



Response
To the consultation on
The Implementation of the Companies Act 2006

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1. Executive Summary

Hitherto provisions have been in place for certain directors to apply to the Secretary of State for their information to be excluded from the public register at Companies House. The new provisions make it easier for directors to apply for such exclusion and provide for a Restricted Register to be made available for certain authorised purposes. A service address may be provided for the public register. Included in the authorised purposes were limited credit referencing activities which use directors' home addresses to deliver a range of products vital for undertaking commercial activity and for the prevention and detection of fraud.

When the Company Law Reform Bill was debated by parliament an additional provision was included enabling those that felt themselves to be at particular risk to have their data removed from credit reference agency databases anyway.

The proposed regulations also make similar provision for shareholders to apply for their data to be restricted but there is no equivalent to the restricted register proposed at this time.

Credit Reference Agency systems use directors' and shareholders' home addresses as the link to access other data on other businesses and personal credit data on the parties involved. For the most part, the addresses themselves are not actually provided to the end user but act merely as the key to other data which is then used in decision systems.

Any restriction in access to the address information immediately increases the risk of losing access to vital credit performance data and increases the potential for fraud and money laundering to take place.

It is entirely possible to make this data available without compromising the safety of the individuals concerned by requiring the actual address data to be protected and restricted such that it is only ever made available for certain agreed and specified purposes and/or with the consent of the data subject.

The recommendation from Experian

The protected register of directors' home addresses must continue to be made available, in total, to the five commercial credit reference agency organisations for certain specific and limited purposes on condition that they use the information in specified ways for those particular purposes only.

The planned solution will generally operate within the confines of the organisation's internal systems solutions and will not, as a general rule, provide the details of the address to the end user except in agreed and specific circumstances such as Prevention of Money Laundering checks with the data subject's consent and fraud investigations. These details and the controls should form part of Supplementary Regulations.

This would enable automated decision systems that support trade and commercial credit decisions as well as identification systems to continue to operate by providing outcomes and scores. No actual address information would be provided to the end user for those individuals that have asked for their information to be restricted. In this way those individuals that are at risk would continue to be protected but their businesses would not be penalised for their decision. Any parties seeking to use this facility to mask previous behaviour would not be able to hide their history.

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Finally, controls on which authorised credit reference agency organisations may obtain the restricted register should be put in place to avoid some of the issues that have arisen with certain unscrupulous companies attempting to obtain the electoral register.

Shareholder data requires similar protections to the directors' data and a restricted register would seem appropriate here too. Similar controls and requirements could be agreed for shareholders too.

2. About Experian

Experian is a global leader in providing analytical and information services to organisations and consumers to help manage the risk and reward of commercial and financial decisions.

Combining its unique information tools and deep understanding of individuals, markets and economies, Experian partners with organisations around the world to establish and strengthen customer relationships and provide their businesses with competitive advantage.

For consumers, Experian delivers critical information that enables them to make financial and purchasing decisions with greater control and confidence.

Clients include organisations from financial services, retail and catalogue, telecommunications, utilities, media, insurance, automotive, leisure, e-commerce, manufacturing, and property and government sectors.

Experian Group Limited is listed on the London Stock Exchange (EXPN) and is a constituent of the FTSE-100 index. It has corporate headquarters in Dublin, Ireland, and operational headquarters in Costa Mesa, California and Nottingham, UK. Experian employs more than 12,500 people in 34 countries worldwide, supporting clients in more than 60 countries. Annual sales are \$3.1 billion (£1.7bn/€2.5bn).

For more information, visit the Group's website on www.experiangroup.com

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3. Background

Credit referencing in the UK

Consumer

The UK has three consumer credit reference agencies, two established organisations of which Experian is the largest, and one start up. Experian® is one of the world's largest suppliers of information on consumers, businesses, property and vehicles. Its databases bring together data from many different sources – public, proprietary and self-reported – to provide the basis for informed and timely business decisions. Although the majority of UK credit applications are processed using Experian data there is healthy competition between the agencies, particularly in certain sectors.

The credit reference agencies provide comprehensive information on the credit status of individuals by combining publicly available records with credit account details received from many thousands of credit grantors. The credit reference agencies collect data from a variety of sources and crosscheck and match that data for accuracy and veracity. This level of checking against a wide range of sources, whilst not foolproof, results in wider coverage and higher levels of accuracy than is achieved in any other UK wide personal database.

When consumers seek financial services, they provide information on their financial position. As part of the process of underwriting a consumer's application, the majority of providers, with the consent of the applicant, utilise the facilities of the UK Credit Reference Agencies. This supplies the financial service provider with reliable credit performance data from other financial institutions, relating to the consumer and their financial unit¹. Not only is this data used to make credit decisions but it is also used to support other activities such as meeting the requirements under the Prevention of Money Laundering Regulations to "know your customer" by performing identity checks. Whilst most lenders use these systems some credit providers offering small amounts or niche products do not use such services, relying on other forms of assessment such as prior knowledge or a manual assessment.

The UK consumer benefits from choice and competition across a wide range of financial services which has been made possible by the innovative and technologically advanced collection, use and delivery of information. The credit reference bureaux provide up to date and comprehensive information to a wide range of consumer facing organisations enabling them to offer swift and discrete decisions in shops, banks and a range of other organisations, face to face and on the telephone or via the Internet. Consumers benefit from the knowledge that their information is provided and assessed in a recognisable and controlled format and that they have the right to access their records at any time, and ensure the information is correct.

In addition to the c200m credit searches each year at Experian alone there are, in the region of another 4.5bn other searches for a variety of purposes such as ID, fraud prevention and the

¹ Under the 1998 Data Protection Act this is defined as a partner with whom the applicant has joint financial arrangements.

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cleaning of marketing lists. There is a degree of overlap between the two. Many businesses conduct marketing activity ahead of consumers making applications for credit or other financial services such as savings accounts or insurance. All of these accounts carry a statutory requirement for identification checks to be conducted under the Prevention of Money Laundering Regulations, which requires any director or shareholder with more than a defined equity in a business to be checked.

Commercial

There are five major credit reference agencies providing commercial information and, in the area of sole traders, small and medium sized enterprises, there is considerable overlap between consumer and commercial activity.

Typically, credit reference agencies such as Experian provide information on businesses and on the proprietors² behind those enterprises. Again, the data is a combination of public and privately shared data and, with the agreement of the parties concerned personal credit data is also accessed and used when making decisions about smaller enterprises³. Experian provides services based on the provision of data, for the purpose of making decisions about credit, identity for the prevention of fraud and money laundering, fraud prevention and investigation and debtor tracing.

Essential to these arrangements is the directors' data from Companies House which, when matched with our other information, enables companies considering doing business with an organisation to quickly and automatically check the individuals behind that enterprise. A core part of the check is credit reference agency access to the home address of the parties concerned as this provides the link between different datasets and is an essential tool to prevent fraud. That check becomes even more vital when the director/proprietor has a break in activity and the only link between their businesses is the home address. This then enables organisations to identify other directorships and shareholdings.

Virtually all of those services are delivered by products that are highly sophisticated using automated systems designed to help manage decisions for our thousands of clients. In the case of clients transacting with commercial organisations, many of those also access data about the proprietors of those organisations. In many cases, such as for the prevention of money laundering, they are legally required to do so. In the case of making credit decisions, it has been agreed both with the Information Commission and as part of a cross industry agreement, that it is reasonable to take personal credit behaviour of the proprietors into account for companies with 3 or less directors/partners/owners. In all cases this is done with the consent of at least one director and, in many cases, all three.

These datasets, obtained as they are from a variety of disparate but complementary sources provide a vital tool for businesses, not just lenders, to make credit decisions about which companies to deal with and how much credit to grant. In fact, most of these decisions are business to business being the basis for many organisations to determine trade credit lines. In this way businesses may utilise

² This covers sole traders, directors or partners

³ This arrangement is under cover of an agreement with the Information Commission and covers organisations with 3 or less proprietors or partners.

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tried and tested systems to protect themselves against fraudsters and serial failed directors who whilst disqualified may still start up again as sole traders or partners.

Most of the data is not delivered in its “raw” form but contributes to an overall score or rating which provides an easy to digest method for users to assess the prospective organisation and the parties behind it.

For example:

1. Mr A is a director of ABC Ltd and he approaches XYZ Ltd with a deal that requires XYZ to extend some finance to ABC. XYZ do not know Mr A and so they obtain a credit report on ABC Ltd and in so doing obtain a risk rating for their planned activity. That rating has taken into account that Mr A has a number of undeclared and dissolved directorships identified because they are located at either Mr A’s current or previous home address.
2. Mr B applies to a bank for finance for a new start-up claiming to be new in business. However, the bank uses a credit reference agency system that then identifies a number of failed directorships and unpaid debts at previous addresses. This information has been obtained because the credit reference agency used the director’s home address to link to other transactions.
3. Mr C applies to a bank to open a company account, in common with all financial services organisations the bank needs to perform identification checks for the Prevention of Money Laundering. As the bank officer completes the account opening screens, the bank’s systems automatically interface with those of a credit reference agency to check the details of the director, identify his home address and then perform ID checks using agreed electronic checks to provide the bank with a confirmation that Mr C is who he claims to be. Without direct access to director’s home addresses the information could not be verified, particularly in the case of common names as how would a bank be able to tell that the Mr C before them is the Mr C that is a director of DEF Ltd?

The issue

Following a number of high profile cases, procedures were put in place for directors that were deemed to be at risk to apply to exclude their home addresses from the public register. Only bona fide cases of individuals at risk were granted leave and authorisation was at the discretion of the Secretary of State.

The Company Law Reform Bill provided for a far less onerous regime whereby any director can choose, for reasons best known to themselves, to provide a “service address” as well as their home address. Only the service address will appear on the public register. A separate register of “protected” addresses would be created. Evidently many more directors will make this choice and not all of them will do so for reasons of personal safety either. The opportunity to cover one’s tracks will be extremely attractive to disqualified directors and others seeking to commit fraud, obtain access to goods and services that would normally not be granted and to create fictitious identities.

However, a last minute amendment also provided for certain individuals to apply for their information to be excluded from the records of a credit reference agency. The concerns that gave rise to this amendment, whilst worthy and understandable, did not take into account how the data is to be used and protected by credit reference agencies and therefore whether such a provision is really required.

Response to the relevant questions:

2.22 Do you agree that credit reference agencies should be permitted to use protected information only:

- (a) to vet applications for credit or applications that can result in the giving of credit or the giving of any guarantee, indemnity or assurance in relation to the giving of credit; and**
- (b) to meet any obligations contained in the Money Laundering Regulations 1993, the Money Laundering Regulations 2001 or any rules made pursuant to section 146 of the Financial Services and Markets Act 2000?**

There are similarities between this data and the position of another publicly available data set - the Voters' Roll. Following recommendations in the Howarth Report and intervention from the Information Commission and two judicial reviews together with a long period of consultation the current process was finalised. With effect from 2002 the Representation of the People Act and the Supplementary Regulations thereto provision was made for a full and edited electoral register. The Full register being that created from the annual canvass and updated monthly by the rolling register and the edited being the records of those individuals that had not opted out of their data being used for any purpose.

At the same time restrictions on the supply and use of the full electoral register was designed to result in only credit reference agencies which are carrying on the business of providing credit reference services being authorised to purchase the register.⁴ They in turn are restricted as to the purposes for which the full register may be used to:

- Vetting applications for credit or applications that can result in the giving of credit or the giving of any guarantee, indemnity or assurance in relation to the giving of credit:
- Meeting any obligations contained in the Money Laundering Regulations 1993(a), the Money Laundering Regulations 2001(b) or any rules made pursuant to section 146 of the Financial Services and Markets Act 2000(c); and
- Statistical analysis of credit risk assessment in a case where no person whose details are included in the full register is referred to by name or necessary implication.

However, this is currently under review because it has created some issues in a number of areas; most notably in the matter of credit account management and also fraud detection and investigation post application. We would suggest therefore that the above list be supplemented as follows:

That the first purpose also includes the administration of credit so it would read:

⁴ The Representation of the People (England and Wales) (Amendment) Regulations 2003 No 1871 section 114.

- Vetting applications for credit or applications that can result in the giving of credit or the giving of any guarantee, indemnity or assurance in relation to the giving of credit *and the ongoing administration of those facilities*.
- Crime and fraud investigation and detection.

This would add three new purposes one of which is not an issue because it does not use personal data anyway (statistical analysis) but which is required for the effective modelling of data for the operation of credit decision systems.

Bona fide credit reference agencies have put in place robust systems to manage the data and ensure that it is only supplied in accordance with the regulations. However, there have been a number of issues with organisations claiming to be credit reference agencies and licensed as such under the Consumer Credit Act but who do not control and protect the data in the same way. We suggest therefore that access be limited to only those 3 consumer related and 5 commercial organisations supplying credit data.

In addition it is worth noting that many public sector organisations also use data at credit reference agencies to perform their checks too so whilst the Regulations will refer to the use by credit reference agencies, and through them their financial services clients, they also need to allow for this too. The Representation of the People Act Supplementary Regulations enable authorised users to supply other authorised users too and in this way the credit reference agencies also supply the public sector.

2.23 Do you agree that:

- (a) only directors or prospective directors should be able to apply for extra protection with respect to credit reference agencies?**
- (b) Application for extra protection should be made to the Registrar of Companies?**

It is our view that restriction in this way should be kept to a minimum on the basis that the restricted register data that is provided to credit reference agencies will already be tightly controlled such that it may only be accessed for particular and specified purposes defined in law.

Credit reference agency systems are designed to use both company data and the personal data of the directors/partners/proprietors to assess the risk of doing business with that organisation. In order to make such an assessment the home addresses of the directors/partners/proprietors are essential in order to obtain the personal credit information.

It is our intention that our systems will not as a matter of policy provide name and address data on directors for general enquiries about companies but will use the addresses in the background to obtain the data and create a risk score for the use of those making enquiries. It enables credit reference agencies to maintain links between directors' various home addresses and businesses even during periods of inactivity. This is an essential fraud and credit control tool. There will be no risk of disclosure of the directors' home addresses in such cases.

However, in certain specific cases, either where the consent has been provided or where the company is the subject of a criminal investigation or an investigation for fraud then the actual address details could and indeed, should be available. The investigation services all use credit

reference agency data for this purpose and restricting availability could have a significant impact on the effective investigation of crime.

It is our view therefore that applications for removal from the restricted list should be only ever considered in truly exceptional cases. However, there is the potential for credit reference agencies to create additional protection in the form of a block on the account so that any enquiry can be intercepted and individually authorised without raising the suspicions of the enquirer.

2.29 Do you agree that:

- (a) whether companies are exempt from all the requirements to supply addresses of all shareholders should depend on whether they are traded on EU regulated markets?**
- (b) Companies that are traded on EU regulated markets should be required to provide addresses of shareholders who held 5 per cent or more of any class of shares at any time during the year in question.**

Whilst we support the need to protect vulnerable and/or at risk individuals we do not agree that companies should be exempt from all requirements to provide addresses of all shareholders if they are not traded on EU regulated markets. Such an exemption will result in the majority of shareholders not providing information for unlisted companies. There are many organisations that are private companies in which individuals may have a large shareholding but not be a director. For the purposes of credit checking and crime and fraud investigation (including the prevention and detection of money laundering) this information still remains important.

We suggest that the data should still be provided but may be placed on a restricted shareholders register in a similar way to the restricted directors' register.

2.30 Do you agree that a director should be able to apply for addresses filed between 1 January 2003 and 1 October 2008 to be removed from the public record if the director has been granted extra protection?

We support measures to protect vulnerable people from harm we consider that, as already stated, it should be possible to remove data from general view but still make it available to credit reference agencies for legitimate purposes. Provisions are in place to ensure that the data is not provided as a general rule but used internally to access the relevant information required to provide scores.

Conclusion

The new public register of directors' addresses must specify whether the address is the home address or a service address.

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The protected register of directors' home addresses must continue to be made available, in total, to certain authorised credit reference agency organisations for certain specific and limited purposes on condition that they use the information in specified ways for particular purposes only. The solution will generally operate within the confines of the organisation's internal systems solutions and will not, as a general rule, provide the details of the address to the end user except in agreed and specific circumstances such as Prevention of Money Laundering checks with the data subject's consent and fraud investigations. These details and the controls should form part of Supplementary Regulations.

This would enable automated decision systems that support trade and commercial credit decisions as well as identification systems to continue to operate by providing outcomes and scores. No actual address information would be provided to the end user for those individuals that have asked for their information to be restricted. In this way those individuals that are at risk would continue to be protected but their businesses would not be penalised for their decision. Any parties seeking to use this facility to mask previous behaviour would not be able to hide their history.

Example:

Mr A - Address X 2006 – now

Personal credit – all OK but high limits and utilisations

Company director

Link to Address W

Address W in 2004 – 2006

Low personal credit

No directorships

Link to address T

Address T 2002 – 2004

Bankruptcy

County Court Judgments

Failed directorships

Credit reference agencies use the home address at Address X to identify Mr A using his personal data (Money Laundering checks) and also to check any previous addresses he might or might not have provided. Chances are he will not disclose the information at address T as it might impact on his application. Only by linking his home address from his directorship will the adverse information be revealed.

Finally, controls on which authorised credit reference agency organisations may obtain the restricted register should be put in place to avoid some of the issues that have arisen with certain unscrupulous companies attempting to obtain the electoral register.