

Consultation questions

Q1. Do you agree that there is a problem that needs a solution?

A1. There does appear to be a problem given the apparent lacuna in the current law and the fact that there have been a number of complaints arising from this issue. The motivation for this practice is often criminal.

Q2. If you do agree, does the proposal set out above address the problem or is there another process we should consider?

A2. The proposal to address the problem appears adequately and reasonable.

Q3. We have referred as shorthand to the 'legal occupier' of the premises. Who should be allowed seek a change of a company's registered office address?

A3. Although restricting the new proposal to the 'legal occupier' will often prove unproblematic there may well be occasions when this individual is readily identifiable. A 'reasonable grounds' test may overcome this problem.

Q4. Should the legal occupier of an address (or any other person) have the right to object at any time to the use of the address by a company as its registered office?

A4. In the absence of a bonafide agreement or contract where explicit terms relating to withdrawal of consent apply; the legal occupier of an address, or any other person who might have justifiable grounds, should have the right to object at any time to the use of the address by a company as its registered office. However some consideration should be given to circumstances where objectors are acting in bad faith or spuriously.

Q5. When such a person writes to the registrar to seek a change in the registered office details, how should this be done? For example, would a simple statement, letter or Companies House form be sufficient or should something more formal be required such as an affidavit or confirmation by a trusted source (e.g. the police)? Why?

A5. Requiring affidavits or confirmation by a trusted source might prove an impediment to individuals seeking to challenge an inaccurate filing i.e. cost of an affidavit and definition of a 'trusted source' and willingness of any such source to become involved. A Companies House form with provision for detailed narrative justifying the change request would seem to be the best way forward. To mitigate against abuse from

vexatious or fraudulent submissions, perhaps the form might contain a 'perjury-like' declaration of truth similar to that incorporated in a 'Section 9 CJA' witness statement.

Q6. Who should Companies House inform about an objection (e.g. the directors and/or secretary of the company) and what should they tell them? (For example just that there had been an objection, or the details of the person who had lodged the objection?)

A6. The company officers should be advised of the objection and the basis for it. At the very least they should also be given the name of the informant, unless there is good reason to suspect that a crime is being committed, which should provide grounds for the identity of the informant to be withheld under sec 29 of the Data Protection Act. Any dispute between the parties may end in court proceedings. The identity of both parties are, therefore, required to be known. Perhaps the form referred to in A5, above, should ask a question relating to the willingness of the informant to have their identity disclosed to the company with a requirement for an explanation to be given by the informant in the event that he/she wishes to remain anonymous.

Q7. How long should the registrar give the company to provide a new address or apply to court before annotating the register to confirm that the address is no longer the address of the company's registered office?

A7. One calendar month would seem to be an adequate amount of time for the registrar to give a company an opportunity to provide a new address or apply to a court before annotating the register, to confirm that the address is no longer the address of the company's registered office.

Q8. Is advertising in the Gazette an appropriate means to serve documents on the company in the absence of any other address?

A8. From a practical perspective, advertising in the Gazette would seem to be an appropriate means to serve documents on the company in the absence of any other address. However the existence of the Gazette is not widely known.

Q9. Do you agree that, in the event of a successful objection, the address should cease to be the company's registered office but should remain on the register as part of the historical record? Will this cause any difficulties? Is anything else required?

A9. Ideally, in the event of a successful objection the incorrect registered office should remain on the register as part of the historical record but with a caveat that it had been incorrectly provided to the Registrar. However, the Data Protection Act allows for 'data-subjects' to have

incorrect information relating to them removed from a data base, such as a register, albeit the registrar could claim sufficient remedy has been provided by properly amending the incorrect information in question. There are also potential Article 8 'Human Rights' implications in relation to privacy. Furthermore, there is also the risk of 'repeat-victimhood' to be considered and any subsequent liability that might attach to the registrar in this regard. This issue is essentially one for the lawyers.

Q10. Is strike-off an appropriate sanction in these circumstances? If so how rapidly? And what protections, if any, should there be for third parties?

A10. Strike-off would appear to be the most appropriate sanction in these circumstances. How rapidly will depend on whether there are any sustainable or reasonable counter-objections. However, if there is no meaningful response from the company concerning the objection, a maximum of no more than three months after the initial notification of objection by Companies House seems a sufficiently reasonable amount of time to allow. Any protections for third-parties should be aligned to the potential harms that might be suffered. The consultation document mentions potential negative credit ratings and the involvement of bailiffs. Measures should be put in place to mitigate these, such as formal notices to the credit reference agencies concerning the misuse of an individual's premises as a non-bonafide registered address or for formal documentation to be provided to 'victim' occupiers by Companies House for inspection by bailiffs. Any crystallised financial losses arising on the part of the victim occupier or other third-party from abuse of this kind should be recoverable at law.

Q11. Are there any other comments you wish to make relating to this issue?

A10. None