Draft Regulations laid before Parliament under sections 1095(6) and 1290 of the Companies Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No. XXXX

COMPANIES

The Registrar of Companies and Applications for Striking Off (Amendment) Regulations 2016

Made - - - -	***
Coming into force - -	*6th April 2016*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1095(1) and (2) and 1292(1) of the Companies Act 2006(**a**).

In accordance with sections 1095(6) and 1290 of the Companies Act 2006, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Registrar of Companies and Applications for Striking Off (Amendment) Regulations 2016 and come into force on 6th April 2016.

Amendment to the Registrar of Companies and Applications for Striking Off Regulations 2009

2.—(1) The Registrar of Companies and Applications for Striking Off Regulations 2009(**b**) are amended as follows.

(2) In regulation 4 (rectification of the register on application)—

(a) in paragraph (1), omit the words in brackets;

(b) after paragraph (1), insert—

"(1A) Paragraph (1) does not apply—

(a) in a case mentioned in section 1095(4A) of the Companies Act 2006 (application for removal from register of material about directors), if the registrar is required under section 1095(4B) of that Act not to remove the material from the register;

(b) in any other case, if there is a valid objection to the application.";

(c) in paragraph (3)(a), for "section 167" insert "sections 167 or 167D"; and

(d) after paragraph (7), insert—

(**a**) 2006 c.46. Subsections (4A) to (4D) of section 1095 are inserted by section 102 of the Small Business, Enterprise and Employment Act 2015 (c.26) with effect from 6th April 2016.

(**b**) S.I. 2009/1803, to which there are amendments not relevant to these Regulations.

"(7A) But an application specifying material of the kind mentioned in section 1095(4A)(a) of the Companies Act 2006 (material naming a person as a director), which is accompanied by a statement of the kind mentioned in section 1095(4A)(b) of that Act, may also be made on behalf of the person named in the material.".

(3) In regulation 5 (applications to rectify: further requirements, objections and notices to be issued by the registrar)—

(a) after paragraph (1)(b), insert—

"(ba) where the applicant is making the application in reliance on regulation 4(7A)—

(i) confirm that the person named in the relevant material which is the subject of the application has consented to the applicant making the application on that person's behalf; or

(ii) explain the basis on which the applicant is otherwise entitled to make the application on that person's behalf;";

(b) in paragraph (8)(i), after "4(1)", insert "and (1A)(b)"; and

(c) after paragraph (15), insert—

"(15A) Paragraphs (15B) to (15F) apply in a case mentioned in section 1095(4A) of the Companies Act 2006 (but not in any other case), in place of paragraphs (8)(g) to (i) and (9) to (15).

(15B) The notice of the application given by the registrar under paragraph (3) must—

(a) give particulars of—

(i) the right of the company to which the application relates to provide the registrar with evidence that the person named in the material did consent to act as a director of the company; and

(ii) the requirements applying to that right under paragraph (15C); and

(b) explain the effect of regulation 4(1) and (1A)(a), paragraph (15F) of this regulation and section 1095(4B) and (4C) of the Companies Act 2006.

(15C) If the company to which the application relates wishes to provide the registrar with evidence that the person named in the material did consent to act as a director of the company, it must, before the end of the period of 28 days beginning with the date on which the registrar's notice under paragraph (3) was issued (as stated in the notice)—

(a) provide the registrar with the evidence in writing (and identify the application to which the evidence relates); and

(b) provide the registrar with a statement by the company that the evidence provided by it is true and is not misleading or deceptive in any material particular.

(15D) If the registrar is provided by the company with evidence and a statement as mentioned in paragraph (15C), the registrar must send an acknowledgement of receipt to the company.

(15E) The registrar must notify the applicant and every person to whom a notice was given under paragraph (3) of the outcome of the application.

(15F) If the outcome of the application is that the registrar does not remove the material from the register, the notice to the applicant under paragraph (15E) must be accompanied by a copy of the evidence provided by the company to the registrar under paragraph (15C)(a).".

Review

3.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of 5 years beginning with the day on which these Regulations come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

Name
Parliamentary Under Secretary of State and Minister for Intellectual Property
Date Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Registrar of Companies and Applications for Striking Off Regulations 2009 (S.I. 2009/1803) (the "2009 Regulations").

The 2009 Regulations contain provisions on the rectification of the register of companies. On receipt of an application, the registrar of companies must remove from the register material that is factually inaccurate, derived from something that is factually inaccurate or forged, or derived from anything invalid or ineffective or done without a company's authority, unless a valid objection is made within 28 days.

Together with section 102 of the Small Business, Enterprise and Employment Act 2015 (c.26), these Regulations introduce a new system for removing from the register material naming a person as a company director.

Regulation 2(2) amends regulation 4 of the 2009 Regulations. While a valid objection will still prevent material being removed from the register in most cases, under regulation 4, as amended, an objection will no longer prevent removal of material naming the person as a director where the application is made by or on behalf of the person so named.

Regulation 2(3) amends regulation 5 of the 2009 Regulations to provide that a company may instead prevent the material about the director from being removed from the register by providing evidence that the person consented to act as a director of the company. It also sets out further particulars of the application process, and makes a change consequential to regulation 2(2).

Regulation 3 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within 5 years after they come into force and within every 5 years after that. Following a review it will fall to the Secretary of State to consider whether these Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke these Regulations or to amend them.

A regulatory impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the Business Environment Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or from www.gov.uk/bis and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

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