

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Chapter 3: Similarity to Other Names

Section 66: Name not to be the same as another in the index

161. This section replaces section 26(1)(c) and (3) of the 1985 Act.
162. *Subsection (1)* retains the present prohibition, in section 26(1)(c), on a company adopting a name that is already on the registrar's index of company names – which includes not only the names of Companies Act companies but various other business entities (see section 1099). *Subsections (2) and (3)* provide power for the Secretary of State to make regulations to replace the detailed rules presently contained in section 26(3) of the 1985 Act as to:
- what is to be disregarded; and
 - what words, letters and symbols are to be taken as the same, or as not the same, when comparing a proposed and an existing name. At present only “and” and “&” are taken as the same.
163. The section provides power also to treat as the same:
- currency symbols (e.g. £, \$) and their respective English word equivalents;
 - “%” and “per cent”;
 - “1”, “2”, “3” etc and “one”, “two” “three”.
164. The prohibition of names that, under these rules, are the same as an existing name will not be discretionary. But in future, it will be possible for there to be exceptions: *subsection (4)* provides that the regulations may provide that names which would otherwise be prohibited as being the same may be permitted in specified circumstances, or with specified consent, and that a subsequent change of circumstances or withdrawal of consent will not affect the company's registration.

Section 67: Power to direct change of name in case of similarity to existing name

165. This section replaces section 28(2) of the 1985 Act which provides power for the Secretary of State to direct a company to change its name if the name is the same as or too like a name already on the registrar's index of company names (or one which should have been there). The objective is to prevent the public being confused by the simultaneous appearance on the register of two very similar names when the similarity is such that the later name was not caught by the non-discretionary prohibition of adopting a name effectively the “same as” an existing name (see section 66).
166. The section is intended to cover two circumstances. First, any delay in the entry on the index of company names of new names of entities that are not UK companies. Companies House enter all names immediately but there may be delays outside their

control. If the name had already been taken by the other entity before the company adopted it, then the Secretary of State will direct the company to change its name. Second, the visual difference between the new name and an existing name being so small that third parties are likely to be confused by the simultaneous appearance of both names on the index of company names.

167. *Subsections (2) and (3)* provide power to make regulations, corresponding to that provided by section 66, to replace the detailed rules presently contained in section 26(3) of the 1985 Act as to:

- what is to be disregarded; and
- what words, letters and symbols are to be taken as the same

when comparing a proposed and an existing name. As in section 67, *subsection (4)* provides for a power to make regulations permitting names that would otherwise be regarded as “too like” in certain circumstances or where consent is given.

Section 68: Direction to change name: supplementary provisions

168. This section replaces section 28(4) and (5) of the 1985 Act as they apply to section 28(2). It provides a deadline of 12 months for the Secretary of State to direct a change of name under section 67, and for the Secretary of State to specify a period for the company’s compliance. It makes failure by the company to comply an offence.

Similarity to other name in which person has goodwill

169. *Sections 69 to 74* are new provisions. They respond to the CLR recommendation (Final Report, paragraph 11.50) that there be provision so that a person can apply for a company to be directed to change its name if the applicant can show that the name was chosen with the principal intention of seeking money from him or preventing him registering the name where it is one in which he has previously acquired reputation or goodwill.

Section 69: Objection to company’s registered name

170. This section provides for any person, not just a company, to object to a company names adjudicator if a company’s name is similar to a name in which the objector has goodwill. There is list of circumstances raising a presumption that a name was adopted legitimately. The respondent must show that one of these applies, or otherwise that he acted in good faith or that the interests of the applicant are not significantly affected (for example, where the applicant has hardly used the name at all). The objection will be upheld if the respondent cannot do so, or if the objector can show that the name was registered either to obtain money from him or to prevent him using the name.

Section 70: Company names adjudicators

171. This section provides power for the Secretary of State to appoint company names adjudicators and their staff and to finance their activities. One of the adjudicators is to be appointed Chief Adjudicator.

Section 71: Procedural rules

172. This section provides the Secretary of State with power to make rules for the proceedings before a company names adjudicator. The list of matters which the rules may cover is not exhaustive. It also enables the rule to confer on the Chief Adjudicator power to determine any matter that could be the subject of the rules made under this power.

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

Section 72: Decision of adjudicator to be made available to public

173. This section requires the adjudicator to publish his decision and his reasons for it, possibly through a website. The publication must be within 90 days of the decision.

Section 73: Order requiring name to be changed

174. This section is a new provision. If an objection made under section 69 is upheld, then the adjudicator is to direct the company with the offending name to change its name to one that does not similarly offend. A deadline must be set for the change. If the offending name is not changed, then the adjudicator will determine a new name for the company.

Section 74: Appeal from adjudicator's decision

175. This section enables appeal to a court against the decision of the company names adjudicator. The court will either uphold or reverse the adjudicator's decision, and may make any order that the adjudicator might have made.