chapter 3: Supplementary

Section 1207: Application of general provisions about offences

1542. This section replaces section 7(6) of the Business Names Act 1985.

Section 1208: Interpretation

1543. This section replaces section 8 of the Business Names Act 1985. In particular, the definition of "initial" means that the restrictions on names in Chapter 1 not only would not apply to James Alexander Scotland if he were to trade as "James Alexander Scotland" or "J. A. Scotland" but also if he were to trade as "Jimmy Scotland" or "Jim A. Scotland". However, the restrictions would apply if he were to trade as "Scotland Bakers" or "John Scotland".