
STATUTORY INSTRUMENTS

2002 No. 912

COMPANIES

The Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002

Made - - - - *31st March 2002*
Coming into force - - *2nd April 2002*

The Secretary of State, in exercise of the powers conferred on her by sections 723B to E of the Companies Act 1985⁽¹⁾ and of all other powers enabling her in that behalf, hereby makes the following Regulations, of which a draft has been laid before Parliament in accordance with section 723F(5) of that Act and approved by a resolution of each House of Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002.

(2) These Regulations shall come into force on 2nd April 2002.

(3) In these Regulations—

“the 1985 Act” means the Companies Act 1985;

“the LLP Regulations” mean the Limited Liability Partnerships (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002⁽²⁾;

“beneficiary of an order” means an individual in relation to whom a confidentiality order is in force;

“company” means a relevant company within the meaning of section 723D of the 1985 Act and a company incorporated outside Great Britain proposing to establish a place of business, or open a branch in Great Britain, which would require that company to deliver for registration the information specified in section 691 of the 1985 Act, or Schedule 21A, as the case may be;

“competent authority” means any authority specified in Schedule 1 to these Regulations;

“police force” means a police force within the meaning of section 101(1) of the Police Act 1996⁽³⁾ or section 50 of the Police (Scotland) Act 1967⁽⁴⁾;

(1) 1985 c. 6. Sections 723B to E were inserted by section 45 of the Criminal Justice and Police Act 2001 c. 16.
(2) S.I.2002/915.
(3) 1996 c. 16.
(4) 1967 c. 77.

“service address” means the address specified pursuant to regulation 2(2)(b) in an application made under section 723B(1) of the 1985 Act or, if another address has been substituted under regulation 7, the address most recently substituted under that regulation; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of England or Wales under or by virtue of the Banking and Financial Dealings Act 1971(5).

PART I

Applications for confidentiality orders under section 723B of the 1985 Act

2.—(1) An application for a confidentiality order shall be made to the Secretary of State.

(2) An application for a confidentiality order shall:

- (a) be in such form and contain such information and be accompanied by such evidence as the Secretary of State may from time to time direct;
- (b) specify each company of which the applicant is or proposes to become a director, secretary or permanent representative and shall specify an address complying with regulation 9;

(3) The Secretary of State may from time to time direct different information or evidence be provided for different cases or categories of application.

(4) The Secretary of State may require any information or evidence delivered by an applicant to be verified in such manner as she may direct.

(5) The Secretary of State may require any application to be supported by a statement by any company to which the application relates that that company wishes a confidentiality order to be made in respect of the applicant together with the statement of the reasons for that wish.

(6) At any time after receiving an application and before determining it, the Secretary of State may require that any applicant deliver additional information or evidence including the delivery by a company of a statement complying with paragraph (5).

(7) Subject to paragraph (8) each application shall be accompanied by a fee of £100, and the Secretary of State may reject any application without considering it unless it is accompanied by such fee.

(8) No fee shall be payable where an application is made by an applicant—

- (a) who at the same time has made an application for a confidentiality order under the LLP Regulations, and where a fee has been paid in respect of that application; or
- (b) in respect of whom, at the time of the application, a confidentiality order made under the LLP Regulations is in force.

(9) An applicant may withdraw his application, by notice delivered to the Secretary of State, at any time before the Secretary of State makes a decision on the application, and the Secretary of State may retain the fee paid in respect of that application.

Referral of questions for the purposes of the determination of an application

3.—(1) The Secretary of State may, in respect of any application or category of applications, refer to a relevant body any question relating to an assessment, in the case of such application or category of applications, of the nature and extent of any risk of violence or intimidation considered by the

applicant as likely to be created in relation to the applicant, or any person living with him, by virtue of the availability for inspection by members of the public of particulars of his usual residential address.

(2) The Secretary of State may also refer to a relevant body any question as to the nature or extent of any risk of violence or intimidation likely to be created in relation to any applicant or category of applicants or persons living with them as a result of their involvement in the activities of a particular company or category of companies or of a particular sector of commerce or industry.

(3) The Secretary of State may accept any answer to a question referred in accordance with paragraph (1) or (2) as providing sufficient evidence of the nature and extent of any risk relevant to an applicant or any person living with him for the purposes of any determination under section 723B(3) or (4) of the 1985 Act.

(4) In this regulation, “relevant body” means any police force and any other person whom the Secretary of State considers may be able to assist in answering a question referred to that person under paragraph (1) or (2).

Notification of the outcome of an application

4. The Secretary of State shall send the applicant at his usual residential address, as stated in his application, notice of her decision under section 723B(3) or (4) of the 1985 Act and such notice shall be sent within five working days of the decision being made.

Appeals

5.—(1) An applicant who has received notice under regulation 4 that his application for a confidentiality order has been unsuccessful may appeal to the High Court or the Court of Session on the grounds that the decision—

- (a) is unlawful;
- (b) is irrational or unreasonable; or
- (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(2) No appeal under this regulation may be brought unless the leave of the court has been obtained.

(3) An applicant must bring an appeal within 21 days of the sending of the notice under regulation 4 or, with the court’s permission, after the end of such period, but only if the court is satisfied:

- (a) where permission is sought before the end of that period, that there is good reason for the applicant being unable to bring the appeal in time; or
- (b) where permission is sought after that time, that there was a good reason for the applicant’s failure to bring the appeal in time and for any delay in applying for permission.

(4) The court determining an appeal may—

- (a) dismiss the appeal; or
- (b) quash the decision,

and where the court quashes a decision it may refer the matter to the Secretary of State with a direction to reconsider it and to make a determination in accordance with the findings of the court.

PART II

Service addresses

6. Where an application for a confidentiality order is made by a director, secretary or permanent representative, that individual shall notify to each of the companies specified in the application the service address specified in the application pursuant to regulation 2(2)(b).

7. If a beneficiary of an order wishes to substitute another address, complying with regulation 9, for an address specified by him under regulation 2(2)(b) or previously notified by him under this regulation, he shall do so by notifying every company of which he is a director, secretary or permanent representative of the address to be substituted.

8. Where the beneficiary of an order—

- (a) becomes a director, secretary or permanent representative of a company; or
- (b) is to be named in a statement delivered under section 10(2) of the 1985 Act as a director or secretary of a company to be formed under the 1985 Act; or
- (c) is a director, secretary or permanent representative of a company at the time when it establishes a place of business in Great Britain requiring registration of information under section 691 of the 1985 Act or opens a branch in Great Britain requiring registration of information under Schedule 21A to the 1985 Act, or proposes to establish such a place of business or open such a branch

that beneficiary shall, in a case falling within (a) or (c) above notify to the company the service address, and in a case falling within (b) above notify the service address to be included in the statement as provided in Schedule 1 to the 1985 Act.

9.—(1) Where an applicant for a confidentiality order or a beneficiary of an order holds, or proposes to hold, office as a director, secretary or permanent representative of more than one company the service address specified by that applicant or beneficiary in relation to each such company must be the same, and that address shall have effect for all offices held, or proposed to be held, by that applicant or beneficiary.

(2) A service address must be at a place at which service of documents may be effected by physical delivery other than a PO or a DX Box Number and where that delivery is capable of being recorded by the obtaining of an acknowledgement of delivery by any person.

(3) A service address must be situated within a state within the European Economic Area, and “a state within the European Economic Area” means a state which is a member of the European Communities and the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein.

PART III

Duration and renewal of a confidentiality order

10.—(1) Subject to paragraphs (2), (3), and (4) a confidentiality order shall remain in force for the period of five years from the date on which it is made unless revoked earlier under regulation 11.

(2) Where the beneficiary of a confidentiality order (“the existing order”) delivers an application under section 723B(1) of the 1985 Act for a further confidentiality order (“the new order”) before the expiry of the existing order (“the expiry date”) and the Secretary of State decides before the expiry date to make a new order under section 723B(3) of the 1985 Act, the new order shall come into force on the expiry of the existing order.

(3) Where the beneficiary of an existing order delivers an application under section 723B(1) of the 1985 Act for a new order before the expiry date and the Secretary of State has not made a decision under section 723B(3) or (4) of the 1985 Act before that date, the existing order shall continue in force until—

- (a) the Secretary of State makes a decision under section 723B(3) of the 1985 Act and the new order is made; or
- (b) the application is dismissed under section 723B(4) of the 1985 Act.

(4) Where a confidentiality order is made in relation to an application in respect of which no fee has been paid pursuant to paragraph (8) of regulation 2 that order shall remain in force for a period equal to the period for which the confidentiality order referred to in paragraph (8) of regulation 2, made under the LLP Regulations, is to remain in force.

Revocation of a confidentiality order

11.—(1) The Secretary of State may revoke a confidentiality order at any time if she is satisfied that—

- (a) the beneficiary of the order, or any other person, in purported compliance with any provision of these Regulations, has furnished the Secretary of State with false, misleading or inaccurate information; or
- (b) the registrar has not received, within the period of 28 days beginning with the date on which the beneficiary of the order was sent notice under regulation 4 of the Secretary of State’s decision, in relation to each company of which that beneficiary is a director, secretary or permanent representative, the information in respect of the service address required to be delivered to the registrar under sections 288, 692 or Schedule 21A of the 1985 Act, as the case may be, by virtue of the making of the order; or
- (c) the registrar has not received within the period of 28 days from—
 - (i) any change or alteration among, or to, the directors, the secretary or permanent representatives by virtue of the appointment of a beneficiary of any order; or
 - (ii) any change in the particulars of the usual residential address or the service address of the beneficiary of an order, in relation to each company of which that beneficiary is a director, secretary or permanent representative,
the information required to be delivered to the registrar under sections 288, 692 or Schedule 21A of the 1985 Act, as the case may be, of any such change or alteration, whether that change or alteration occurred before or after the making of the confidentiality order; or
- (d) any statement delivered to the registrar under section 10(2) of the 1985 Act naming an individual in respect of whom a confidentiality order under section 723B of that Act has been made did not contain the service address of the beneficiary or was not accompanied by a statement under section 10(2A) containing the usual residential address of the beneficiary; or
- (e) any return required to be delivered to the registrar under section 691(1)(b)(i) of, or paragraph 1(1) of Schedule 21A to, the 1985 Act does not contain the service address of the beneficiary or any return required to be delivered to the registrar under sub-section (5) of section 691 of, or paragraph 9 of Schedule 21A to, the 1985 Act is not so delivered; or
- (f) any address purporting to be the service address of a beneficiary of an order which has been notified to the registrar under any provision of the 1985 Act which does not comply with all the requirements of regulation 9.

(2) Where a beneficiary of an order is also the beneficiary of a confidentiality order made under the LLP Regulations which is revoked under those Regulations, the order made under section 723B of the 1985 Act is also revoked.

(3) If the Secretary of State proposes to revoke an order under this regulation, other than one revoked under paragraph (2), she shall send the beneficiary of the order notice.

(4) The notice must—

- (a) state the grounds on which it is proposed to revoke the order;
- (b) inform the beneficiary that he may, within the period of 21 days beginning with the date of the notice, deliver representations to the Secretary of State; and
- (c) state that if representations are not received by the Secretary of State within that period, the order will be revoked at the expiry of that period.

(5) If the beneficiary delivers representations as to why the order should not be revoked within the period specified in paragraph (4), the Secretary of State shall have regard to the representations in determining whether to revoke the order, and shall send the beneficiary notice of her decision, and such notice shall be sent within five working days of the decision being made.

(6) Any communication by the Secretary of State in respect of the revocation or proposed revocation of a confidentiality order shall be sent to the beneficiary at his usual residential address.

Notification of cessation of a confidentiality order

12. On a confidentiality order ceasing to have effect, for whatever reason, the beneficiary of that order shall notify every relevant company within the meaning of section 723D(1)(a) of the 1985 Act of which he is a director or secretary, of that order ceasing to have effect within five days of its so ceasing to have effect.

PART IV

Access to confidential records

13.—(1) Subject to paragraph (2) a competent authority is entitled to inspect, and take copies of, confidential records.

(2) The circumstances in which a competent authority may inspect, and take copies of, confidential records are that the registrar has made a determination, in respect of that competent authority, as to the manner in which that competent authority and its officers, servants and representatives may inspect, and take copies of, confidential records.

(3) The registrar may from time to time vary or revoke any determination with the consent of the competent authority in respect of whom it has been made.

Disclosure of relevant information

14.—(1) Subject to regulation 13 the disclosure of relevant information by any person is prohibited in the following circumstances—

- (a) where the information disclosed was delivered to the registrar, after the making of a confidentiality order in relation to the beneficiary of an order to whom the information relates, in the course of the performance of the duties of the registrar under the 1985 Act in respect of that information and the information was obtained by the person disclosing it from the registrar;

- (b) where the information disclosed was provided to a company, of which the beneficiary of the order to which the information relates was a director, secretary or permanent representative, after the making of that order, for the purpose of enabling the company to comply with sections 288, 289, 290, 691, 692 and Schedule 21A of the 1985 Act, as the case may be, and the information was obtained by the person disclosing it from the company.

(2) Paragraph (1) does not prohibit the disclosure of relevant information by a competent authority which is made for the purpose of facilitating the carrying out of a public function and “public function” includes—

- (a) any function conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
- (b) any function conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
- (c) any similar function conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
- (d) any function exercisable in relation to the investigation of any criminal offence or for the purposes of any criminal proceedings,

and disclosure for the purpose of facilitating the carrying out of a public function includes disclosure in relation to, and for the purpose of, any proceedings whether civil, criminal or disciplinary in which the competent authority engages while carrying out its public functions.

(3) Paragraph (1) does not prohibit the disclosure of relevant information where the disclosure—

- (a) facilitates the creation and maintenance of confidential records, the protected part of the register of a company, any return by an oversea company of information which is to form part of confidential records and the provision of facilities for the inspection and copying of confidential records; or
- (b) is by the registrar, or any person performing functions on his behalf, of any relevant information obtained in the circumstances described in sub-paragraph (1)(a), included in any document delivered to the registrar under any provision of the 1985 Act where that document is prescribed in respect of the delivery to the registrar of any information which is not relevant information and that document is made available for inspection and copying as if that were required by section 709(1) of the 1985 Act; or
- (c) is by any person of any relevant information obtained by that person from any document as is referred to in sub-paragraph (b).

(4) Paragraph (1) does not prohibit the disclosure by any person of relevant information obtained in the course of the performance of their duties or functions, where that disclosure occurred notwithstanding the exercise by that person of the due care and diligence in maintaining the confidentiality, required by the 1985 Act and these Regulations, of that information, that could reasonably be expected of a person performing those duties and functions.

(5) In this regulation—

“enactment” includes—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation;

“subordinate legislation” has the meaning given in the Interpretation Act 1978(6) and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.

(6) 1978 c. 30.

PART V

Form and delivery of notices etc.

15.—(1) Any notice—

- (a) by the Secretary of State under regulation 4, 11(3) or 11(5); or
- (b) to the Secretary of State under regulation 2(9);

and any representations made to the Secretary of State under regulation 11 shall be in legible form.

(2) Where any notice is required to be sent by the Secretary of State to the usual residential address of any person, that notice is validly sent if sent to the address of that person, shown in the records of the registrar available for inspection or copying under section 709 of the 1985 Act or the confidential records as the case may be when the notice is sent.

Amendments of enactments

16. The enactments mentioned in Schedule 2 to these Regulations shall have effect with the amendments specified being amendments supplemental to, and consequential upon, the making of these Regulations.

Offences and penalties

17.—(1) Any person who, in an application under section 723B of the 1985 Act, makes a statement which he knows to be false in a material particular, or recklessly makes a statement, which is false in a material particular, shall be guilty of an offence.

(2) Any person who discloses information in contravention of regulation 14 shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; and
- (b) on summary conviction, to imprisonment not exceeding six months, or to a fine not exceeding the statutory maximum or to both.

31st March 2002

Melanie J. Johnson,
Parliamentary Under Secretary of State for
Competition, Consumers and Markets,
Department of Trade and Industry

SCHEDULE 1

Regulation 1

Competent Authorities

the Secretary of State;

the registrar and the registrar of companies for Northern Ireland;

an inspector appointed under Part XIV of the Companies Act 1985 or regulation 30 of the Open-Ended Investment Companies Regulations 2001⁽⁷⁾;

any person authorised to exercise powers under section 447 of the Companies Act 1985, or section 84 of the Companies Act 1989⁽⁸⁾;

any person exercising functions conferred by Part VI of the Financial Services and Markets Act 2000⁽⁹⁾ or the competent authority under that Part;

a person appointed to make a report under section 166 of the Financial Services and Markets Act 2000;

a person appointed to conduct an investigation under section 167 or 168(3) or (5) of the Financial Services and Markets Act 2000;

an inspector appointed under section 284 of the Financial Services and Markets Act 2000;

the Department of Enterprise, Trade and Investment in Northern Ireland;

the Scottish Executive;

the Scotland Office;

the National Assembly for Wales;

the Wales Office (Office of the Secretary of State for Wales);

the Treasury;

the Commissioners of HM Customs and Excise;

the Commissioners of Inland Revenue;

the Bank of England;

the Director of Public Prosecutions and the Director of Public Prosecutions in Northern Ireland;

the Serious Fraud Office;

the Secret Intelligence Service;

the Security Service;

the Financial Services Authority;

the Competition Commission;

the Occupational Pensions Regulatory Authority;

the Panel on Takeovers and Mergers;

the Chief Registrar of Friendly Societies and the Registrar for Credit Unions and Industrial and Provident Societies for Northern Ireland;

the Director General of Fair Trading;

the Office of the Information Commissioner;

the Friendly Societies Commission;

a local weights and measures authority;

(7) S.I. 2001/1228.

(8) 1989 c. 40.

(9) 2000 c. 8.

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the Charity Commission;
 an official receiver appointed under section 399 of the Insolvency Act 1986⁽¹⁰⁾;
 a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986;
 an inspector appointed under Part XV of the Companies (Northern Ireland) Order 1986⁽¹¹⁾ or Regulation 22 of the Open-Ended Investment Companies (Companies with Variable Capital) Regulations (Northern Ireland) 1997⁽¹²⁾;
 any person authorized to exercise powers under Article 440 of the Companies (Northern Ireland) Order 1986;
 the Official Receiver for Northern Ireland;
 a police force;
 any procurator fiscal;
 an overseas regulatory authority within the meaning of section 82 of the Companies Act 1989.

SCHEDULE 2

Regulation 16

1.—(1) Section 10 of the 1985 Act is amended as follows—

(2) insert after subsection (2)—

“(2A) Where any statement delivered under subsection (2) includes an address specified in reliance on paragraph 5 of Schedule 1 there shall be delivered with the statement, a statement in the prescribed form containing particulars of the usual residential address of the director or secretary whose address is so specified.”;

(3) insert in subsection (3) after the words “The statement” the words “under subsection (2)”.

2.—(1) Section 288⁽¹³⁾ of the 1985 Act is amended as follows—

(2) insert after subsection (5)

“(5A) Where a confidentiality order made under section 723B is in force in respect of a director or secretary of a company, subsections (3) and (5) shall not apply in relation to that part of the register of the company as contains particulars of the usual residential address of that individual.”;

(3) subsection (7) is repealed.

3.—(1) Section 289⁽¹⁴⁾ of the 1985 Act is amended as follows—

(2) insert after subsection (1)—

“(1A) Where a confidentiality order made under section 723B is in force in respect of a director, the register shall contain, in addition to the particulars specified in subsection (1) (a), such address as is for the time being notified by the director to the company under regulations made under sections 723B to 723F.”.

⁽¹⁰⁾ 1986 c. 45.

⁽¹¹⁾ 1986/1032 (N.I. 6).

⁽¹²⁾ S.R.N.I. 1997/251.

⁽¹³⁾ Section 288 was amended by section 143 of the Companies Act 1989 c. 40, and section 45 of the Criminal Justice and Police Act 2001 c. 16.

⁽¹⁴⁾ Section 289 was amended by section 145 of the Companies Act 1989 c. 40, and the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000, S.I. 2000/1430.

4.—(1) Section 290(15) of the 1985 Act is amended as follows—

(2) insert after subsection (1)—

“(1A) Where a confidentiality order made under section 723B is in force in respect of a secretary the register shall contain, in addition to the particulars specified in subsection (1) (a), such address as is for the time being notified by the secretary to the company under regulations made under sections 723B to 723F.”.

5.—(1) section 691(16) of the 1985 Act is amended as follows—

(2) insert after the word “containing” in subsection (1)(b)(i) the words “(subject to subsection (5)).”

(3) insert after subsection (4A)—

“(5) Where a confidentiality order made under section 723B is in force in respect of a director or secretary required to be specified in the list under subsection (1)(b)(i)—

- (a) if the order is in respect of a director, subsection (2) has effect in respect of that director as if the reference in subsection (2)(a)(iii) to his usual residential address were a reference to the address for the time being notified by him to the company under regulations made under sections 723B to 723F;
- (b) if the order is in respect of a secretary, subsection (3) has effect in respect of that secretary as if the reference in subsection (3)(a) to his usual residential address were a reference to the address for the time being notified by him to the company under such regulations; and
- (c) in either case the company shall deliver to the registrar, in addition to the return required by subsection (1), a return in the prescribed form containing the usual residential address of the director or secretary to whom the confidentiality order relates, and any such return shall be delivered to the registrar within one month of the company establishing a place of business in Great Britain.”.

6.—(1) Section 692 of the 1985 Act is amended as follows—

(2) insert after subsection (1)—

“(1A) If an individual in respect of whom a confidentiality order under section 723B is in force becomes a director or secretary of an overseas company—

- (a) the return required to be delivered to the registrar under subsection (1) shall contain the address for the time being notified by the director or secretary to the company under regulations made under sections 723B to 723F, but shall not contain his usual residential address; and
- (b) with that return the company shall deliver to the registrar a return in the prescribed form containing the usual residential address of that director or secretary.

(1B) If a confidentiality order under section 723B is made in respect of an existing director or secretary of an overseas company, the company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the address for the time being notified to it by the director or secretary under regulations made under sections 723B to 723F.

(1C) If while a confidentiality order made under section 723B is in force in respect of a director or secretary of an overseas company there is an alteration in his usual residential

(15) Section 290 was amended by section 145 of the Companies Act 1989 c. 40.

(16) Section 691 was amended by section 145 of the Companies Act 1989, and the Companies Act 1985 (Electronic Communications) Order 2000, S.I. 2000/3373.

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address, the company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the new address.”.

(3) In subsection (3), after “subsections (1)” insert “, (1B), (1C)”.

7.—(1) Schedule 1(17) to the 1985 Act is amended as follows—

(2) insert after paragraph 4—

“(5) Where a confidentiality order made under section 723B is in force in respect of any individual named as a director or secretary, paragraphs 1(a) and 3(1)(a) have effect as if the references to the usual residential address of the individual were references to the address for the time being notified by him under regulations made under sections 723B to 723F to any companies or oversea companies of which he is a director, secretary or permanent representative, or, if he is not such a director, secretary or permanent representative either the address specified in his application for a confidentiality order under regulations made under section 723B or the address last notified by him under regulations made under sections 723B to 723F as the case may be.”.

8.—(1) Schedule 21A(18) to the 1985 Act is amended as follows—

(2) insert after the word “containing” in paragraph 2(1)(d) and after the words “names and” in paragraph 3(f) the words “(subject to paragraph 4A)”;

(3) insert after paragraph 4—

“(4A) Where a confidentiality order made under section 723B is in force in respect of a director or secretary required to be specified in the list under paragraph 2(1)(d) or a permanent representative required to be specified in the list under paragraph 3(f)—

- (a) if the order is in respect of a director, paragraph 2(1)(d) has effect in respect of that director as if the reference in paragraph 2(3)(a)(iii) to his usual residential address were a reference to the address for the time being notified by him to the company under regulations made under sections 723B to 723F;
- (b) if the order is in respect of a secretary, paragraph 2(1)(d) has effect in respect of that secretary as if the reference in paragraph 2(4)(a) to his usual residential address were a reference to the address for the time being notified by him to the company under such regulations;
- (c) if the order is in respect of a permanent representative, paragraph 3(f) has effect in respect of that representative as if the reference to his usual residential address were a reference to the address for the time being notified by him to the company under such regulations; and
- (d) in any case the company shall deliver to the registrar, in addition to the return required by paragraph 1(1) a return in the prescribed form containing particulars of the usual residential address of the director, secretary or permanent representative to whom the confidentiality order relates, and any such return shall be delivered to the registrar within one month of having opened a branch in a part of Great Britain.”.

(4) insert after paragraph 8—

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(17) Schedule 1 was amended by section 145 of the Companies Act 1989 c. 40 and by the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000 S.I. 2000/1430.

(18) Schedule 21A was amended by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992 S.I. 1992/3179.

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(1) If an individual in respect of whom a confidentiality order under section 723B is in force becomes a director, secretary or permanent representative of a company that has delivered a return under paragraph 1(1)—

- (a) the return required to be delivered to the registrar under paragraph 7(1) shall contain the address for the time being notified to the company by the director, secretary or permanent representative under regulations made under sections 723B to 723F, but shall not contain his usual residential address; and
- (b) with the return under paragraph 7(1) the company shall deliver to the registrar a return in the prescribed form containing the usual residential address of that director, secretary or permanent representative.

(2) If after a company has delivered a return under paragraph 1(1) a confidentiality order under section 723B is made in respect of an existing director, secretary or permanent representative of the company, the company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the address for the time being notified to it by the director, secretary or permanent representative under regulations made under sections 723B to 723F.

(3) Sub-paragraph (4) applies if, at any time after a company has delivered a return under paragraph 1(1), there is an alteration in the usual residential address of a director, secretary or permanent representative of the company in respect of whom a confidentiality order under section 723B is in force.

(4) The company shall within the time specified below deliver to the registrar of companies for registration a return in the prescribed form containing the new address.

(5) The time for the delivery of a return required by sub-paragraph (2) or (4) is 21 days after the date on which notice of the alteration in question could have been received in Great Britain in due course of post (if despatched with due diligence).

(6) Where a company has more than one branch in Great Britain and any provision of this paragraph requires a return to be made to the registrar, that provision requires the company to deliver a return in respect of each of the branches; but a return which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 45 of the Criminal Justice and Police Act 2001 inserted sections 723B to 723F into the Companies Act 1985 (“the 1985 Act”). Those sections provide for a system of granting confidentiality orders to directors and secretaries of companies formed under the 1985 Act and directors, secretaries and permanent representatives of overseas companies with a place of business, or a branch, in Great Britain within the meaning of the 1985 Act.

Confidentiality orders are granted to individuals on application to the Secretary of State when she is satisfied that the availability for inspection of the usual residential address of that individual in the records of the registrar of companies creates, or is likely to create, a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation. The effect of the order

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is that all notifications to the registrar of companies subsequent to the granting of the order in respect of the usual residential address of the beneficiary of an order are kept as confidential records by the registrar which do not form part of his records available for public inspection. These Regulations make further provision for the implementation of the system and for supplemental and consequential amendments to the 1985 Act.

Part I of the Regulations makes provision for the application process. Regulation 2 provides for the manner of making applications, for the evidence to be delivered to the Secretary of State in support of the application, and prescribes a fee for an application. Regulation 3 empowers the Secretary of State to refer questions to other bodies for the purposes of deciding upon applications. Regulation 4 prescribes the manner in which the Secretary of State notifies the outcome of an application. Regulation 5 provides for appeals to the Court against the decision of the Secretary of State rejecting an application.

Part II of the Regulations makes provision for the address which is to appear on the public record of the registrar of companies on the granting of a confidentiality order in place of the usual residential address of the beneficiary of an order. Regulations 6, 7 and 8 specify how and to whom that address and any changes to it are to be notified in the circumstances set out in those regulations. Regulation 9 requires such an address to be the same in respect of all companies of which the beneficiary of an order is a director, secretary or permanent representative. It also defines the nature of a place that can be such an address and requires the address to be situated within the European Economic Area.

Part III of the Regulations makes provision for the duration, renewal and revocation of confidentiality orders. Regulation 10 determines the time for which confidentiality orders are to remain in force and makes provision for the operation of confidentiality orders when they are sought to be renewed. Regulation 11 describes the circumstances in which the Secretary of State may revoke confidentiality orders when orders have been obtained on false, misleading or inaccurate information, when certain information relating to the beneficiary required by the 1985 Act has not been delivered to the registrar within a prescribed period and where a service address does not comply with the requirements of Regulation 9. It provides for an order to be revoked where the beneficiary is also the beneficiary of a confidentiality order under the Limited Liability Partnerships (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002 and that order is revoked under those regulations. It also prescribes the procedure to be followed on the revocation of an order. Regulation 12 provides for notice to be given by a beneficiary of an order when it ceases to have effect.

Part IV of the Regulations makes provision for granting access to confidential records of the registrar and imposes a prohibition on the disclosure of relevant information as defined in section 723C(5) of the 1985 Act. Regulation 13 grants access to confidential records to the competent authorities listed in Schedule 1. Regulation 14 prohibits disclosure of relevant information by persons obtaining such information in the circumstances set out in paragraph (1) of that regulation, while the remaining paragraphs of the regulation provide exemptions from that prohibition.

Part V of the Regulations contains provisions on the manner and form of certain notices to be given to and by the Secretary of State under these Regulations (Regulation 15) and provision is made in Regulation 17 for breaches of the prohibition in Regulation 14 and for knowingly or recklessly making statements, false in a material particular, in an application under section 723B to constitute an offence. Regulation 16 makes the modifications in Schedule 2 to the enactments specified in that Schedule. The amendments seek to ensure that the enactments, under which companies formed under the 1985 Act (sections 10, 288, 289, 290 of, and Schedule 1 to, the 1985 Act) and overseas companies (sections 691, 692 of, and Schedule 21A to, the 1985 Act) are required to notify the usual residential address of directors, secretaries and permanent representatives, are modified to require notification of the service address of a beneficiary of an order to the registrar for the public record and the continued notification of changes in the particulars of the usual residential address of a beneficiary to the registrar for confidential records defined in section 723D of the 1985 Act. Schedule 2 (paragraph 2) also amends section 288 of the 1985 Act to remove the right of members of

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the company and the public to inspect that part of the register kept by a company under that section which contains particulars of the usual residential address of beneficiaries of confidentiality orders.