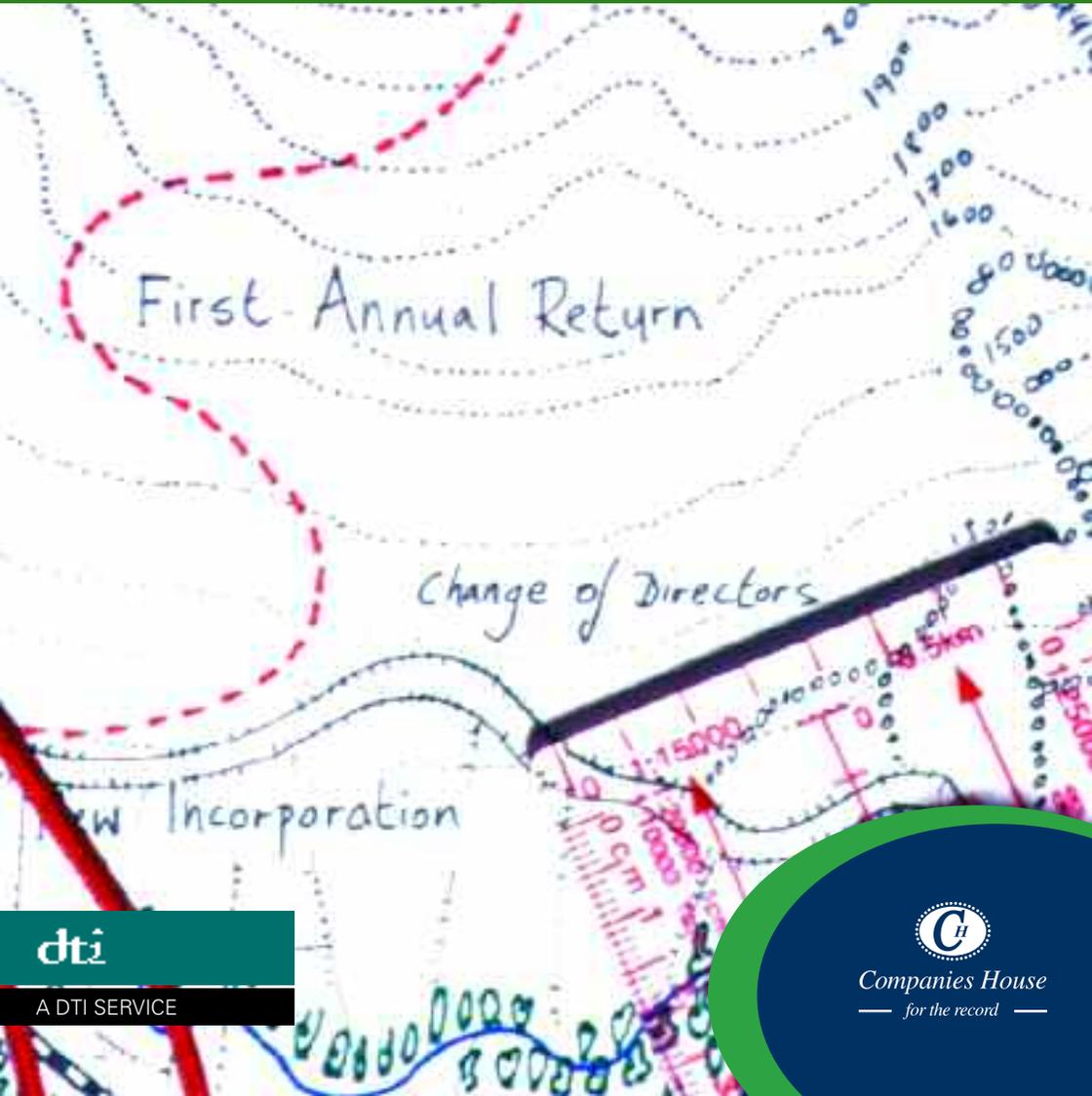


March 2006

Directors and Secretaries Guide



dti

A DTI SERVICE



Companies House
— for the record —

All the Guidance Booklets listed below together with all our other published information is available on the Companies House website:

www.companieshouse.gov.uk

This booklet is available in Welsh, large print and audio tape on request.

Guidance Booklets

Formation and Registration

Company Formation	GBF1
Company Names	GBF2
Business Names	GBF3

Administration and Management

Directors and Secretaries Guide	GBA1
Annual Return	GBA2
Accounts and Accounting Reference Dates	GBA3
Auditors	GBA4
Late Filing Penalties	GBA5
Share Capital	GBA6
Resolutions	GBA7
Company Charges and Mortgages	GBA8
Company Charges (Scotland)	GBA8(S)
Flat Management Companies	GBA9
Dormant Companies	GBA10

Winding-Up

Liquidation and Insolvency	GBW1
Liquidation and Insolvency (Scotland)	GBW1(S)
Strike-off, Dissolution and Restoration	GBW2
Strike-off, Dissolution and Restoration (Scotland)	GBW2(S)



Contents

Introduction	02
1 Limited companies: the basics.....	03
2 Role of a company director.....	05
3 Role and duties of a company secretary	09
4 What you have to send to Companies House	14
5 Quality of documents	19
6 Further information	22

**This booklet is a guide only and
should be read with the relevant legislation**

© Crown Copyright

Published by
Companies House, Crown Way, Cardiff CF14 3UZ

Introduction

All companies must have officers. This means at least one director and a company secretary for a private limited company, and at least two directors and a company secretary for a public limited company. The director, or directors, must manage the company's affairs in accordance with its articles of association and the law. Certain responsibilities apply to all directors, whether executive or non-executive, and to all types of company whether trading or not. The company secretary is the chief administrator of the company.

This booklet:

- explains some of the main responsibilities of a company's officers; and
- deals with some of the key requirements of the Companies Act 1985 in relation to the delivery of documents to Companies House. When we refer to 'the Act' in this booklet, we mean the 1985 Companies Act (as amended in 1989 and later).

The booklet will not tell you everything about being a director or secretary, but it will give you a good idea of your responsibilities as they relate to Companies House.

If, after reading this booklet, you are in doubt about your responsibilities, you should seek professional advice from a solicitor or accountant.

Chapter 1 **Limited companies: the basics**

1 Do I really need a limited company?

The majority of businesses are not companies. The reasons for having a company are varied, for example, it could involve ownership of property, obtaining investment funds, taxation or contractual relationships. Many businesses function satisfactorily as sole traders or partnerships.

The key point to recognise is that a company is a separate entity.

- This means that it is a legal person in its own right.
- It is separate from those who own or run it, and has 'limited liability'.

2 What does limited liability mean?

Limited liability gives the owners of the company (its shareholders) protection if the company fails.

This means that if a company is put into liquidation, the people who own the company will only be required to pay what they have already paid or agreed to pay towards settling its debts.

3 How do I set up a limited company?

If you decide, maybe after taking professional advice, that a limited company is the best thing for your business, you can buy a ready-made company from a company incorporation agent. Alternatively, you can incorporate a company yourself - for details see our booklets, 'Company Formation' and 'Company Names'.

4 What can I do with an unwanted company?

If you decide that you do not need a company that you have set up, you should consider putting it into voluntary liquidation. If the company cannot afford this, you may be able to apply for it to be struck off the register.

Our guidance booklets 'Liquidation and Insolvency' (or 'Liquidation and Insolvency (Scotland)') and 'Strike-off, Dissolution and Restoration' (or 'Strike-off, Dissolution and Restoration (Scotland)'), will give you more information on these subjects.

Chapter 2 **Role of a company director**

1 Can anyone be a director?

Generally it is up to the members to appoint the people they believe will run the company well on their behalf. The only restrictions that prevent anyone becoming a director are:

- the person must not have been disqualified by a court from acting as a company director (unless he or she has been given leave (permission) to act by a court for a particular company);
- the person must not be an undischarged bankrupt (except with leave of the court);
- in Scotland, anybody under the age of 16; and
- for a PLC or their subsidiaries, anybody over the age of 70 unless specifically approved by a general meeting of the company.

2 What responsibilities does a director have towards Companies House?

Every company director has a personal responsibility to ensure that statutory documents are delivered to the Registrar as and when required by the Act. In particular:

- accounts (only for limited companies);
- annual returns (Form 363);
- notice of change of directors or secretaries or in their particulars (Forms 288a/b/c); and
- notice of change of registered office (Form 287).

Chapter 4 summarises what a limited company has to send to Companies House.

3 What happens if accounts or annual returns are not filed?

All the directors of the company could be prosecuted. Failure to deliver documents on time is a **criminal offence**. On conviction, a director could end up with a criminal record and a fine of up to £5,000 for each offence.

Alternatively, if the Registrar believes that the company is no longer carrying on business or in operation, he could strike it off the register and dissolve it. If this happens all the assets of the company, including its bank account and property, generally become the property of the Crown.

The company can only be restored to the register and continue in existence by means of a court order. See our booklet, 'Strike-off, Dissolution and Restoration' or for Scottish companies 'Strike-off, Dissolution and Restoration (Scotland)', for details.

4 Are directors really prosecuted?

Yes. On average more than 1,000 directors are prosecuted each year for failing to deliver accounts and returns to the Registrar on time. Persistent failure to deliver statutory documents on time may also lead to a director being disqualified from taking part in the management of a company, for a specified period.

5 What happens if accounts are delivered late?

As a director of a private limited company, you normally have a maximum of 10 months from the accounting reference date in which to deliver your company's accounts to the Registrar. The accounting reference date is the date to which your accounts must be prepared.

As a director of a public limited company, you normally have a maximum of 7 months from the accounting reference date in which to deliver your company's accounts to the Registrar.

Important: if your company's first accounts cover a period of more than 12 months, they must reach Companies House within 22 months of the date of incorporation for private companies and 19 months for public companies.

If accounts are received late, the company will automatically be charged a 'late filing penalty'. These penalties can be in addition to any fine imposed by a court - as explained in question 3 of this chapter. The late filing penalty will be calculated according to the following scale:

Length of delay	Private company	Public company
3 months or less	£ 100	£ 500
3 months one day to 6 months	£ 250	£1000
6 months one day to 12 months	£ 500	£2000
More than 12 months	£1000	£5000

See our booklet, 'Late Filing Penalties', for details.

6 How can prosecution and penalties be avoided? Make sure your company complies on time with all its filing obligations, not only in connection with its accounts and annual returns, but in connection with all other documents required under the Act.

7 Isn't my accountant supposed to do all this? Your accountant's responsibilities depend on the agreement you have with him or her. However, the responsibility to deliver accounts and other statutory documents rests entirely with the directors.

Ensure that your accountants have all the necessary information to prepare your accounts and get them audited on time. If necessary, chase your accountants. Don't just assume they are getting on with the job.

Accountants and financial advisers don't get prosecuted or penalised for late filing. You do!

8 Why does Companies House need this information? In exchange for the benefits of trading with limited liability, companies must deliver certain information about themselves to the Registrar. He must then make this information available for inspection by the public so that they can make informed decisions about companies that they may wish to invest in or do business with.

Remember: delivery of documents does not take place until they reach the Registrar.

Chapter 3 **Role and duties of a company secretary**

1 Does every company need a secretary? Yes. Section 283(1) of the Act says every company must have a secretary. Section 283(2) states that a sole director cannot also be the secretary.

2 Does a company secretary need any qualifications? The company secretary of a public limited company needs to be qualified as explained below. The company secretary of a private limited company needs no formal qualifications.

Section 286 of the Act (qualifications of company secretaries) says that the directors of a public limited company must make sure, as far as reasonably possible, that the secretary, or each joint secretary, is a person who appears to them to have the proper knowledge and experience to carry out the functions of company secretary. In addition, the secretary must also be a person who:

- is a member of any of the following bodies:
 - the Institute of Chartered Accountants in England and Wales;
 - the Institute of Chartered Accountants of Scotland;
 - the Institute of Chartered Accountants in Ireland;
 - the Chartered Association of Certified Accountants;
 - the Institute of Chartered Secretaries and Administrators;
 - the Chartered Institute of Management Accountants;
 - the Chartered Institute of Public Finance and Accounting; or

- held the office of secretary (or assistant or deputy secretary) of the company on 22 December 1980; or
- held the office of company secretary of a company (except a private company) for at least 3 out of the 5 years immediately before his or her appointment as secretary; or
- is a barrister, advocate or solicitor called or admitted in any part of the UK; or
- is a person who appears to the directors to be capable of carrying out the functions of company secretary, because he or she holds, or has held, any other similar position or is a member of any other body.

3 What are the duties of a company secretary?

They are not specified by the Act, but are usually contained in an employment contract.

Special duties

As the secretary is an officer of the company under section 744 of the Act, they may be criminally liable for defaults committed by the company. For example failure to file – in the time allowed – any change in the details of the company’s directors and secretary, and the company’s annual return.

The secretary may also have to make out a statement of the company’s affairs if an administrative receiver or a provisional liquidator is appointed, or if a winding-up order is made. (Sections 47 (Section 66 for Scotland) and 131 of the Insolvency Act 1986.)

Other duties

The company secretary usually undertakes the following duties:

(a) *Maintaining the statutory registers.* These are:

- the register of members (section 352);
- the register of directors and secretaries (section 288);
- the register of directors' interests (section 325);
- the register of charges (section 407 or 422 for Scottish companies); and
- for public companies only, the register of interests in shares (section 211).

(b) *Ensuring that statutory forms are filed promptly.*

You cannot simply send a letter to notify the Registrar that you wish to change the situation of the company's registered office or that changes have occurred among directors or secretaries or their particulars. You should normally use forms 287 and 288a, b or c as appropriate. You may also use the annual return Form 363s in some circumstances if the return is due at the convenient time. Changes of directors' and secretaries' details must be notified within 14 days. There are many other forms that need to be delivered to the Registrar. See Chapter 4, 'What you have to send to Companies House', for more information.

(c) *Providing members and auditors with notice of meetings.* You must give them 21 days written notice of an annual general meeting. You must

give them 14 days written notice of a meeting which is neither an annual general meeting or a meeting to pass a special resolution. If you are the secretary of an unlimited company, the written notice required is 7 days.

- (d) *Sending the Registrar copies of resolutions and agreements.* You must send the Registrar copies of every resolution or agreement to which section 380 applies, for example special and extraordinary resolutions, within 15 days of them being passed.
- (e) *Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings – also copies demanded by anyone under section 239 of the Act.* You must send accounts at least 21 days before a meeting at which they are to be laid – see section 238 of the Act.
- (f) *Keeping, or arranging for the keeping, of minutes of directors' meetings and general meetings.*
- (g) *Ensuring that people entitled to do so, can inspect company records.* For example, members of the company and members of the public are entitled to a copy of the company's register of members, and members of the company are entitled to inspect the minutes of its general meetings and to have copies of these minutes.
- (h) *Custody and use of the company seal.*
Companies no longer need to have a company seal but if they do, the secretary is usually

responsible for its custody and use. (Company seals can be bought from legal stationers and company formation agents.)

4 Does a company secretary have any powers?

No, but the Act allows them to sign the following re-registration applications:

- the re-registration of a limited company as unlimited – section 49(4) of the Act;
- the re-registration of an unlimited company as limited – section 51(4);
- the re-registration of a public company as a private company – section 53(1)(b); and
- the re-registration of a private company as a public company – section 43(3).

The secretary is also allowed to sign most of the forms prescribed under the Act.

5 What rights does a company secretary have?

They depend on the terms of his or her contract with the company. The secretary has no special rights under the Act.

Chapter 4 **What you have to send to Companies House**

Company directors and secretaries are responsible for delivering information to the Registrar. There are over 200 forms that companies could file. The following information deals only with the most common forms and documents that companies will use.

1 Accounts

All limited companies, whether trading or not, must keep accounting records and file accounts for each accounting period with the Registrar.

Unless a company is claiming exemption as a medium-sized, small, audit-exempt or dormant company, the accounts will include:

- a directors' report signed by a director or the company secretary;
- a balance sheet signed by a director;
- a profit and loss account (or income and expenditure account if the company is not trading for profit);
- an auditors' report signed by the auditor;
- notes to the accounts; and
- group accounts (if appropriate).

Our booklet, 'Accounts and Accounting Reference Dates', provides more information on preparing and filing accounts and about exemptions from filing.

Accounts must be produced to a standard that we can scan to reproduce electronically – see chapter 5.

Directors are personally responsible for ensuring that accounts are prepared and delivered to Companies House. Failure to do so may result in a criminal conviction and record for the director(s) and will result in financial penalties for the company.

2 Annual returns (Form 363)

An annual return is a snapshot of general information about a company giving details of its directors and secretary, registered office address, shareholders and share capital.

Companies House will send a pre-printed 'shuttle' annual return form to the company's registered office each year. It details the information already held on our database.

The details should be:

- checked closely (and amended if necessary);
- signed and dated; and
- returned to us within 28 days of the date shown on the form, with the filing fee.

If you file the annual return late or not at all, the company and its director(s) and secretary can be prosecuted.

Please note that *annual returns* are quite separate from *annual accounts*. For more information about how to complete an annual return, refer to our 'Annual Return' booklet.

3 Change of accounting reference date - Form 225

Every company has an accounting reference date, which is the date to which the company's accounts are prepared each year. This date can be changed using Form 225. For more information, see our 'Accounts and Accounting Reference Dates' booklet.

4 Change of registered office - Form 287

It is vital that you keep us informed of the location of your registered office. All formal communications are sent there.

Every company must have a registered office: it is the 'home' of the company to which all official documents, notices and court papers have to be sent by law. The address must be a physical location, not just a post office box. This is because people have the right to visit your office to inspect certain registers and documents, and to deliver documents by hand.

You can change your registered office address by sending a completed Form 287 to the Registrar. The change becomes legally effective only when we have registered the form.

5 Change of directors and secretary and their details - Forms 288

There are three types of Form 288.

- Form 288(a) is used for the appointment of an officer.
- Form 288(b) is used for an officer ceasing to act (resignation, removal, death etc).
- Form 288(c) is used for a change in details of an officer, for example, a change of name or new residential address.

All changes to directors' and secretary's details must be sent to the Registrar within 14 days of the change.

**Electronic delivery of directors details and registered office address:
The Registrar's PROOF (PROtected On-line Filing) Scheme**

Company directors hold an important position in a company: they have power to make purchases and enter into credit arrangements on behalf of the company. Similarly, the registered office address is important because it is the address to which all official communications will be sent.

Records held at Companies House are sometimes used to check the legitimacy of a company and its directors before credit or loans are made therefore it is important that the records are correct. **Companies are vulnerable to fraud if the wrong people get themselves on record as company directors or a bogus registered office address is filed.**

In order to combat fraudsters posing as legitimate directors, Companies House offers companies a fully electronic and secure system for notifying changes of directors and changes to the registered office address. If you opt to only notify these electronically, they will be protected by electronic codes and we will not accept notices from your company delivered in any other format.

In order to take advantage of this service you will first need to register through our WebFiling service for a security code and an authentication code to enable your company to file electronically. To find out more about this please visit our web site at www.companieshouse.gov.uk.

You will then need to complete an 'Opt-in' form (PR1) and agree to the terms and conditions so that any change of directors or change of registered office address are **only** accepted by Companies House if they are delivered by the secure electronic method and never on a paper form. The 'Opt-in' form and terms and conditions are available from our web site or by calling 0870 33 33 636. The completed form must be posted back to Companies House.

This service is voluntary; you may opt-out at any time and we will revert to accepting notices from your company delivered electronically or on paper forms.

6 Allotments of shares - Form 88(2)

This form should be sent to Companies House within one month of the shares being allotted. Our booklet, 'Share Capital and Prospectuses' gives more information about this.

7 Resolutions

Copies of any special or extraordinary resolutions and certain types of ordinary resolutions, need to be sent to Companies House within 15 days of them being passed by the company – our booklet, 'Resolutions', gives more information about this. When a resolution alters the memorandum or articles of a company, a copy of the amended document must also be sent in at the same time as the resolution.

There is no special form to complete but the document must be produced to a standard that we can scan and reproduce electronically – see chapter 5.

8 Mortgages and charges

Details of any mortgage or charge created by the company must be sent to Companies House within 21 days. See our booklet, 'Company Charges and Mortgages' or for Scottish companies 'Company Charges (Scotland)'.

Chapter 5 **Quality of documents**

1 What happens to documents sent to Companies House?

The documents and forms you deliver to Companies House are scanned to produce an electronic image. The original documents are then stored, and the electronic image is used as the working document.

When your business contacts view the company record, they see the electronic image reproduced on-line. So it is important not only that the original is legible, but that it can also produce a clear copy.

This chapter lays down a few quality guidelines to follow when preparing a document for filing at Companies House.

2 What happens if my documents do not meet the guidelines ?

Section 706 of the Act allows Companies House to reject documents that cannot be captured electronically, giving a notice saying why they are unacceptable. An acceptable copy must be delivered within 14 days of the notice (otherwise we treat the original as not having been delivered).

3 How should documents be set out?

Every document delivered to the Registrar must state in a prominent position the registered number of the company, and must comply with any requirements specified by the Registrar relating to the legibility of that document.

Briefly, documents should be on A4 size, plain white paper between 80gsm and 100gsm in weight with a matt finish. Text should be black, clear, legible, and of uniform density. Letters and numbers must not be less than 1.8mm high, with a line width of not less than 0.25mm.

When you fill in a form:

- use black ink or black type;
- use bold lettering (some elegant thin typefaces and pens give poor quality copies);
- don't send a carbon copy;
- don't use a dot matrix printer; and
- remember – photocopies can result in a grey shade that will not scan well.

When you complete other documents, please remember:

- the points already made relating to completing forms;
- to use A4 size paper with a good margin;
- to supply them in portrait format (that is with the shorter edge across the top);
- to include the company number in the top right-hand corner of the first page.

Important: coloured ink can drop out (disappear) when a document is scanned to produce an image. To prevent this – **always use black ink to complete and sign all documents.**

4 What are the most common problems to avoid?

Glossy accounts. If you are producing colour-printed glossy accounts, please save them for your shareholders and others who will appreciate them. We still need black on white with a matt finish. A typed unbound version or printer's proof is ideal, provided it has the necessary signatures.

Members lists. Our requirements on document quality apply equally to the lists of shareholders that accompany annual returns and allotment forms.

If these are computer prints, it is essential that the print quality is good. We have particular problems with lists printed on green-lined computer paper. We can handle members lists on paper up to 14.5" x 12".

We will accept documents delivered on certain types of computer generated microfiche (comfiche) on a black master – as an alternative to paper – provided we can duplicate them on our diazo machines.

We may also be able to accept magnetic tape for very large listings.

5 Can I find out more about this?

For further guidance on print requirements contact 0870 33 33 636.

Chapter 6 Further information

1 Can I use information from Companies House?

Yes. Company information is vital to informed decision-making.

At Companies House you'll find information on every company in Great Britain, from names and addresses to annual returns and accounts. But note that most unlimited companies do not have to file their accounts.

You can also get information about overseas companies that establish a place of business in this country or open a branch here.

You can order a company search by telephoning 0870 33 33 636 or by visiting any of our offices – shown on the back cover.

2 Where do I get forms and guidance booklets?

This is one of a series of Companies House booklets which provide a simple guide to the Companies Act – see the inside front cover for a full list.

On request, we can also provide guidance on related legislation. Titles include: 'Overseas Companies' (GB01), 'Limited Partnership Act' (GB02), 'Newspaper Libel and Registration Act' (GB03), 'European Economic Interest Groupings' (GB04), 'Use of Welsh' (GB05) and 'The European Company: Societas Europaea (SE)' (GB06).

Statutory forms and guidance booklets are available, free of charge, from Companies House. The quickest way to get them is through our web site www.companieshouse.gov.uk or by telephoning 0870 33 33 636.

If you prefer you can write to our Stationery Sections in Cardiff or Edinburgh – addresses are on the inside back cover.

Forms can also be obtained from legal stationers, accountants, solicitors and company formation agents – addresses in business phone books.

If in doubt about your responsibilities, seek professional advice.

3 How do I send information to the Registrar?

You may deliver documents to the Registrar by hand (personally or by courier), including outside office hours, bank holidays and weekends to Cardiff, London and Edinburgh – see the back cover for addresses.

You may also send documents by post, by the Document Exchange service (DX), or by Legal Post (LP) in Scotland. If you send documents, please address them to:

*For companies incorporated
in England and Wales:*

**The Registrar of Companies
Companies House
Crown Way
Cardiff CF14 3UZ**

DX33050 Cardiff

For companies incorporated in Scotland:

**The Registrar of Companies
Companies House
37 Castle Terrace
Edinburgh EH1 2EB**

DX ED235 Edinburgh 1

LP – 4 Edinburgh 2

**Documents
Delivered by Post**

If you are sending documents by post, courier or Document exchange (DX) and would like a receipt, Companies House will provide an acknowledgement if you enclose a copy of your covering letter with a pre-paid addressed return envelope. We will barcode your copy letter with the date of receipt and return it to you in the envelope provided.

Please note: an acknowledgement of receipt does not mean that a document has been accepted for registration at Companies House.

our 3 point plan to prevent identity fraud



Companies House
— for the record —

WebFiling



safe and simple

Using **WebFiling**, our online filing service, is a far safer and more secure way to send us statutory information than using paper forms sent by post. You need to register for a security code (issued by email) and an authentication code (issued by post to your registered company office) and then you can send us much of the information about your company electronically. It's also 50% cheaper to file your annual return online.

PROOF



PROTECTED Online Filing

Once you have received your authentication code to file electronically, you can then sign up to **PROOF**, our new PROTECTED Online Filing service, which is designed to reduce identity fraud still further. We will then only accept forms relating to changes of address and directors' details from you electronically. We will not accept any of these documents on paper unless you authorise it.

Monitor



get the bigger picture

The **Monitor** service enables you to keep an eye on your competitors, business collaborators and your own company and 'monitor' which documents have been filed into Companies House. You know that certain company information lies within the public domain, so what could be more efficient than information that could help or protect your business being available to you the moment it is filed?

for further information,
please visit our website at
www.companieshouse.gov.uk

dti

A DTI SERVICE

well written?
0870 33 33 636

how to contact us

Contact Centre: 0870 33 33 636
Mini-com: 029 2038 1245
enquiries@companieshouse.gov.uk
www.companieshouse.gov.uk

Cardiff:

Companies House
Crown Way, Cardiff CF14 3UZ
Fax: 029 2038 0900

Edinburgh:

Companies House
37 Castle Terrace, Edinburgh EH1 2EB
Fax: 0131 535 5820

London:

Companies House
21 Bloomsbury Street, London WC1B 3XD
Fax: 029 2038 0900



AWARDED FOR EXCELLENCE



Companies House
— for the record —

GBA1 V10