

IFA REPRESENTATION 1/21



Consultation on Powers of the Registrar.

The IFA welcomes the opportunity to comment on the [Powers of the Registrar](#) issued for consultation by BEIS on 9th December 2020.

We would be happy to discuss any aspect of our comments and to take part in all further consultations in this area.

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General comments

1. IFA supports measures to increase the transparency of corporate entities and welcomes the proposals set out in this consultation.
2. IFA recognises the need to reform the powers and processes of Companies House to improve reliability, accuracy and usability of information held at Companies House, prevent abuse of personal information on the register and to curb the deliberate abuse of the registers to facilitate financial wrongdoing and other offences.
3. The IFA, as an Anti-Money Laundering supervisory body listed in schedule 1 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 is particularly concerned with, and supportive of, any measures intended to reduce vulnerabilities that are exploited by criminals, such as the use fraudulent information on the register to hide money laundering activity.
4. IFA is also supportive of a regulatory framework and initiatives aimed at speeding up processes and removing duplication and administrative burdens.
5. IFA would like to thank BEIS for the opportunity to respond to this consultation and offers its support and future engagement on corporate reform.

Specific questions

Section 1: A risk-based Approach

Question 1: Do you agree that the querying power should be exercised on a risk-based approach? If you disagree, please explain your rationale.

6. IFA agrees with the risk based approach proposed by Companies House as this approach is consistent within the accountancy sectors approach to anti money laundering monitoring of firms and focusses resources on identified priorities.

Section 2: Querying power: potential scenarios

Question 2: Are there specific circumstances under which you consider the querying power should be exercised? Please give reasons for your answer

7. IFA has not identified any specific circumstances under which we would consider the querying power should be exercised. However, the powers to initiate queries should be available pre and post acceptance of filings.
8. We would suggest the registrar should not be limited by specific circumstances relating to querying powers and should ensure flexibility to prevent the undermining of the government's corporate strategy reform aims and principles.

Section 3: Application of the new querying power to company names

Question 3: In what circumstances do you think the power should be used in the context of company names? Please provide reasons for your answer.

9. IFA agrees with the principle outlined in the consultation document concerning the power of the Registrar to query company names. We support the expansion of controls over sensitive words and expression in company names to include abbreviations and foreign equivalents of such words and expressions.
10. It is not clear from the consultation if there are any implications for the Intellectual Property Office (IPO) that need to be considered if Companies House reject a name. IFA suggest Companies House consider would be for the IPO not to accept a trademark application unless prior approval of a name has been granted by Companies House.
11. Where there is clear evidence of any deliberate abuse of naming processes to suggest illegitimate links to established firms, or to misleadingly suggest that any company provides services and expertise that they do not, IFA agrees that the power to query should be available to the Registrar post-registration to ensure that all potential issues may be identified at the registration stage.
12. If not already under consideration, this should be extended to include potential misuse of Standard Industrial Classification (SIC) codes, as incorrect codes can have a direct impact on professional regulations. IFA supervise accountancy service providers and regularly refer to SIC codes to establish if an identified firm appears to be offering accountancy services and therefore requires AML supervision. We have noted that on occasions firms appear to have used an inappropriate SIC code for the services provided at the point of incorporation or once trading. An example could be a firm calling itself ABC Accounting with a SIC code relating to Veterinary services.
13. It may not be practical or reasonable for all potential issues to be identified at the company registration stage, given the large number of registrations involved and this should be addressed on a risk-based approach to avoid unnecessary delays to company registrations.
14. IFA notes the intention to review the role of the Company Names Adjudicator (CNA) and looks forward to further consultation on this matter in due course.
15. We are concerned that it is not clear how the proposed changes to Companies House powers and the role of the CNA fit in with other regulators requirements or guidance? For example, according to the Charity Commission guidance, the charity name must not:
 - be the same as or similar to another charity
 - use words you do not have permission to use, such as trademarks or famous names
 - contain anything offensive
 - be misleading, for example suggesting the charity does something that it does not break intellectual property rules

IFA strongly recommend engagement with other regulators to ensure common practice and guidance is produced to streamline the process across sectors.

Question 4: Do you agree that this is an appropriate use of the querying power? Please provide reasons for your answer.

16. IFA agrees that it is appropriate for the Registrar to have the power to both query and, where relevant, reject or require changes to company names. The option for firms to have any such decision adjudicated upon already exists, although IFA would also suggest decisions by the adjudicator should be published to ensure transparency in the use of such powers as well as an educational resource.

Question 5: Is it appropriate to place the onus on the company and/or the applicant to demonstrate that a name is being registered or was registered in good faith?

17. IFA agrees that given the resources available to the Registrar then it would be appropriate to place the onus on the firm to demonstrate good faith.

Question 6: Do you agree that the “sensitive words and expressions” regulations should be amended to capture circumstances such as that described above?

18. IFA agrees that regulations should be reviewed and amended to prevent the mis-use of sensitive words and expressions.

Section 4: Other company name loopholes

Question 7: Do you agree that we should close this gap in the way we propose? Are there any other gaps that we should consider?

19. IFA agrees that the closing of such loopholes is appropriate when registering new names, or as a result of a Companies House direction to change a name, to enhance the integrity of the register of companies.
20. IFA have not identified any additional gaps regarding company name loopholes.

Section 5: The querying process and annotation of the register

Question 8: What sanctions do you consider are most appropriate to incentivise compliance with the new requirement to respond to a query raised by the Registrar?

21. IFA agrees with the proposal to incentivise compliance by making non-compliance an offence.
22. As there is an existing criminal legal framework to deal with the most serious offences such as Money Laundering and Terrorist Financing, IFA believes that consideration could be given to creating a civil offence for non-compliance with new or lack of response to directions issued by Companies House in the 14-day period suggested.
23. It is however important that due consideration is given to proportionality and fairness when considering such enforcement actions and offences which should be open and transparent.

Section 6: Legal effect documents

Question 9: Do you agree that the removal of most documents which have legal effect by virtue of registration at Companies House should be a matter for the courts?

24. IFA agrees that in the majority cases there are no reasons why the removal of a document which gives legal effect from the register should not remain a matter for the courts.

Question 10: We propose that the Registrar should be able to remove certain filings which in future, will give legal effect such as director appointments. Do you have any views on whether the Registrar should have any other role in respect of legal effect filings?

25. IFA agrees that simple or straight forward filings such as director appointments and change of registered office address should be able to be removed administratively by the Registrar.

26. IFA is not aware of any other role in the case of legal effect filings that should be considered.

27. IFA would consider having some form of entry on the company filing history would potentially be a useful indicator when considering risk indicators in its regulatory oversight work.

Section 7: What information will be published?

Question 11: Do you agree that the evidence provided as a result of the Registrar's queries should not be published unless it comprises information that would normally be published? Please give reasons for your answer.

28. IFA agrees with the position that evidence provided to satisfy the Registrar's queries should only be used for that purpose and not published as a matter of course.

Section 8: Transparency on the use of the querying power

Question 12: The Registrar will provide an explanation about why the query is being made. What other information would you expect the query to contain?

29. To avoid confusion and unnecessary administration, a clear explanation about why the query is being made along with the legal basis for the query, the required information, time scales and how the information will be processed would appear to be appropriate.

30. The IFA cannot identify any other information to include in the query.

Question 13: What kinds of evidence do you think it would be appropriate for the Registrar to request in support of a response to a query?

31. The IFA believes the Registrar would need to be clear when defining the evidence required to support a response to a query and, given the vast array of information available, needs to provide guidance and examples such as lease or rental agreements spanning prescribed time frames.

Question 14: What guidance on the Registrar's use of the querying power would you expect Companies House to publish?

32. IFA agrees that risk assessment methodology should not be published. However thematic findings over time may be useful indicators of where applicants have made mistakes.
33. Any guidance would need to be clearly set out and accessible in the same manner as the majority of Companies House Guidance on its website.

Section 9: Complaints

Question 15: Do you agree that complaints should be handled using the same process as the current Companies House complaints process? If not, please include reasons for your answer.

34. IFA agrees that complaints should be handled using the same process as the current Companies House complaints process.

Section 10: Removal of Information

Question 16: Do you agree that the Registrar should have greater powers to remove information? Do you have suggestions for other approaches we could take?

35. IFA agrees with the proposal to increase powers to remove information from the register as failure to do so undermines the integrity and usefulness of the register.
36. The proposed circumstances, where there is no response or where the registrar is not satisfied with a response, appear reasonable and proportionate.
37. IFA also supports the Registrar having the power to annotate the register to make clear that information has been removed to ensure transparency.

Section 11: Rectification of registered office address

Question 17: Do you agree that the Registrar should close this loophole or are there circumstances where remaining at the default address, or moving to the default address more than once, is warranted?

38. IFA believes the Registrar should be able to change an address to the default address without an application where the evidence to do so is appropriate and proportionate.

Question 18: Do you agree that the amount of time a company (or other entity) can be defaulted to the Companies House address be limited to a specified period, e.g., 12 months?

39. IFA believes that limiting the time period would be appropriate and would enable the Registrar to control the integrity of the register.
40. It is not clear why a 12 month period has been suggested. However, this time period appears to be appropriate and allow ample time for rectification,

Question 19: What action do you consider should be taken if a company remains at the default address for longer than 12 months?

41. IFA believes that unless there is a clear and reasonable reason to remain at a default address then appropriate sanctions should be introduced to maintain the integrity of the register.
42. IFA believes that if all rectification attempts have been exhausted then enforcement action including removal from the register should be considered provided appropriate appeals processes are in place.

Section 12: Speeding up processes.

Question 20: Do you agree that it is appropriate to reduce the 28-day period? If not, what period do you consider is appropriate and why?

43. IFA supports any initiative to speed up the response period to an application for the removal of information from the register and agrees that reducing this time period from 28 days to 14 days appears appropriate given the current digital landscape.

Question 21: Do you agree that Companies House should have the ability to remove the name or address of the affected individual while a response is awaited from the company?

44. As stated above, IFA supports initiatives to speed up the process. However, procedures must be in place to ensure the integrity of queries are sound and not vexatious or submitted in error.

Section 13: Power to require delivery by electronic means.

Question 22: Do you agree that the power to require (or mandate) delivery by electronic means should be conferred from the Secretary of State to the Registrar?

45. The IFA believes the transformation to mandate digital delivery is long overdue provided digital assistance is provided to reporters with digital access challenges such as lack of broadband connectivity.

Section 14: Rules governing company register.

Question 23: We intend to remove the requirement for companies to keep and maintain their own Register of Directors. Do you have any concerns about this approach?

46. IFA have no concerns regarding the proposal to remove the requirement for companies to keep and maintain their own register of directors as this will ensure one complete source of information and improve the integrity of the public register.

Question 24: What impact would changes to the requirement to keep any of the registers in the list above have?

47. IFA has not data on the integrity of companies' own directorship records or any issues associated with this information. However, the removal of the need to keep a separate register of directors can only have a positive impact for alleviating administration for businesses.

48. It is not clear what impact this would have for Charitable companies who must provide details of trustees who are also directors to the Charity Regulators.

Question 25: We may also consider further changes to the election regime for private limited companies which was introduced in 2016. How useful is the election regime for private limited companies?

49. As stated above, IFA supports any measures that reduce duplication and administrative burden which the election regime appears to do. However, we have no evidence to support how the election regime has been used or how helpful it has been.

Contact details

Should you wish to discuss our responses further, please contact Tim Pinkney, Head of Practice Standards by email at timp@ifa.org.uk