

Opinion Stephen Copp



Kiss and tell

Regardless of its controversial contents, the implementation of the Companies Act 2006 has seen a complex series of unnecessary cock-ups and could have been much better communicated, argues **Stephen Copp**

When studying to become a solicitor, I remember being advised to KISS: Keep It Simple, Stupid. It is a shame, perhaps, that such advice was not followed by the Department of Trade & Industry, now the Department for Business, Enterprise & Regulatory Reform (DBERR), with the Companies Act 2006. The 2007 edition of Butterworths' *Company Law Handbook* will have landed with a hard thud on many practitioners' desks. It is over 5lb and carries an unusual qualification: 'Regular users ... will notice that ... [it] ... is nearly 1,000 pages larger than last year's and is at the very limit of what can be bound in a one-volume work'. Indeed, 'Some items ... have been removed (and replaced with a note) in order to create space for the new Companies Act 2006 material.'

Remember one of the former DTI's own criticisms of the law, which initiated its review, that: 'Company law thus grew in bulk and complexity, but there was no attempt to slim down the basic structure' (*Modern Company Law, March 1998*)?

And although some material should disappear when the Act is fully implemented, the length means that great care needs to be taken as to implementation – care that appears lacking.

Over-complex implementation

The government's intentions as to how the Act should be implemented were, as with much relating to the Act, commendable. Margaret Hodge, then minister for work and pensions, informed parliament that she wanted to introduce benefits for business as soon as possible, minimise commencement dates, recognise the need for familiarisation and so on. Nonetheless, something like 10 commencement dates can be traced in total and the implementation of many key provisions is split between three key dates, with the original deadline of 1 October 2008 having slipped to 1 October 2009, according to Stephen Timms' new parliamentary statement (7 November 2007). The reason given is to allow Companies House more time. Such delays are, however, frustrating for practitioners. For example, some directors' general duties, such as to promote the success of the company, are now in force, while others – in the same part of the Act – relating to conflicts of interests, may not come into force until a now unspecified date, subject to (yet

another) consultation. So for now practitioners must refer to both old and new legislation on related issues.

Unnecessary cock-ups

The Act's implementation has been fraught with cock-ups. For example, *The Companies Act 2006 (Commencement No 4 and Commencement No 3 (Amendment) Order 2007* was made 'in consequence of defects' in *The Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007*; similarly *The Companies (Tables A to F) (Amendment) Regulations 2007* required amendment by *The Companies (Tables A to F) (Amendment) (No 2) Regulations 2007*, again 'in consequence of defects'. If these were purely technical matters, perhaps they could be forgiven. However, some of these changes, especially those linked to the statutory provisions for resolutions (which may even raise questions of human rights law), go to the heart of the question as to who controls a company. Practitioners need to wise up quick.

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Poor communication

Worse still, the Act's implementation has not been communicated as well as practitioners might expect. Glaring examples were *The Companies Act 2006 (Commencement No 1, Transitional Provisions and Savings) Order 2006* and *The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006* laid before parliament on 21 December 2006, making some changes as early as 1 January 2007: easily missed, especially by those inclined to enjoy Christmas festivities.

Kiss ... and tell?

Big-bang implementation of the Act, when all was ready, would have been a much better solution. Pity, therefore, the poor practitioners trying to get to grips with the law as it (rather temporarily) stands. Perhaps, the DBERR should not KISS, but KISS and TELL: keep it simple, stupid and try enacting less and less.



CCH Companies Act Conference

Accountancy's publisher CCH is holding a Companies Act Conference in London on 2 April 2008. Attendees will get a practical update and guidance on how to comply. CCH is also holding half and one-day Companies Act courses. Details at www.cchpd.co.uk

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