Department for Business, Innovation and Skills:

Evaluation of the Companies Act 2006, Volume One

Submitted to

Fiona Hodkinson and Adam Gray, Department for Business, Innovation and Skills

Prepared by

Samantha Fettiplace and Rebecca Addis

Infogroup/ORC International
Angel Corner House
1 Islington High Street
London N1 9AH

www.orc.co.uk

Tel. 020 7675 1194
E-mail samantha.fettiplace@orc.co.uk

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Contents

1 Executive summary

The overarching aim of this evaluation study was to assess the impact of the Companies Act 2006 on UK businesses, and to determine whether it is meeting its key policy objectives, which include:

- To enhance stakeholder engagement and a long term investment culture (promoting wider participation, and ensuring decisions are based on a long-term view rather than immediate return);
- To ensure better regulation and a 'Think Small First' approach;
- To make it easier to set up and run a company.

Many of the changes introduced through the Act appear to have been perceived as a piece of good house-keeping, enabling somewhat archaic provisions to be removed, bringing Company Law into the twenty first century, rather than radical change. It must be borne in mind when reviewing these findings that the Companies Act 2006 is primarily an enabling Act, so it is for a company to decide whether it wishes to take advantage of the measures provided and when it wishes to do so. Thus further time must elapse to allow companies to decide how they wish to proceed. It appears that some companies have made changes in tranches rather than all in one go, and also that advisors have been hugely influential in which changes have been made. That aside, awareness levels, particularly those relating to small private companies, were higher than some stakeholders expected and so too were levels of compliance / adoption with certain measures such as auditor limited liability agreements.

1.1 Introduction and methodology

ORC International was commissioned by the Department for Business, Innovation and Skills (BIS) in November 2009 to conduct an evaluation of the Companies Act 2006, to assess awareness of and compliance with or the adoption of key measures implemented through the Companies Act 2006; thus in turn allowing the impact of the Act to be evaluated. This study was the first large scale evaluation of the Companies Act 2006, an enabling Act that covers 1300 provisions affecting all sizes of companies in the UK. The research programme was challenging given the scope of the Act, the need to cover all types of businesses, the technicality of the subject matter and sampling complexities to ensure a robust approach.

Three primary means of data collection were undertaken:

- One thousand computer aided telephone interviews (CATI) with UK businesses (interviews were spread across a range of company sizes as detailed in the methodology but excluded newly incorporated companies[1]. Interviews were

[1] Termed 'Companies Act 2006' companies

conducted amongst those responsible for corporate governance and a stratified random probability sampling approach was deployed in order to ensure a robust baseline to measure the impact of the Companies Act).

- Fifteen face to face depth interviews with key company law stakeholders from a range of backgrounds (see Section 1.6 of Volume Two);
- Fifteen face to face/ telephone case studies with businesses of interest identified from the quantitative study[2].

Thirteen measures were selected by BIS to be assessed in the research study. Given that the Act has 1300 sections, it would not have been feasible to evaluate the entire Act in one research project. The measures were chosen based on the following criteria:

- they were deemed to bring about the biggest savings or impose the highest costs on companies;
- if they had contentious issues at the time of Parliamentary Bill passage;
- if they were highlighted by business and company law professionals as being of particular interest and/ or importance.

Throughout the report levels of awareness of these measures are calculated on the basis of those companies to which the measure was asked i.e. awareness of the codification of directors' duties has been calculated on a base of all companies but awareness of changes to capital maintenance are calculated on a base of large private companies only (full breakdown of which measures were asked to which company sizes can be viewed in Section 1.4 of Volume Two). Similarly levels of adoption / compliance are based on all those companies to which the specific measure applies. Figures in the report, other than the information on the profile of businesses in Section Four, have been weighted largely on basis of economic impact so results presented throughout the report tend to reflect the views of larger companies in the sample (as detailed in Section Three of the report).

1.2 Overall awareness and compliance with / adoption of measures

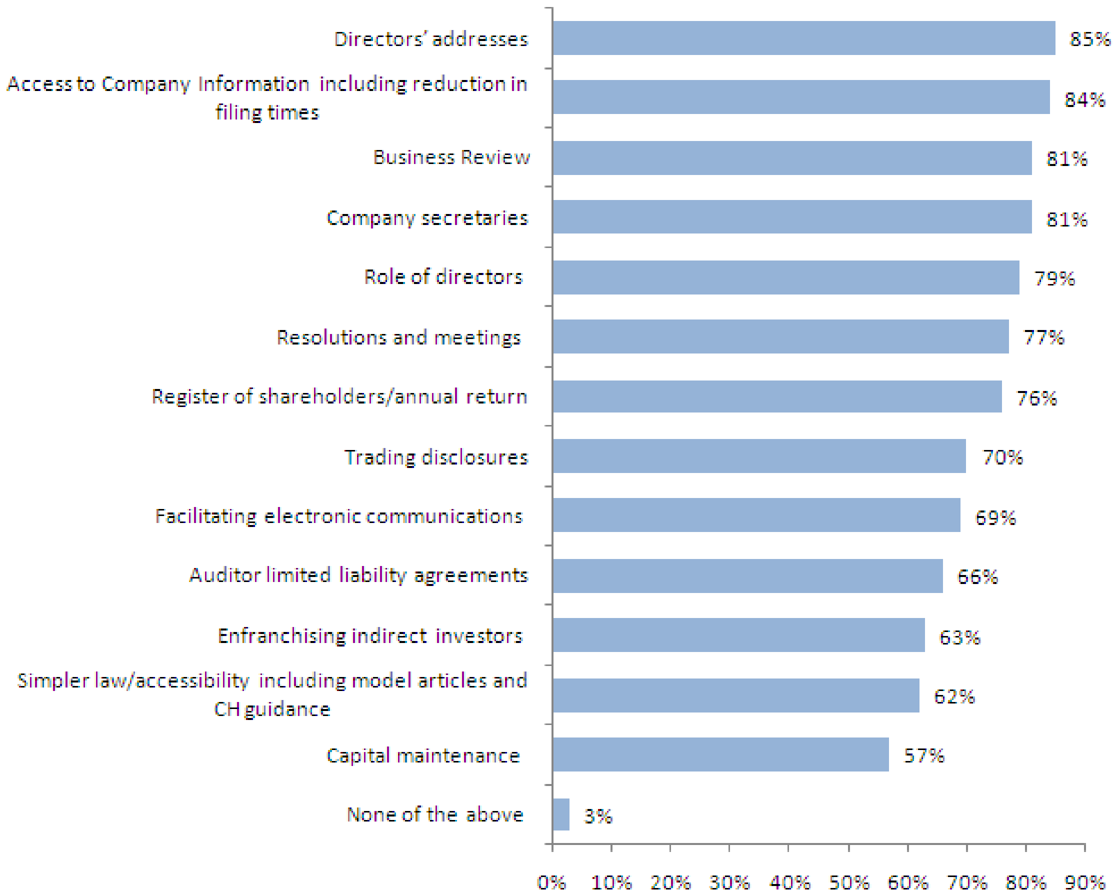
Overall, the large majority of companies interviewed (85%) were aware of recent changes regarding Company Law, in particular the Companies Act 2006. As anticipated by stakeholders, small private companies had the lowest awareness levels, with two fifths (40%) being aware of recent changes regarding Company Law, compared with over nine in ten quoted companies (94%).

[2] Summary case studies have been included in this Volume; extended case studies are provided in section 1.72 in Volume Two.

Awareness of any changes to Company Law was highest amongst companies incorporated by Companies House over ten years ago; from respondents who were company secretaries; from companies within the SIC codes of transport, storage and communication and financial intermediation; from companies who used advisors; and companies who used Companies House and their solicitor as sources of guidance.

In terms of awareness of individual measures (see Figure 1.1), awareness was highest regarding the change to directors' addresses (85%; asked to all), access to company information and filing times (84%; asked to public and quoted companies only), and the business review (81% awareness from large private, public and quoted companies only). Companies were least aware of the broad changes to capital maintenance (57% from large private only), and simpler law/ accessibility (62%; asked to small, medium and large private and public companies).

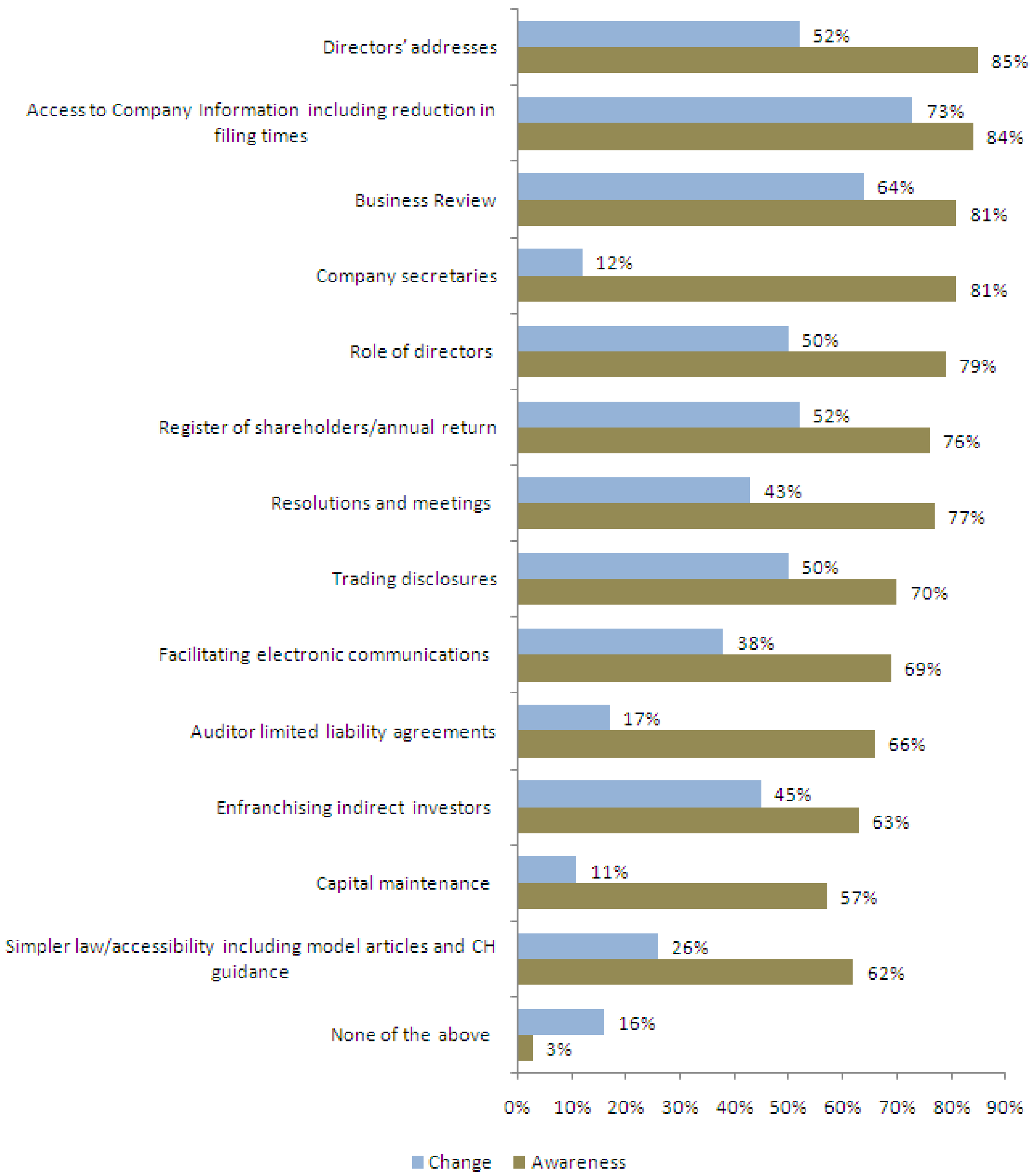
Figure 1.1 Awareness of individual measures



Source: Q9a. Firstly, are you aware of any of the following changes regarding Company Law, even if you haven't taken any direct action? Base: Simpler law/accessibility including model articles and CH guidance (952); Capital maintenance (235); Enfranchising indirect investors Enfranchising indirect investors (276); Auditor limited liability agreements (743); Facilitating electronic communications (511); Trading disclosures (1001); Resolutions and meetings (725); Register of shareholders/annual return (1001); Role of directors (1001); Company secretaries (725); Business review (511); Access to Company Information including reduction in filing times (276); Directors' addresses (1001); None (1001). Weighted by economic impact.

Levels of adoption, as shown in Figure 1.2, were found to be highest with regard to access to company information including filing times (73%), and the business review (64%). In contrast, the changes least used included those within the broad measure of capital maintenance (11%), company secretaries (12%), and auditor limited liability agreements (17%). Significantly more small private companies had made no changes (54%) to any measure, than any other company size.

Figure 1.2 Awareness and adoption by individual measures



Source: Q9b.And thinking back over the past 3 years [or since this business started if sooner] can you tell me if you have taken any steps to make changes in any of these areas? Base; directors' addresses (931); Access to Company Information including reduction in filing times (268); Business review (497); Company secretaries (663); Role of directors (931); Register of shareholders/annual return (931); Resolutions and meetings (663); Trading disclosures (931); Facilitating electronic communications (497); Auditor limited liability agreements (714); Enfranchising indirect investors (268); Capital maintenance (229); Simpler law/accessibility including model articles and CH guidance (883): None (931). Weighted by economic impact.

Adoption levels were also found to be highest amongst companies who had used BIS publications or alerts, networking groups, or their own institute as their source of original awareness of changes to Company Law.

Almost half of companies who had made a change found the changes in the law 'easy' to understand (49%) whilst sixteen per cent found it 'difficult'[3]. Quoted companies found understanding the changes in the law most difficult 19%[4]. Understanding of the changes was furthermore highest among financial intermediation businesses and lowest in wholesale and retail trade companies.

Company directors, owner/family members, and chief executive/ managing directors were less likely to understand the changes well compared with company secretaries and finance directors. Surprisingly, around half of accountants interviewed did not understand the changes well.

Time-wise, one third of companies (33%) spent ten hours or less on all changes they had made, with just over a fifth of companies (21%) estimating that they had spent over forty hours; quoted companies were most likely to have spent over forty hours responding to the changes in company law.

Compliance and adoption costs incurred were noted in terms of hours spent split by job roles involved, and costs of external professional services were asked. Almost two-fifths (38%) of companies had purchased external professional services (significantly so in quoted companies, 53% of whom had purchased external professional services).

However, companies were asked to look back over a long time period given the first phase of the Act's implementation was in 2006, and the possible inaccuracy of their recall should be borne in mind when reviewing this section.

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[3] Includes all companies who scored 4 and 5 on a 5 point scale where 1 means very easy and 5 means very difficult (Q11a).

[4] Includes all quoted companies who scored 4 and 5 on a 5 point scale where 1 means very easy and 5 means very difficult (Q11a).

1.3 Perceptions of individual measures

Although awareness of the codification of directors' duties was high (79%), the proportion of those perceived to have responded was lower at 50%, given the codification did not represent a change in the current law, (all must comply with these provisions) but for just under half of companies interviewed, the codification had not prompted a change in how they carry out their duties). Overall, one-fifth of those who had responded agreed the statutory statement had had an impact on the way directors discharged their duties, and almost three fifths were aware of the changes to the procedure for bringing about a derivative action for breach of duty (59%). Of those companies not initially aware of the changes relating to directors' duties, over one-third indicated that they would now take advice from the company's accountant on the nature of their requirements.

Quoted companies who had made a change to the business review were asked how difficult they found providing the additional material and whether they found it easy to comply with new regulations. In spite of some concerns prior to the change about the burden of reporting, the majority felt neutral about this with 56% finding the extra material 'neither difficult nor easy' to provide. Similar proportions (54%) found the process the same in terms of compliance. Relatively low proportions of companies had indications on the usefulness of the information from shareholders or felt that shareholders would find it useful.

Of those companies who had made a change to improving shareholder access to information, awareness of the new filing dates was extremely high (95% of respondents).

Companies who had made related changes to eCommunications were asked if they had sought and received shareholder approval to use website communications and whether they had used the website default procedure. Over three-fifths of companies indicated that they had in response to both questions.

All companies which had made at least one change following the simplification measures were asked which had been adopted. Actions in response to two measures were most common: the removal of the requirement to hold an AGM (51%) and the ability to execute documents by a sole director (43%).

Of those companies who had made changes in relation to meetings and resolutions, 32% agreed that they no longer hold AGMs[5] . Of these, 11% cited cost savings as the key driver for the change[6]. Almost three-fifths of those who had made a change indicated that they had used the written resolution procedure (57%).

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[5] Given the randomisation aspect, not all companies who had made a change with simpler law would have been asked about resolutions and meetings, explaining the variance in the percentage of those no longer holding AGMs as this is a different sample base.

[6] All reasons for not holding AGM's can be seen in Figure 6.29 in section 6.7 of Volume One.

All small, medium and large private companies who had not made a change and who had a company secretary were asked if they would consider abolishing the role. Just over one fifth indicated that they would do so, of which one in ten would expect associated cost savings.

Of companies who had made a related change to directors' addresses, 60% had provided a new service address to Companies House[7]. Of those who had not made a change, just under one third indicated that they were likely to do so. Furthermore, of those who had taken steps to making a change relating to trading disclosures, 98% were aware of their obligations in terms of the display of their company's name.

Just under one fifth (18%) of companies agreed that there had been benefits from the provision to remove shareholders' addresses from the annual return, and the vast majority (97%) were unaware of concerns arising from their removal.

Almost a fifth of companies (17%) had entered, or taken steps towards entering an auditor limited liability agreement. This level of adoption was higher than anticipated by stakeholders, although interestingly several companies were unable to cite advantages (to their company) of entering such an agreement.

1.4 Advice, guidance and third parties

1.4.1 Stakeholder views

Stakeholders interviewed collectively imagined that professional advisors would play a key role in instigating awareness of the changes in Company Law, and in initiating change; the consensus was that advisors were an appropriate and sensible means of knowledge transfer.

Reinforced through case studies, stakeholders believed that communications were disseminated largely based on mandatory changes; that advisors will have sent out briefings but only where companies needed to make a change. As suggested by one case study respondent, the push from third parties may have made companies who needed to know about changes a bit sceptical about their necessity and relevance.

The extent to which BIS helped raise awareness was applauded by stakeholders but it was larger companies who were anticipated to be the key beneficiaries of such activity.

1.4.2 Business views

[7] Note this is based on a randomised sample and not all companies who had made a change, or taken steps towards making a change to directors' addresses were asked this question. The percentage of companies actually submitting an address can, therefore, not be calculated but these indicative figures suggest that roughly two fifths of all those who had taken steps may not have actually submitted an address.

One in five companies in the survey became aware of changes to Company Law through BIS publications or alerts (20%), almost three quarters became aware through their advisor (71%), and over half through their own institute (56%[8]).

Companies aware of the Act but who had made no changes predominantly had become aware of the Act through other means, such as training courses, personal investigation, and other publications.

1.4.3 Companies House

Stakeholders made positive reference to Companies House as a source of guidance for companies and as an awareness channel, and positive ratings were also received in terms of Companies House being an instrumental source of bringing about initial awareness (59%[9]).

Over three fifths of companies had used the Companies House website as a source of information on company law (64%). Of those, almost three fifths of companies were satisfied with the usefulness of the website (59%[10]), and almost half agreed it was helpful (45%[11]).

1.4.4 Third parties

Eighty three per cent of companies overall used an advisor; significantly more large private, public and quoted companies were found to do so than small private companies (81%, 82%, 90% vs. 73%).

Solicitors were the over-riding source of advice for companies (68%), followed next by accountants (39%); auditors were also heavily cited as another source of advice.

Companies would rather receive news of changes to Company Law via email, although significantly more small private companies would prefer to have received direct mail than other company sizes.

Measure specific, highest usage of advisors was found with capital maintenance, enfranchising indirect investors and access to company information; lowest use was found with regards company secretaries.

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[8] This was a multi-code question in the survey and thus percentages total more than 100%.

[9] Includes both those who became aware through Companies House Roadshows and Companies House publications.

[10] Includes those who scored 4 and 5 on a five point scale where 1 is very unsatisfied and 5 is very satisfied (Q143).

[11] Includes those who scored 4 and 5 on a five point scale where 1 is very unhelpful and 5 is very helpful (Q144).

1.5 Evaluating policy objectives

Given the final implementation phase of measures introduced in the Companies Act 2006 was October 2009, it is still early to be assessing the Act's impact and evaluating whether policy objectives have been met, a consensus echoed by businesses and stakeholders alike. Furthermore the challenge of identifying levels of awareness of the Companies Act 2006 among small private companies was known from the outset, given their high use of advisors whereas larger private, public and quoted companies tend to employ in house accountants/ finance directors and company secretaries who keep abreast of changes in corporate governance. Recently incorporated companies[12] were also excluded from the study deliberately. Policy objectives, and specific goals included within the White Paper of 2005, were assessed within this context.

1.5.1 Enhancing shareholder engagement and a long term investment culture

Measures introduced to enhance stakeholder engagement have been partially successful: the additional information required in the business review has not been arduous to provide and could be beneficial to shareholders, and changes to directors' duties have the potential to bring about a cultural shift in how decisions are made for the benefit of shareholders.

The 'Enhancing indirect investors' measure has had a greater uptake than expected and increased shareholder democracy could still become a reality (companies have altered their articles to allow for this, but the consequences of this change on investors are yet to be known and will depend on actions by brokers and other intermediaries).

Auditor limited liability agreements are being utilised too, but the benefits of companies entering into such agreements was questioned (although some companies referenced using agreements to ensure auditor fees did not increase in future).

The Act has therefore paved the way for shareholder engagement to be enhanced, but this has not yet been fully realised and, as agreed by stakeholders, is possibly not something that legislation alone can accomplish.

1.5.2 Ensuring better regulation and a 'think small first' approach

Again this has been partially successful to date. Stakeholders, given their higher awareness and understanding of both the policy objectives and the specific measures, were more enthused than companies by simplified changes which allow for greater flexibility.

Companies are often still thinking of adopting the model articles- but they are not top priority, thus in spite of a disappointing take up currently, this could well undergo an increase over

[12] Termed 'Companies Act 2006' companies.

time. Newly incorporated companies, despite their exclusion from this study, will however automatically adopt these measures from here on in and this will therefore change the stock of companies over time.

The removal of the requirement to hold an AGM and procedures allowing written resolutions have been positively received (although the extent to which formal AGMs were being carried out prior to this is questionable, particularly for small companies as illustrated in Section 6.7.3); informal shareholder assent however was found to be the predominate means of making decisions for companies with ten or fewer shareholders.

Few companies had abolished their company secretary role but the likelihood of small and medium-sized private companies considering doing so in future was fairly high. However, this modest reduction is in line with the Regulatory Impact Assessment (RIA)[13] estimation of 5%.

The reduction of capital by way of a solvency statement (included with the capital maintenance measure) aimed at large private companies also appears to have been better received than stakeholders anticipated; cost savings were referenced as the key driver here.

Changes have therefore simplified the law for small and medium-sized private companies, but given their reliance on advisers for all legal matters, they do not appear to have been that directly affected.

1.5.3 Making it easier to set up and run a company

It is still early days to assess performance with this objective (as with all objectives). On the whole, the areas covered within this objective received more neutral responses, with changes being acknowledged to be of less significance than the other changes introduced.

Advantages for new companies were noted in that directors do not need to submit a personal address (and their previous residential address will not remain on the register as with existing companies), and awareness levels of trading disclosure requirements were high which can be seen in a positive light. Companies were however fairly neutral on the provision allowing shareholder addresses to be removed from the annual return.

Deregulation was found to be an area of dispute: the changes brought in are being utilised, but regulation remains and so too do references to red tape and administration obligations.

In principle the changes do appear to have facilitated the process of setting up and running a company, and positives were noted, but on the whole companies and stakeholders were more neutral about the implemented changes.

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[13] Regulatory Impact Assessment (January 2007)

1.5.4 Overall evaluation (including cost savings/ flexibility benefits of measures assessed)

The Companies Act 2006 has impacted companies to varying degrees dependent upon the extent to which optional changes have been adopted and/or complied with. This therefore added to the difficulty of measuring benefits at an overall level and should be borne in mind.

Despite high awareness, and in some instances high compliance or adoption, neutral perceptions of added value in terms of flexibility and cost savings were captured from companies. Stakeholders too were fairly neutral with one noting marginal cost savings from changes to eCommunications.

In terms of flexibility, changes for private companies on resolutions and meetings were most beneficial for companies with just under a third stating this change had been most beneficial in terms of flexibility (31%); least beneficial were the register of shareholders and the business review (15%), both mandatory changes.

Regarding cost savings, changes to eCommunications (30%), and resolutions and meetings (20%) were most beneficial to companies; least beneficial was again the business review (23%) additional requirements.

Overall, over a third of companies disagreed that Company Law had been simplified (34% NET[14]), whilst one fifth of companies agreed[15], indicating that time is needed for the changes to further embed themselves and for benefits to be realised. It must be stressed however that the Companies Act 2006 is primarily an enabling Act, so it is for a company to decide whether it wishes to take advantage of the measures provided and when it wishes to do so.

1.6 Potential areas for change

In terms of areas for improvement, the following feedback was received:

- Directors' duties: added clarity and guidance to boost awareness and understanding of Section 172, in order to increase behavioural change.
- Business review: added clarity on the process is still required to improve the quality of information provided, to ensure the review is not seen as 'boiler plate'. Should the Operating and Financial Review (OFR) be reintroduced, clarity of requirements must be stressed to optimise value provided to shareholders.

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[14] Includes those who 1 and 2 on a five point scale where 1 is do not agree at all and 5 is completely agree (Q133).

[15] 42% of companies were neutral, see Figure 8.5 in section 8.1 of Volume One.

- Directors' addresses: previous addresses are not blocked out, credit agencies can still access directors' details, and one is no longer able to differentiate directors with the same name on the register are all criticisms to be taken on board.
- Register of shareholders: this change did not include the removal of all shareholder addresses, another point for consideration moving forwards.
- Simpler law/ accessibility: greater promotion of the benefits that could be derived from adopting and/or amending the new template could increase up-take of new model articles.
- Enfranchising indirect investors: the owner of the shares is not then on the share register, therefore no one else can write to them bar the stock broker- again to be taken on board for consideration.
- Auditor limited liability agreements: Companies appear to be entering agreements whilst openly acknowledging they do not know of any benefits to their company- so added clarity of Section 172 is required. US dual listed companies are also not able to enter these agreements.
- Guidance: available guidance materials should be promoted (particularly with the small private company in mind, targeted by company size). Email (and direct mail for small private companies) was cited as the preferred communications channel for updates in Company Law, but for small private companies, other avenues such as local business forums and town partnerships were also suggested.

2 Introduction and objectives

2.1 Background

Company law was established to provide a legal framework for how companies are formed, operated and managed. Companies Acts have been in existence for the last 150 years. The predecessor to the focal law of this study was the Companies Act of 1985 which was an Act of the Parliament of the UK, and which set out the responsibilities of companies, their directors and secretaries. There have been numerous additions, amendments and consolidations since then, but they have created a patchwork of regulation that is immensely complex and seriously out of date[16].

The Companies Act 2006 superseded the 1985 Act, and was at the time of Royal Assent the longest Act in Parliamentary history, with 1,300 sections and 15 schedules. It was introduced to promote enterprise, and stimulate investment[17]; the Act intended to enhance the performance of companies across the UK, by simplifying and improving the framework of legislation. It takes into account current company needs in an age of enhanced technology and transnational business operations. The Act replaces most of the Companies Act 1985, although a small part of the 1985 Act remains, relating mainly to company investigations and community interest companies[18].

The consultation period prior to the implementation of the Act was extensive and spanned a ten-year period, commencing with the Company Law Review (CLR) in 1998, which in turn led to the Government's subsequent White Paper 'Modernising Company Law' of 2002. The CLR (1998-2002) was set up by what was then the Department for Trade and Industry (DTI), and was conducted by an independent group of experts, practitioners and business people, to take a long-term and fundamental look at our underpinning system of company law, to determine how it could be brought up to date; in the then Secretary of State for Trade and Industry, Margaret Beckett's, words change was needed as...

'*we are determined to ensure that we have a framework of company law which is up-to-date, competitive and designed for the next century, a framework which facilitates enterprise and promotes transparency and fair dealing. That is why we are launching a thorough and wide-ranging review of our core company law*'.

A series of public consultations were thereby conducted and the Government took full account of that process, of responses to the White Paper, and of subsequent consultations, both formal and informal, in determining the policy measures set out in the finalised White

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[16] *Modern Company Law for a Competitive Economy, Company Law and Investigations Directorate part of Corporate and Consumer Affairs. March 1998*

[17] *Company Law Reform: Small Business Summary*
[18] *Briefing Companies Act 2006, Freshfields Bruckhaus Deringer, 8 November 2006*

paper 'Company Law Reform' of 17th March 2005. The Companies Act 2006 subsequently received Royal Assent on 8 November 2006.

The implementation of the Companies Act 2006 has been staggered, with the final stage implemented on 1st October 2009; the intention of which was to give companies sufficient time to prepare for the new regime under the Act, rather than implementing all 1,300 sections of the Act at once. BIS was responsible for the implementation of this Act.

The Act introduced a range of deregulatory measures, particularly aimed at increasing flexibility for private companies, for example it removes the requirement for private companies to have a company secretary or to hold an annual general meeting unless they positively opt to. The Act is expected to deliver benefits to business of around £400 million a year[19].

The introduction of a statutory statement of directors' duties, which has codified the current law, was a significant change, which aimed to clarify the current duties of directors and in whose interest they should be acting. Interlinked with this change was the introduction of the enhanced business review, involving additional reporting requirements, particularly for quoted companies, and which aimed to encourage disclosure of strategic, forward-looking information to shareholders.

2.2 Research objectives

The overarching aim of this evaluation study was to assess the impact of the Companies Act 2006 on UK businesses, and to determine whether it is meeting its policy objectives, which include:

- To enhance stakeholder engagement and a long term investment culture (promoting wider participation, and ensuring decisions are based on long-term view rather than immediate return);
- To ensure better regulation and a 'Think Small First' approach;
- To make it easier to set up and run a company;
- To provide flexibility for the future.

What follows in this report is an evaluation of the Act against these objectives, and it measures, as far as is possible, the pros and cons that have arisen to date from the adoption of the Act's measures. However, as previously cited in the former Regulatory Impact Assessment of 2007:

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[19] *Companies Act 2006 Evaluation: Additional Background, BIS*

'*Company law is hugely facilitative. There is no natural company; instead a company is the product of the nexus of regulation known as company law'.*

It is through reducing unnecessary elements of compliance where BIS hopes to deliver cost savings for companies, yet estimating these direct savings is extremely difficult[20].

Further to this we aimed to identify:

- Any unanticipated changes or impacts.
- Potential areas for further simplification or analysis.
- Any areas where the new provisions are not working effectively.
- Whether new issues have arisen for the company law framework going forward in order to maintain and improve the UK's competitive business edge.

Thirteen provisions were selected by BIS to be evaluated throughout this research study on the basis of the grounds of cost / benefit predictions, length of time in force, extent of contention during passage and business interest. These measures comprised:

1. Role of directors - Provisions governing the duties owned by directors to the company.
2. Business review- Provisions requiring directors to draw up a business review and to include this in their annual directors' report.
3. Access to Company Information including reduction in filing times.
4. Facilitating electronic communications - Making electronic communication the default method for communication with shareholders.
5. Enfranchising indirect investors– Provisions that provide rights to indirect investors through proxy and information rights.
6. Simpler law/accessibility, including model articles and Companies House[21] guidance.
7. Resolutions and meetings including- Provisions that remove the need for private companies to hold AGMs, changes to the law around making decisions through written resolutions, and meeting notices.

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[20] *Regulatory Impact Assessment, March 2007*

[21] http://www.companieshouse.gov.uk/

8. Company secretaries- The removal of the requirement for private companies to have a company secretary.

9. Capital maintenance - including the removal of the prohibition on financial assistance for the purchase of a company's own shares and reduction of capital by way of a solvency statement.

10. Directors' addresses- Both a service address and the usual residential address must be filed, with only the service address being placed on the public register

11. Trading disclosures- Provisions governing what details a company must include on signs, stationery, websites etc.

12. Register of shareholders/annual return- Changes so that for most companies, shareholders' addresses are not included in annual returns. Public companies only provide names and addresses of those with significant shareholdings.

13. Auditor limited liability agreements- Provisions allowing companies to enter into an agreement with an auditor, limiting the liability of that auditor in cases of professional negligence.

Whilst the main body of research findings have been included in this Volume, the appendices have been included in a separate second Volume; relevant references are made throughout this report to additional information in Volume Two.

3 Methodology

This evaluation study was conducted in compliance with ISO 20252 and comprised three interlinking strands, blending quantitative and qualitative research methods. The three primary means of data collection took place though:

- One thousand computer aided telephone interviews (CATI) with UK businesses;
- Fifteen face to face stakeholder depth interviews;
- Fifteen face to face/ telephone case studies with businesses of interest from the quantitative study.

3.1 Telephone interviews

One thousand interviews were conducted amongst those responsible for corporate governance within UK businesses. Within small and medium-sized private companies, owner/managers were targeted, and in larger companies, chief executives, finance directors and company secretaries held the relevant responsibilities within this area (see profile of businesses in Section 4). In each case, it was the company rather than individual that was targeted, and hence individuals could be contacted more than once if they held corporate governance responsibility for more than one company stated on the sample.

Sample was drawn from a commercial data source used by BIS, the Bureau Van Dijk FAME database. FAME contains detailed information on all public and private companies currently registered in the UK and includes information on company profiles, profit and loss accounts, balance sheets, cash flow statements, directors' details, industrial activity etc. FAME provides easy access to the raw data needed to determine size categories based on the Companies Act 2006 definitions. To note, data for this study was drawn from the May 2009 database and does not therefore include any "new" Companies Act 2006 companies.

The definitions of company sizes used throughout this report are based on definitions within the Companies Act 2006 and the breakdown for small, medium and large private companies can be seen in Figure 3.1; companies qualify into whichever category in relation to its first financial year if the following conditions are met in that year:

Figure 3.1 Company size definitions defined in the Companies Act 2006

	Small	Medium	Large
Turnover	Not more than £6.5 million	More than £6.5 million but less than £25.9 million	Over £25.9 million
Balance sheet total	Not more than £3.26	Greater than £3.26 million but less than	Greater than £12.9

	million	£12.9 million	million
Number of employees	Not more than 50	More than 50 but less than 250	Greater than 250

Definitions for public and quoted companies, as per the Companies Act 2006 as are follows:

Public- Is a company form and type of registration. Defined as a company that has permission to offer its registered securities (stock, bonds, etc.) for sale to the general public, typically through a stock exchange, or occasionally a company whose stock is traded over the counter (OTC) via market makers who use non-exchange quotation services.

Quoted- Defined in Section 262 of the 1985 Act and Section 385 on the 2006 Act as a company whose equity share capital has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c.8), is officially listed in an EEA State, or is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

A stratified random probability sampling approach was deployed in order to ensure a robust baseline to measure the impact of the Companies Act 2006 and, allowing for a more reliable basis to track changes resulting from the Act. With random probability sampling, each sampled unit went through the same calling protocols, enabling response rates to be maximised; each record was called six times (rather than six pieces of sample being called once). This verifiable approach also gave each piece of sample the same chance of selection, to eliminate bias that can occur from quota sampling approaches.

The primary sampling units of the stratified random probability sampling design were businesses, with strata defined by the type of business (the sample frame can be seen in Figure 3.2; five categories as defined by BIS - private small, private large, private medium, Public and quoted companies; definitions shown in Figure 3.1). The sample design tended towards a disproportionate allocation rather than proportional allocation, as having sample sizes proportionate to the corresponding population sizes would have led to samples which were too small for the smaller population groups, such as Public and Quoted companies. Therefore, the sample allocation to the strata was disproportionate to compensate for the anticipated differences in response rates in some strata and to achieve minimum sample sizes for groups of businesses which formed the domains of interest. Within each stratum, businesses were sampled with equal probabilities and without replacement. Further detail on the sample frame is included within Section 1.1 in Volume Two.

Figure 3.2 Sample frame

Business Types	Population	Population proportion	1000 interviews split proportionally	Target Interviews	Confidence Interval (+/-%)
Private: Small	2,044,224	97%	972	228	**6.5**
Private: Medium	32,322	2%	15	250	**6.2**
Private: Large	18,705	1%	9	250	**6.2**
Public	7,308	0%	3	222	**6.5**
Quoted	781	0%	0	50	**13.4**
Total	**2,103,340**	100%	1000	**1000**	**3.1**

The questionnaire was designed to include a) those aware of the Act and who had made subsequent changes, b) those aware of the Act but had made no changes and c) those unaware of the Act[22]. Extensive routing was thus inserted based on awareness, compliance with or adoption of the measures and company size. Awareness and compliance with / adoption of all thirteen measures were captured in the initial section of the questionnaire, which allowed respondents to be routed through to either:

Section one: exploring compliance / adoption with three measures selected at random where changes had been made (directors' duties and the business review were prioritised and always selected when changes had been made in these areas). Total costs and time incurred were also captured at an overall level for all changes made;

Section two: an informative section for those unaware of four particular measures (directors' duties, resolutions and meetings, company secretaries and directors addresses) exploring awareness and likelihood of making changes. This section included, therefore, those with no awareness and those with awareness who may have made changes and answered Section One beforehand but had not made changes to any one or more of the aforementioned measures covered in this section;

Section three: An overall evaluation section asked to all, looking at their understanding of Company Law and evaluating the changes made as a whole; sources of guidance were also questioned in this final section.

[22] All research materials including the questionnaire can be seen in Section Four of Volume Two.

Fieldwork spanned from Monday 22nd February to Friday 16th April 2010. In total one thousand and one interviews were recorded, the breakdown of which can be seen versus the initial target in Figure 3.3[23].

Figure 3.3 Final interviews achieved

	Target	Actual number of interviews achieved
Small	228	258
Medium	250	232
Large	250	235
Public	222	227
Quoted	50	49
Total	1000	1001

The resulting data were analysed at an overall level, and by key cross breaks, including most notably:

- Company size
- Awareness of Companies Act 2006 or not
- Source of awareness
- Whether changes had or had not been made
- Incorporation date to Companies House
- Job title of respondent
- By Industry type (based on SIC code)
- Use of advisors

[23] Further detail on interviews achieved, final resolutions and sampling errors can be seen in Section 1.2 of Volume Two.

Weighting the data

An overall weight frame was applied to the finalised data set, provided by BIS, in order to present a more accurate representation of the data based on economic activity amongst companies surveyed, and thus their exposure to the Companies Act and resultant changes. This was chosen as the preferred weight frame as opposed to weighting the data to represent company population sizes, as the data would then be vastly skewed towards the views of small private companies.

The weight frame applied for small private companies was based on total assets from the FAME database; for all other company sizes the weights were calculated based on turnover data. All data included within this report, except the profiles of companies, are based on weighted data. However, when assessing data within each company size, as each company size was given one weight, the percentages are not affected by the overall weight frame and portray the actual percentage of companies within said company size who, for example, were aware of a set measure; it is rather when looking at overall percentages and all other cross breaks where the weighting takes effect.

Details of the weighting frame applied have been included Section 1.3 of Volume Two. All base sizes shown below each chart in this report are based on actual rather than weighted numbers.

3.2 Stakeholder depths

Fifteen stakeholder depth interviews were conducted amongst organisations involved in the consultation and/ or implementation periods of the Companies Act 2006 (a list of which can be seen in Section 1.6 of Volume Two). These organisations were selected by BIS and named contact details were provided; telephone recruitment was conducted by ORC International. Fourteen stakeholder depths were carried out face to face, and one over the telephone; ensuing views from all stakeholders have been interspersed throughout the report, although respondents have been kept anonymous. No incentives were offered for this stage of the research. The stakeholder depths were carried out in parallel to the quantitative stage of the research, spanning a time frame from Tuesday 19th January, with completion of the last on Tuesday 18th May 2010.

3.3 Case studies

The third and final strand of the research study involved conducting fifteen case study interviews with businesses to explore in more depth particular areas of interest. The recruitment specification guide for the case studies was devised post completion of the quantitative fieldwork in order to assess headline findings from top line data prior to recruitment[24]. Once agreed, telephone recruitment was organised by ORC International

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[24] The case study specification is included in Section 1.71 of Volume Two.

amongst those companies who fitted the relevant case study specifications and who had agreed during the quantitative study to take part in a case study. The case study interviews took place from 10th May to 16th June 2010.

A mixture of face to face and telephone case studies were carried out (ten telephone and five face to face), dependent primarily on geographical location and respondent preference. Respondents willing to take part were offered an incentive of forty pounds to be given to a charity of their choice. ORC International, upon completion of all case studies, sent individual cheques to designated charities, together with a letter detailing the benefactor; a copy of these letters was then sent to respondents themselves.

The findings from these case studies have been summarised, and key insights have been written-up and included within relevant sections of the report. Extended write ups on the complete case studies can be found in Section 1.72 of Volume Two.

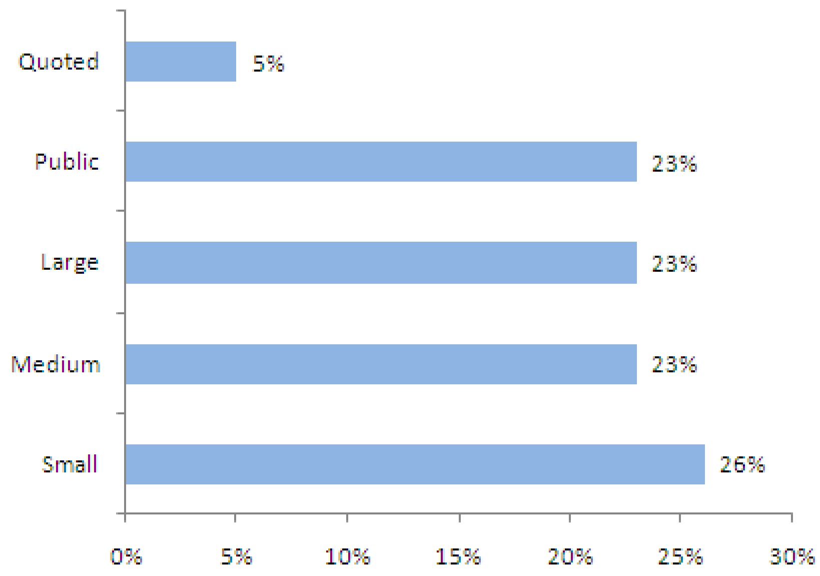
4 Profile of participating businesses

4.1 Company type

Figure 4.1 illustrates the unweighted distribution of respondents by company size. Just over a quarter of those interviewed were from a small private company, whilst just under a quarter were from a medium private, large private or public company. Only five per cent were from a quoted company. In terms of the weighting, quoted companies have been assigned a larger weight and have been boosted to 26%, and the proportion of large private companies has also changed from 23% to 53%. Further changes were as follows;

- Public, 23% unweighted to 10% weighted
- Medium private, 23% unweighted to 6% weighted
- Small private, 26% unweighted to 5% weighted

Figure 4.1 Company type- unweighted



Source: Sample; Company type. Base: 1001, all company sizes, unweighted

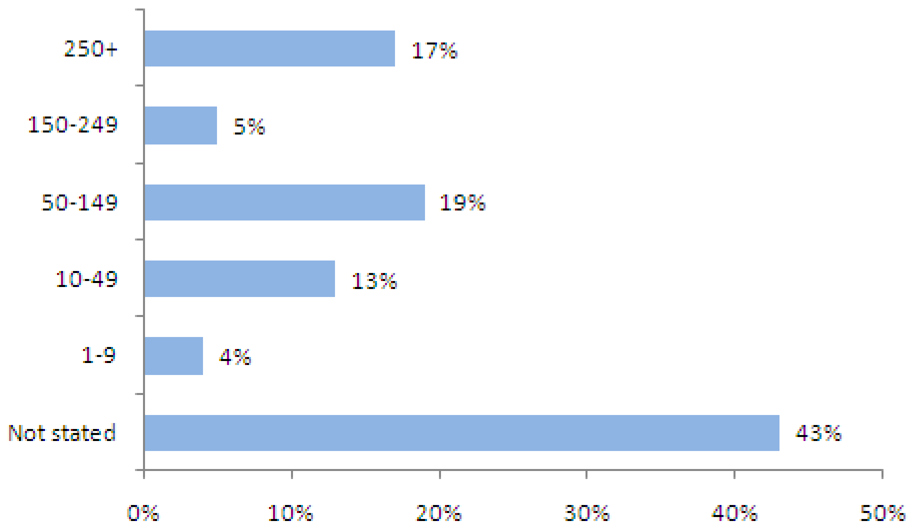
4.2 Employees

Again when unweighted, approximately one-fifth of respondents had between 50-149 employees, whilst 17% had 250+ employees, and only a small minority had between 150-249 (5%), 10-49 (13%) or 1-9 (4%) employees. Nearly half did not state how many employees they had. As would be expected those responding on behalf of a quoted company (65%) were significantly more likely to have 250+ employees than those from a large private (43%) or public company (15%). Those in a small private company (95%) were most likely to have not stated how many employees they had than those in any other company (24% NET[25]).

Awareness of the Companies Act 2006 appears to be related to the number of employees. Twenty-two per cent of those aware of changes in Company Law had over 250 employees compared with just five percent who were not aware of changes in Company Law having over 250 employees.

Comparisons between weighted and unweighted data reveal one main difference: 41% have 250+ employees in the weighted data compared to just 17% in the unweighted data. This is due to both large and quoted companies being heavily up-weighted.

Figure 4.2 Number of employees- unweighted



Source: Sample; number of employees. Base: 1001, all company sizes, unweighted

4.3 Industry

Respondents were most likely to be from the real estate, renting and business activities (34%), manufacturing (18%) or wholesale and retail (14%) sectors (Figure 4.3). Respondents were least likely to be from agriculture, hunting and forestry (1%), education (1%) and health and social work (1%). Manufacturing was most likely to consist of medium private companies (25% of whom fell into this category) rather than small private (13%) or public companies (14%). The construction industry was more likely to consist of small private companies (12%); this was significantly higher than that recorded for medium private (5%), large private (7%) and public companies (6%).

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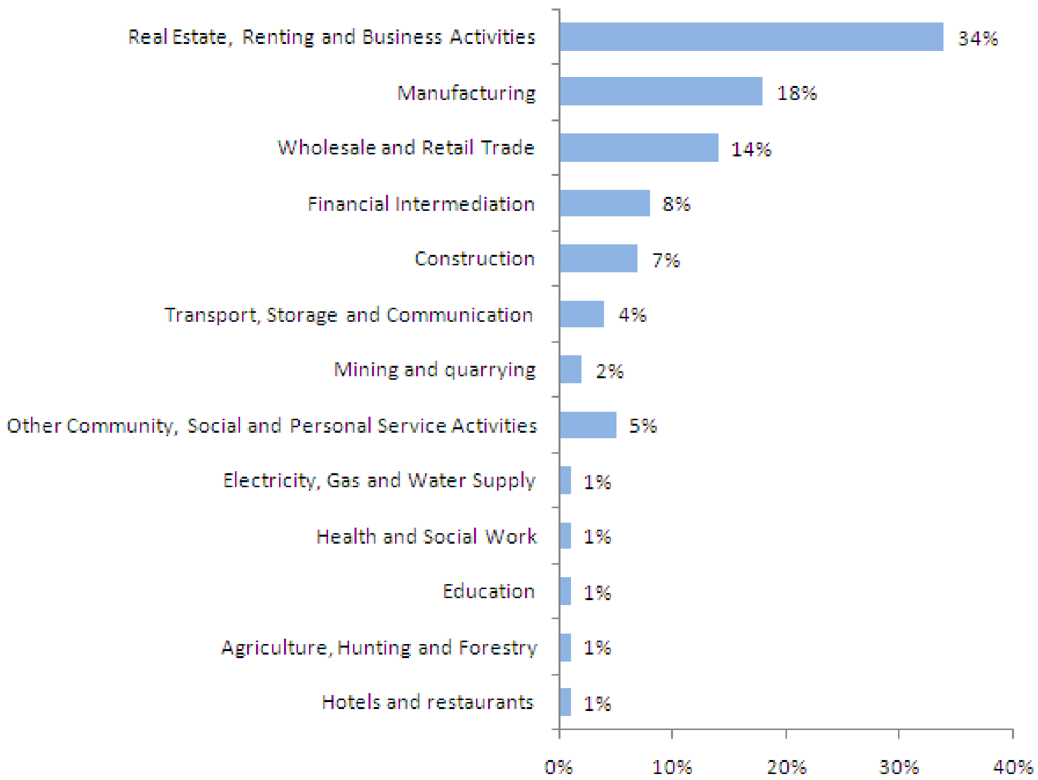
[25] Aggregate percentage from medium private, large private, public and quoted companies.

Industry types remained largely consistent when the overall weight frame was applied.

Figure 4.3 Industry – unweighted



Source: Sample; industry. Base: 1001, all company sizes, unweighted

4.4 Assets

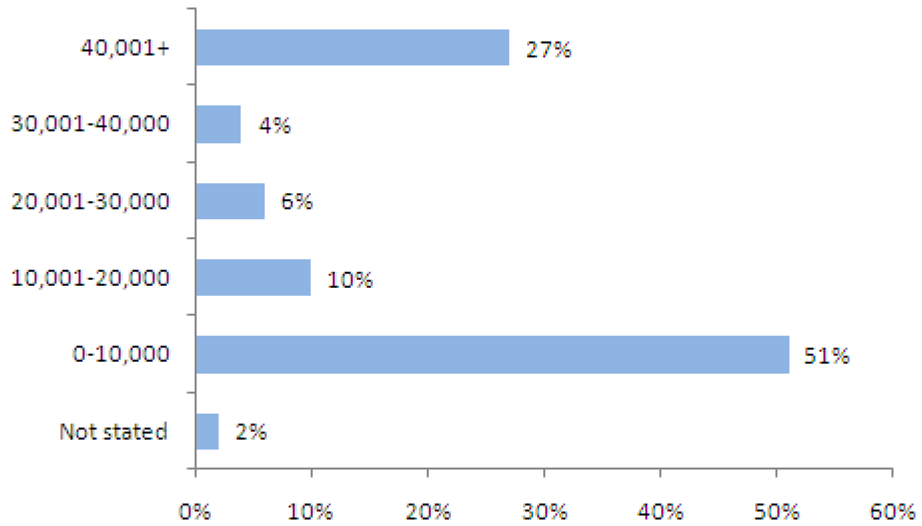
More than half (51%) of companies had £0-10,000 worth of assets and twenty-seven per cent had £40,000+ in assets. One tenth had £10,001-20,000, six per cent £20,001-30,000 and four per cent had £30,001- 40,000 worth of assets. As would be expected, small private companies (93%) were more likely to have £0-10,000 in assets than medium private (69%), large private (4%), public (42%) and quoted (8%) companies. Conversely quoted companies (76%) were more likely to have over £40,001 in assets than all other companies (NET 25%). Companies that had over £40,001 in assets were more likely to be aware of changes in Company Law, particularly the Companies Act 2006 (35% of those aware vs. 8% of those who were not aware).

As would be expected there have been two major changes, again this is due to both large private and quoted companies being up-weighted. These differences are;

- £40,001+, 27% unweighted to 55% weighted

- £0-10,000, 51% unweighted to 18% weighted

Figure 4.4 Assets - unweighted



Source: Sample; assets. Base: 1001, all company sizes, unweighted

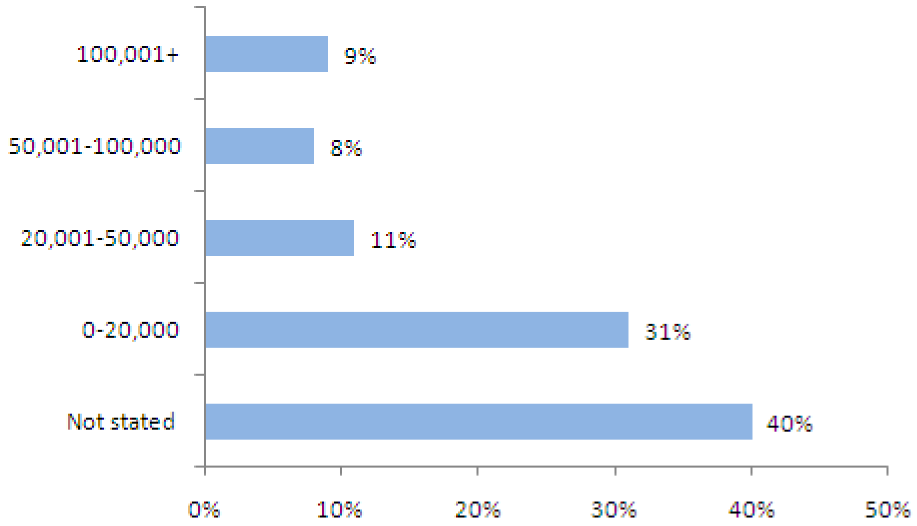
4.5 Turnover

Two-fifths of companies did not state their turnover. Of those who stated their turnover nearly a third had a turnover of £0-20,000, approximately one tenth had a turnover of £20,001-50,000 and under one tenth had a turnover of £50,001-£100,000 or £100,000+ (Figure 4.5). Of those with a turnover of 100,001 + the company secretary was the most likely respondent (14%) compared to owner/ family member (0%), chief executive (0%) and company director (0%). Reflecting previous trends those with the greatest turnover were significantly more likely to be aware of the changes to Company Law (13% vs. 1% not aware).

The three largest differences between the weighted and unweighted data in relation to turnover were:

- A substantial shift for those who had a turnover of between £0-20,000, from 31% unweighted to 15% weighted;
- The percentage of respondents who had a turnover of £100,000+increased from 9% unweighted to 24% when weighted was applied;
- In the unweighted data an additional 14% had not stated the turnover they had made (40% unweighted vs. 26% weighted).

Figure 4.5 Turnover -unweighted



Source: Sample; turnover. Base: 1001, all company sizes, unweighted

4.6 Job title

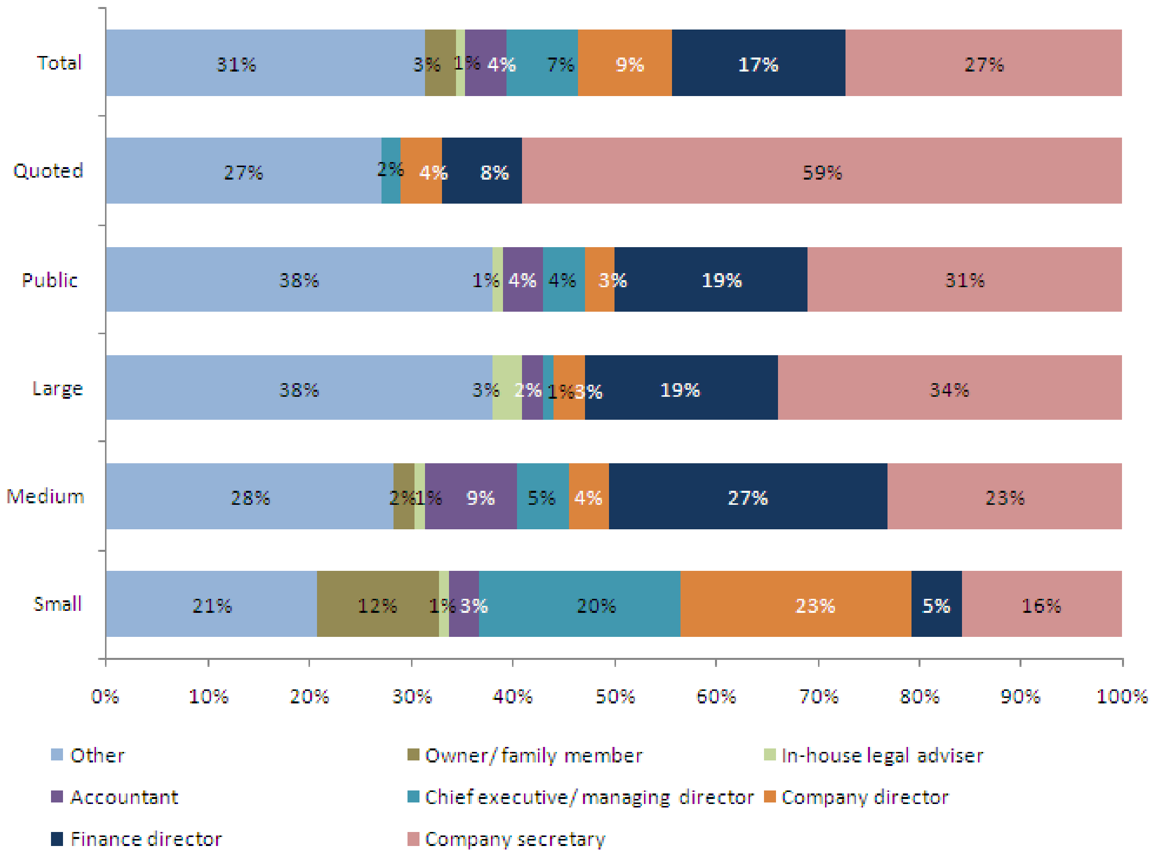
As shown in Figure 4.6, over a quarter of respondents were company secretaries and seventeen per cent were finance directors. Just under one third of job titles did not fall into the preset categories, some of the other job titles given included, head of HR, compliance manager, and vice president of legal affairs.

Company secretaries were more likely to be from quoted companies (59%) than small private (16%), medium private (23%), large private (34%) or public companies (31%). The owner/ family member or chief executive were more likely to be from small private companies (12%) than medium private (2%), large private (0%), public (0%) or quoted companies (0%).

Knowledge of the Companies Act 2006 appeared to be related to the job title, however, this could be with a function of company size as the owner /family member or chief executive were more likely to be from small private companies, and these were the two posts that were most likely to be unaware of changes in company law (9% and 13% of those unaware vs. aware 1% and 5%). Company secretaries had the greatest awareness with a third stating they were aware of the changes (33% vs. not aware 14%).

There was only one main difference between the weighted and unweighted tables. In the unweighted tables 27% were company secretaries however in the weighted tables 38% were company secretaries.

Figure 4.6 Job title



Source: Q7 Firstly ... what is your job title/position? Base: 1001, all company sizes, unweighted

If small, medium, and large private companies and public companies did not directly state that they were the directors they were prompted in order to ascertain whether this was the case. Thirty seven percent stated that they were (unweighted), in fact, a director and 63% were not (base 868). The percentage of directors reduced when weighting was applied to 27% whilst those not directors rose to 73%.

Quoted companies were asked a separate question to establish if they were the non-executive director of the company, just 6% were and 94% were not (base 47). Given this was asked only to one company size, the weighting did not affect these proportions. The relatively low incidence of directors is partially attributable to the fact that a relatively high proportion of interviewees were company secretaries who do not tend to be at directors themselves.

5 Overall awareness and adoption of the measures

- Overall, the large majority of companies interviewed (85%) were aware of recent changes regarding Company Law, in particular the Companies Act 2006.
- As anticipated by stakeholders, small private companies had the lowest awareness levels, with two-fifths (40%) being aware of recent changes regarding Company Law, compared with over nine in ten quoted companies (94%).
- Percentages of those aware and proportions of those taking steps towards making a change for each measure have been based on the total number of companies to which each measure relates i.e. not all measures are applicable to all companies of all sizes.
- Awareness of any changes to Company Law was highest amongst companies incorporated by Companies House over ten years ago; from respondents who were company secretaries; from companies within the SIC codes of transport, storage and communication classification (95%) and financial intermediation (93%); from companies who used advisors (87%), and companies who used Companies House (97%) or their solicitor (91%) as sources of guidance.
- In terms of awareness of individual measures, awareness was highest regarding the change to directors' addresses (85%; asked to all), access to company information and filing times (84%; asked to public and quoted companies only), and regarding the business review (81% awareness from large private, public and quoted companies only).
- Companies were least aware of the broad changes to capital maintenance (57% from large private only) and simpler law/ accessibility (62% from small, medium, and large private and public companies).
- Compliance and adoption-wise, levels were found to be highest with regard to access to company information including filing times (73%), and the business review (64%). In contrast, the changes least optimised included those measures within capital maintenance (11%), company secretaries (12%), and auditor limited liability agreements (17%).
- Uptake levels were also found to be highest amongst companies who had used BIS publications or alerts, networking groups or their own institute as their source of original awareness of changes to Company Law.
- Significantly more small private companies had made no changes (54%).

- Almost half found the changes in the law ‘easy’ to understand (NET 49%[26]) whilst sixteen per cent found it ‘difficult’ (NET[27]); quoted companies found understanding the changes in the law most difficult (21% NET[28]).
- One third of companies spent ten hours or less (33%) on all changes they had made, with just over a fifth of companies (21%) estimating that they had spent over forty hours; quoted companies however were most likely to have spent over forty hours responding to the changes in company law.
- Almost two-fifths (37%) of companies had purchased external professional services (significantly so for quoted companies, 53% of whom had purchased external professional services); over three-fifths did not however spend more than £500 on such services.

5.1 Awareness

Overall, the large majority of companies interviewed (85%, Figure 5.1, weighted by economic impact) were aware of any recent changes regarding Company Law, in particular the Companies Act 2006. This in itself is a positive initial finding and sets a benchmark moving forwards. However, it should be noted that this indicates that the majority were aware that there had been a change rather than demonstrating specific knowledge of individual changes.

Stakeholder opinions as to the extent of awareness amongst companies were varied, although it was widely anticipated that small private companies would have a lower awareness than their larger counterparts, primarily because some of the larger-scale changes, for example eCommunications, were aimed at public and quoted companies and changes to the business review reporting requirements (for quoted companies in particular) were mandatory rather than optional changes. Some thought levels of knowledge would be dependent on job title (with company secretaries having a high awareness, but directors less so despite key changes to directors’ duties in Section 172), whilst one stakeholder thought it would very much be dependent on each individual business. A recurring theme however, was the expectation that listed companies would be aware of the big changes (although not necessarily the specifics; the awareness of each is to be explored in Section 6). The lengthy

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[26] Includes those scoring 1 and 2 on a 5 point scale where 1 is very easy and 5 is very difficult (Q11a).

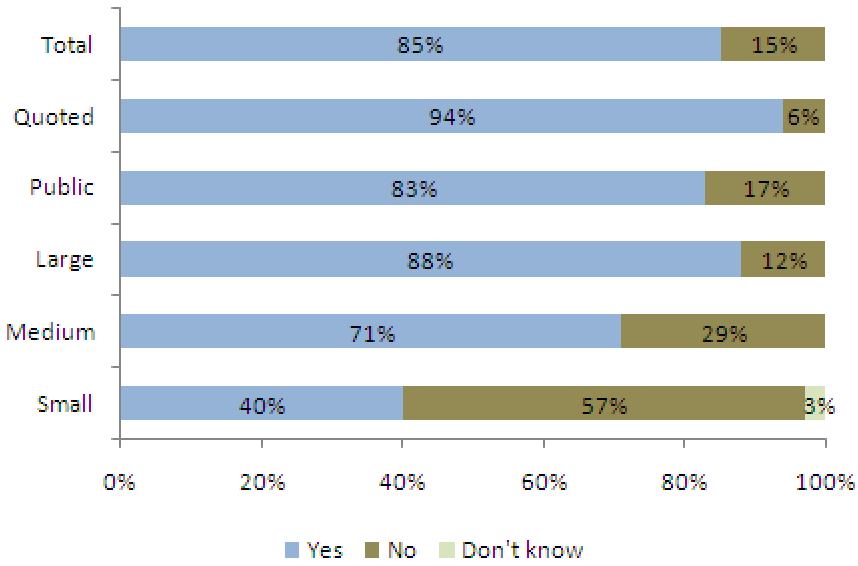
[27] Includes all companies scoring 4 and 5 on a 5 point scale where 1 is very easy and 5 is very difficult (Q11a).

[28] Includes all quoted companies scoring 4 and 5 on a 5 point scale where 1 is very easy and 5 is very difficult (Q11a).

implementation period was cited on several occasions as a reason for why awareness might be fairly high.

Figure 5.1 depicts awareness across the five key size bands of companies interviewed (individual awareness within each size of company is not affected by the overall weighting frame based on economic weighting), and as can be seen, and as anticipated, small private companies had the lowest awareness levels, with two-fifths (40%) being aware of recent changes regarding Company Law, compared with over nine in ten quoted companies. The awareness level of small private companies was proven to be significantly lower statistically than all other company sizes.

Figure 5.1 Awareness of any recent changes regarding Company Law (in particular the Companies Act 2006) overall and split by company size



Source: Q8. And are you aware of any recent changes regarding Company Law (in particular the Companies Act 2006)? Base: 1001 (quoted, public, large private, medium private and small private, weighted by economic impact).

Specific statistical differences were unearthed within the data, providing greater insight into those companies with the highest awareness levels. These were found amongst:

- Companies incorporated by Companies House over ten years ago (88% awareness) rather than companies incorporated 4-10 years ago (82% awareness);
- Those registered as ‘Medium’ (82%), ‘Full accounts’ (86%) or ‘Group’ (91%), rather than those labelled as ‘total exemption full’(55%), and ‘total exemption small’ (33%);
- As also anticipated, awareness was highest amongst company secretaries (94%), significantly higher than owner/ family member (22%), chief executive/ managing

director (41%), finance director (88%), company director (65%), accountant (85%) and other (82%);

- In terms of industry type, awareness was highest in companies included within the transport, storage and communication classification (95%) and financial intermediation (93%) rather than those companies within construction (80%) and wholesale and retail trade (74%);

- Those who used advisors (87% awareness) versus those who did not (76%);

- To be explored in more detail in Section 7, those who did have highest general awareness used Companies House as a source of guidance (97% of whom had awareness). Together with ninety-one per cent of those who had a solicitor, these represented significantly higher awareness levels than those who noted their accountant as a source of guidance (81%).

In terms of awareness of specific changes within the Companies Act 2006, as quoted by one stakeholder:

'They'll (companies) be aware of big changes, not the specifics. They will become aware when they need to reach for professional guidance'.

This gradual process of acquiring awareness and making changes step by step becomes apparent throughout this evaluation as, despite the three year implementation stage, companies appeared in no rush to then make all the possible changes at once. That said positive feedback was received on the phased implementation plan, for example:

'It was phased in appropriately - there were no surprises as a result'. (stakeholder)

'The implementation worked. Pretty successful, sensible, bite size chunks'. (stakeholder)

'The phased implementation was done well and made sense. It had a minimal impact on companies and was not too disruptive. Appropriate for the type of reforms not to have an immediate start'. (stakeholder)

5.1.1 Awareness of changes to individual measures

When asking about the awareness of individual changes, a description of what the change involved was also read out by the interviewer (wording as per that included within the introduction to this report in Section 2.2). Companies were asked about all changes applicable to their company on the basis on company size (full breakdown of which changes applied to which company sizes has been provided in Section 1.4 of Volume Two). For the purposes of analysis, the base sizes for awareness of each measure were calculated to show awareness only by those company sizes for which the change was relevant, and which was asked to.

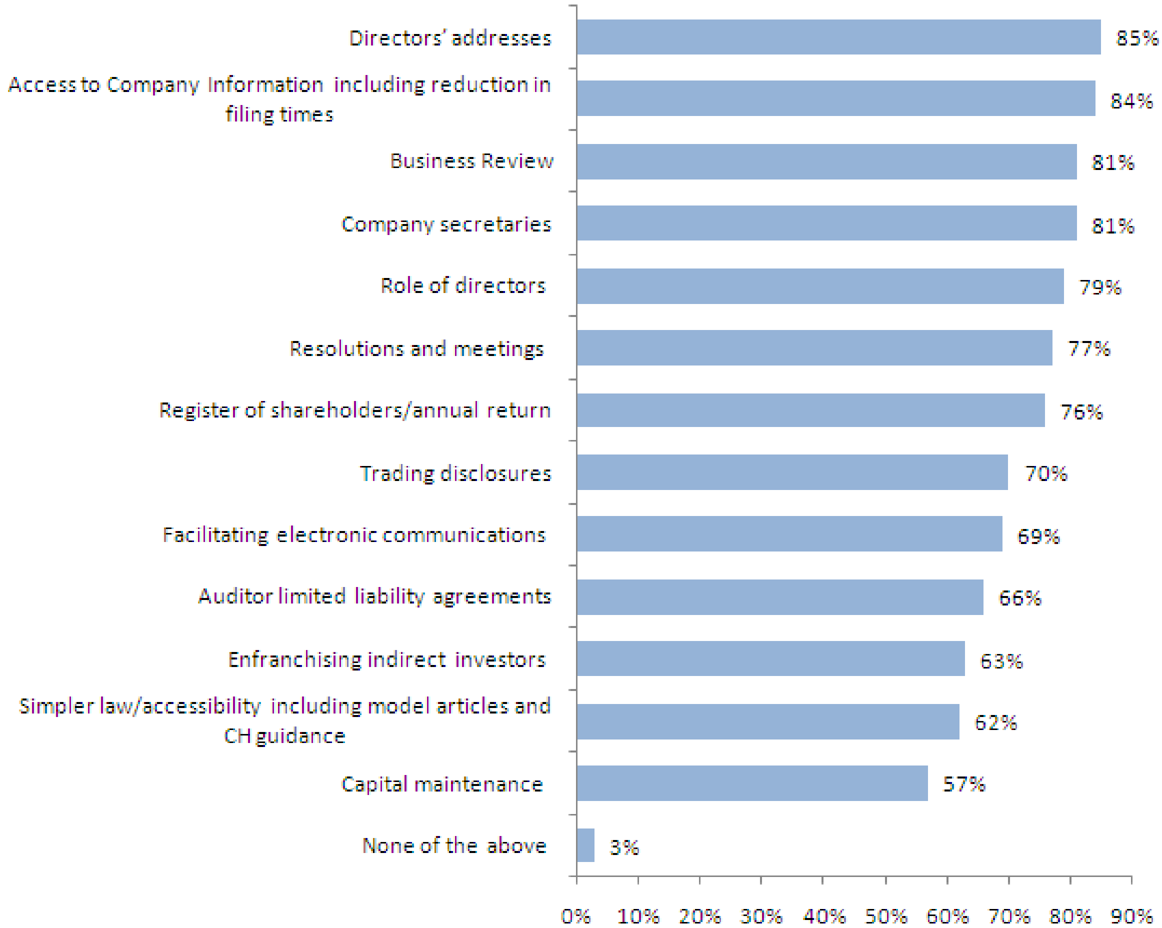
At first glance, and as shown in Figure 5.2, it is apparent that awareness was highest regarding the change to directors' addresses (85% awareness from all interviewees), followed by the changes to access to company information and filing times (84%; asked to public and quoted companies only). The change with the third highest awareness was the business review (81% awareness from large private, public and quoted companies only). It is somewhat unsurprising that the change to directors' addresses reaped highest awareness levels given this was a change that was personal to them and straightforward to understand. The prior speculation that changes to the business review would have a negative potential impact may also explain why this was found to be high on companies' agendas.

Companies were least aware of changes regarding capital maintenance (asked to large private companies only), and changes to simpler law and accessibility, including model articles (asked to small, medium, and large private and public companies).

When comparing awareness of measures against their implementation dates[29], there is no clear correlation between increased awareness over time for those changes implemented first: for example, the register of shareholders was introduced in October 2009 yet elicits a higher awareness level from companies than the change to eCommunications, implemented back in January 2007. This could however be symptomatic of more recent changes being fresher in respondents' minds.

[29] Implementation dates for each measure assessed can be observed in Section 1.5 of Volume Two.

Figure 5.2 Awareness of individual measures



Source: Q9a. Firstly, are you aware of any of the following changes regarding Company Law, even if you haven't taken any direct action? Base: Simpler law/accessibility including model articles and CH guidance (952); Capital maintenance (235); Enfranchising indirect investors (276); Auditor limited liability agreements (743); Facilitating electronic communications (511); Trading disclosures (1001); Resolutions and meetings (725); Register of shareholders/annual return (1001); Role of directors (1001); Company secretaries (725); Business review (511); Access to Company Information including reduction in filing times (276); Directors' addresses (1001); None (1001). Weighted by economic impact.

Significant differences were, however, noted within the awareness of specific measures, and full details of such differences can be found in Section 2.1 of Volume Two. Of particular interest however were the significant differences in awareness resonating from different sized companies. It should be noted that differences in awareness when reporting on individual sized companies, given each size company was given one weight, are not affected by the overall weight frame based on economic impact (and thus are equivalent to unweighted figures). Differences amongst each measure by company size have been summarised below and can be seen in full in Section 2.3 of Volume Two:

Role of directors (79% awareness from all companies): Significantly higher awareness was found among large private (78%), public (78%) and particularly quoted (90%) than small (48%) and medium (66%) private companies.

Business review (81% awareness from Large Private, Public and quoted companies): Unlike with other changes, company size did not bear an impact on awareness of the business review. Quoted companies (90% awareness) were more likely, but not significantly more likely, to have an awareness of the business review than public (79%) or large private businesses (78%).

Access to Company information, including filing times (84% awareness from public and quoted companies): There were no significant differences between company size and type, with 81% from public companies and 86% from quoted companies being aware of this measure.

Facilitating electronic communications (69% awareness from large private, public and quoted companies): Quoted companies (86%) were significantly more likely to be aware than large (62%) or public (65%) companies.

Enfranchising indirect investors (63% awareness from public and quoted companies): There was greater awareness from those in quoted companies (73%) than those in public companies (37%).

Simpler Law/ accessibility including model articles and CH guidance (62% awareness from Small, Medium, and Large private and Public companies): Those in public (61%) and large private (67%) companies had significantly higher levels of awareness than those in small (29%; significantly lower than all other sized companies) or medium-sized (47%) private companies.

Resolutions and Meetings (77% awareness from small, medium and large private companies): Higher awareness was evident in large private companies (81%); this was significantly higher than in medium private (66%) and small private companies (47%).

Company secretaries (81% awareness from small, medium and large private companies): Those from both large (85%) and medium (72%) private companies were more likely to have an awareness of this measure than those from small private companies (51%).

Capital Maintenance (57% awareness from large private companies): 57% of those in large private companies had an awareness of Capital Maintenance - a measure only asked to this size of company.

Directors' addresses: **(85% awareness from all companies):** Higher awareness noted from medium private (80%), large private (83%), public (89%) and quoted (92%) companies compared with small private companies (63%).

Trading disclosures (70% awareness from all companies): Continuing the trend, significantly higher awareness was found in quoted companies (88% awareness) over all others (49% small private, 56% medium private, 65% large private and 70% public).

Register of shareholders/annual return (76% awareness from all companies): The highest level of awareness was once more found in quoted companies (88%); again significantly higher than small private (58%), medium private (70%) and large private (71%).

Auditor limited liability agreements (66% awareness from medium, large, public and quoted companies): Significantly higher awareness from quoted companies (86%) than medium private (47%), large private (59%) and public (63%) companies.

A recurring trend across all measures was apparent however, with highest awareness generally being found amongst[30]:

- Quoted companies than all other sized companies;
- Companies incorporated by Companies House 4-10 years ago;
- Companies whose original source of awareness of changes to Company Law had been through the BIS website, networking groups, business seminars and BIS publications/ alerts over those who had become aware through press comments;
- Company secretaries and accountants rather than owner/ family member, chief executive/ managing director or company directors;
- Industry wise, companies within transport, storage and communication, construction financial intermediation and manufacturing over those within wholesale and retail trade and real estate renting business activities;
- Companies with over 250 employees.

Explored here in more detail, are the specific differences that were evident amongst those companies who had made no changes to measures implemented through the Companies Act 2006:

Companies with no awareness of the measures (3% had no awareness): To be expected, significantly more small private companies had no awareness of the measures (16%), compared to medium private (6%), large private (3%), public (3%) and quoted (2%) companies. Linked to this, companies with 10-49 employees had the highest lack of awareness of all measures (7%) rather than those with over 250 employees (2%). Newer companies, incorporated by Companies House 1-3 years ago were also found to have less

[30] Found by analysing the data by key demographic information captured in the survey and from the Sample.

awareness of changes on the whole (10%; significantly higher than that of companies incorporated 4-10 years ago (2%) and over 10 years ago (3%)). However, given the majority of new companies are small private companies, as discovered through illustrative case studies (case studies 13 and 14, Section 8), they have little involvement in the legal side of setting up businesses, being heavily reliant on third parties to do so.

Regarding job titles of the respondents interviewed, it was the owner/ family member who exhibited the lowest awareness of all measures (36% unaware; significantly higher than that recorded for chief executive/ managing director (6%), company director (10%), accountant (3%), company secretary (1%) and other job roles (5%)).

Finally, awareness was significantly lower in companies in the wholesale and retail trade (7% unaware) than those in manufacturing (2% unaware).

5.2 Adoption of the measures

5.2.1 General uptake

Stakeholder views as to the extent of uptake were generally anecdotal, but the general consensus was that business will have taken up the changes that they needed to, but that '*companies are still aligning*', suggesting that the changes are yet to be fully entrenched and it is still early to be evaluating the final impact of such changes. One stakeholder thought that adoption levels would be good '*but for non-quoted companies it has likely been haphazard depending on the size and number of shareholders*'.

As stated in the Regulatory Impact Assessment (RIA[31]) of 2007, '*there is generally speaking no companies police' for ensuring compliance with the requirements of company law. The registrar (Companies House) and DTI prosecutors have limited remits associated with some of the non permissive provisions in the Act…'*

The RIA furthermore went on to state that '*no particular compliance issues are anticipated*', although as will be explored when assessing individual measures in Section 6, there have been some adoption and/or compliance issues that have come to light with regards certain changes.

As can be observed in Figure 5.3, adoption levels varied across individual measures. Base sizes were again calculated to ensure adoption rates were a percentage of those able to make the relevant change as some measures only applied to certain types of companies,

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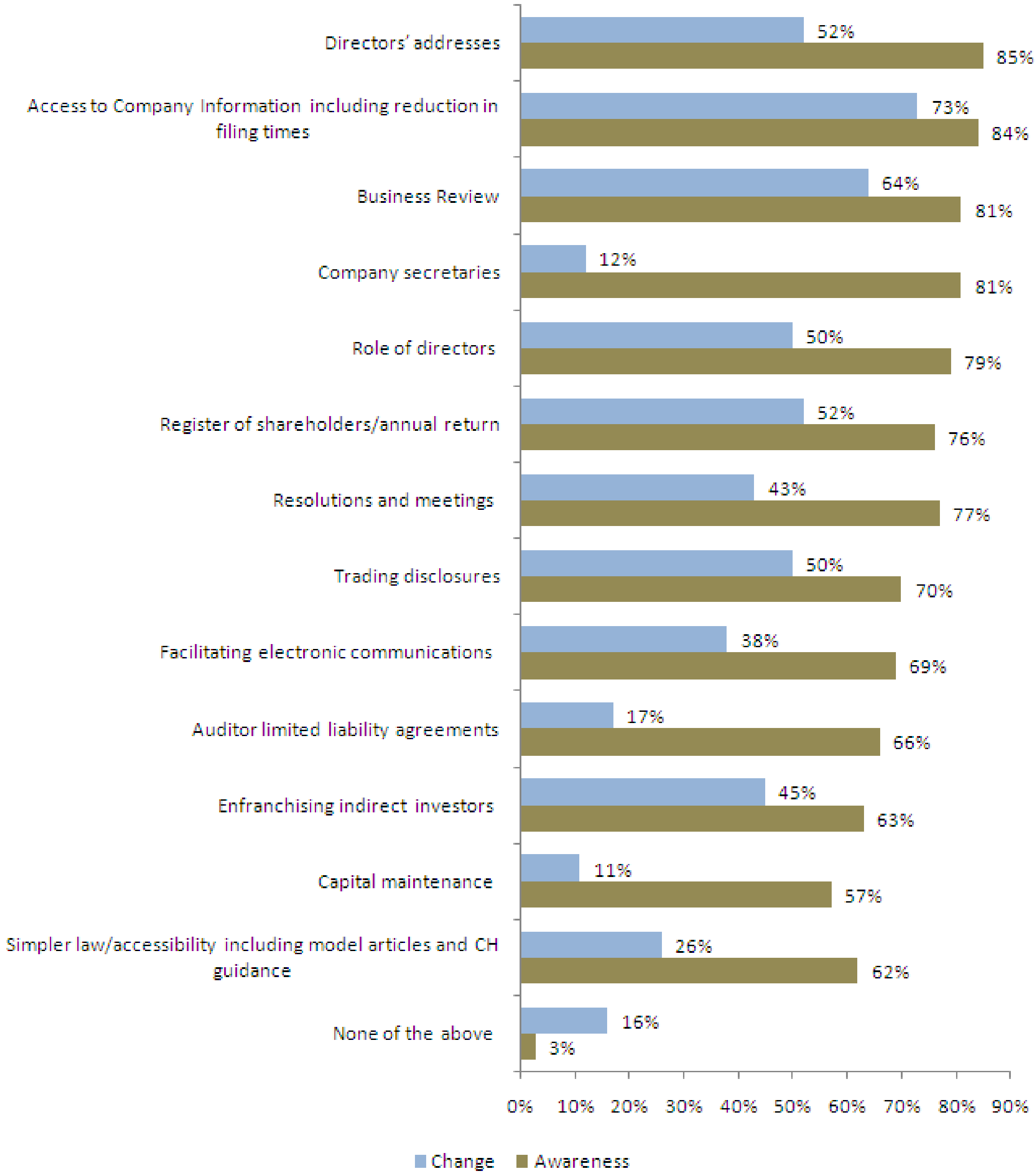
[31] Regulatory Impact Assessment (January 2007), which assessed the costs and benefits of changes implemented though the Companies Act 2006, concluding that improvements will translate to a total cost saving of approximately £250 per annum.

rather than as a percentage of all companies interviewed[32]. Compliance levels were found to be highest with regard to access to company information including filing times (73%) and the business review (64%) which is unsurprising given that these areas were mandatory. By contrast, the changes least optimised included those measures within capital maintenance (11%), company secretaries (12%), and auditor limited liability agreements (17%). However, given likely indications from stakeholders that companies were not entering auditor limited liability agreements, this latter adoption figure was higher than anticipated.

When comparing the percentage of those who made a change versus those aware for each measure (Figure 5.3), it can be seen that heightened awareness of access to company information including filing times had had an impact of those who had made changes (84% awareness and 73% compliance, although reduced filing times were a mandatory change). Conversely, for company secretaries the disparity between awareness and adoption was greatest and despite high awareness, few had made a change (81% vs. 12%).

[32] During the quantitative survey, companies were only asked if they had taken steps towards making a change if they indicated that they were aware of the specific measure under consideration. Base sizes were altered and levels of adoption calculated as a proportion of all those who were asked if they were aware of the specific measure.

Figure 5.3 Awareness and adoption by individual measures



Source: Q9b. And thinking back over the past 3 years [or since this business started if sooner] can you tell me if you have taken any steps to make changes in any of these areas? Base; directors' addresses (931); Access to Company Information including reduction in filing times (268); Business review (497); Company secretaries (663); Role of directors (931); Register of shareholders/annual return (931); Resolutions and meetings (663); Trading disclosures (931); Facilitating electronic communications (497); Auditor limited liability agreements (714); Enfranchising indirect investors (268); Capital maintenance (229); Simpler law/accessibility including model articles and CH guidance (883): None (931). Weighted by economic impact.

Significant differences were again observed amongst different company sizes and, as with awareness, what follows is a summary of these differences in adoption/ compliance levels. As previously mentioned, the data for each company size is not affected by the overall weighting frame, and represents the percentage out of those asked within that company size that had made a change.

Role of directors (50% taken steps to make a change among all companies): Significantly more quoted companies had made changes in this regard (71%) than small private (13%), medium private (27%), large private (46%) and public companies (48%).

Business review (64% compliance from large private, public and quoted companies): Changes were recorded from a greater number of quoted companies (84%) than large private (56%) and public (56%) companies.

Access to company information including filing times (73% taken steps to make a change among public and quoted companies): Significantly more quoted companies (80%) had made changes compared to public companies (55%).

Facilitating electronic communications (38% taken steps to make a change among large private, public and quoted companies): Significantly more quoted companies (67%) had made a change than large private (26%) and public companies (28%).

Enfranchising indirect investors (45% taken steps to make a change among public and quoted companies): Significantly more quoted companies had made this change (57%) than public companies (12%).

Simpler law/accessibility including model articles and CH guidance (26% taken steps to make a change from small, medium, and large private, and public companies): A greater proportion of large (29%) and public (28%) companies had made a change in this area than small (9%) and medium-sized (13%) private companies.

Resolutions and meetings (43% taken steps to make a change among small, medium and large private companies): Significantly more large private (47%) companies had made changes than small (17%) and medium-sized (28%) private companies.

Company secretaries (12% taken steps to make a change among small, medium and large private companies): No significant differences were unearthed between size of company and level of uptake.

Capital maintenance (11% taken steps to make a change among large private companies): only asked to large private companies thus no differences.

Directors' addresses (52% taken steps to make a change among all companies): Significantly more public companies (60%) had made changes compared with small (24%) and medium-sized (44%) private companies.

Trading disclosures (50% taken steps to make a change among all companies): Almost four-fifths (78%) of quoted companies had made changes in this regard as opposed to almost half of public companies (47%), just over two-fifths of large private companies (42%), and a third of medium private companies (31%); significantly fewer small private companies had made a change (18%).

Register of shareholders/annual return (52% taken steps to make a change among all companies): Once more, significantly more public (58%) and quoted (73%) companies had made changes compared with small private (22%), medium private (38%) and large (45%) private companies.

Auditor limited liability agreements (17% taken steps to make a change among medium and large private, public and quoted companies): Significantly more public companies had entered an agreement (21%) than medium (13%) and large (15%) private companies.

As with company profiling analysis of companies who had awareness of the various measures, a detailed breakdown of further significant differences amongst companies who had made changes to each measure has been included in Section 2.2 of Volume Two. Clearly there were differences amongst measures, given not all measures were applicable to private/ public companies, but on the whole the familiar trend found when looking at awareness levels continued, and highest adoption levels were found amongst:

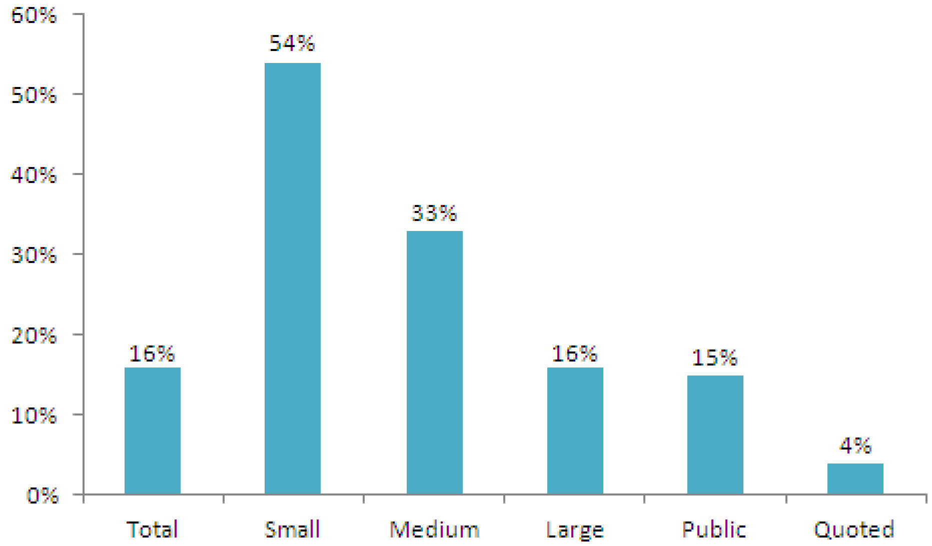
- Public and quoted companies, who had made more changes compared with small, medium and large private companies (where the measure was applicable to all, for example directors' duties);
- Company secretaries over other job titles interviewed;
- Companies who had cited BIS publications or alerts, networking groups, or their own institute as their original source of awareness of the Companies Act 2006;
- Companies within construction, transport, storage and communication and financial intermediation compared with companies within wholesale and retail trade and real estate renting business activities

What follows below is a detailed profile of those companies who had made no changes to any of the measures introduced through the Companies Act 2006.

No changes made (16% of all businesses): As with awareness levels, significantly more small private companies had not made any changes (54%) in any of the aforementioned measure areas. Thirty-three percent of medium private companies had also not made a change, itself significantly higher than the levels recorded for large private (16%), public (15%) and quoted (4%). Correspondingly, a significantly lower adoption level was recorded for companies with over 250 employees (9%) than those with 10-49 employees (26%) and 50-149 (22%). Interestingly, a higher proportion of chief executives/ managing directors

(29%) cited they had not made any changes, significantly more so than finance directors (14%) and company secretaries (7%). Furthermore, over half of those who had not made any changes were not aware of changes to Company Law (55%). Finally, low uptake was found to be of most common within the wholesale and retail trade (25%), significantly more so than in manufacturing (16%), transport, storage and communication (6%) and financial intermediation (9%).

Figure 5.4 Proportion of companies making no changes, split by company size



Source: Q9b.And thinking back over the past 3 years [or since this business started if sooner] can you tell me if you have taken any steps to make changes in any of these areas? Base: 1001; small (258), medium (232), large (235), public (227), quoted (49).

5.2.2 Understanding of the changes introduced

All companies who had made a change to any one or more of the particular measures aforementioned were asked how easy or difficult they had found understanding changes in the law. Almost half of those interviewed found this 'easy' (49%; NET score of those scoring 4-5 on a 5 point scale), whilst sixteen per cent found it 'difficult' (NET score of those scoring 1-2 on a 5 point scale). When split by company size (as shown in Figure 5.5), it can be observed that quoted companies found understanding the changes in the law most difficult (21% NET[33]) significantly more so than medium private companies (8% NET). This may be because some of the more complex changes were aimed at larger companies (for example, enfranchising indirect investors), but could also be because bigger organisations found it more difficult to understand the implications of the changes for them as their organisations

[33] Includes quoted companies scoring 4 and 5 on a 5 point scale where 1 means very easy and 5 means very difficult (Q11a).

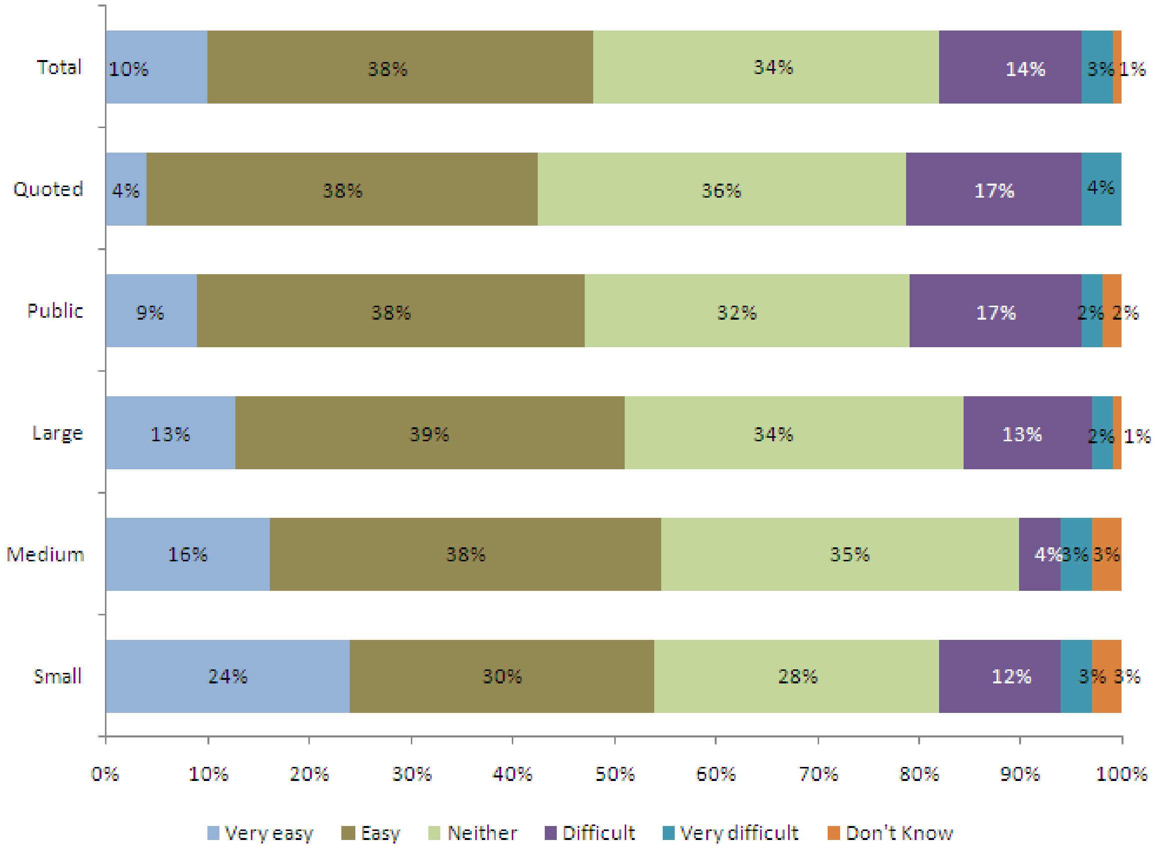
are more complex than others. Significantly more small private companies (15% NET) found understanding the changes to the law difficult than medium private companies (8% NET).

The highest incidence of companies finding the changes in the law difficult to understand was found in those from companies whose original awareness of Company Law changes stemmed from the BIS website (26% NET), rather than those who had become aware through Companies House publications (14%), press comments (16%), BIS publications or alerts (14%), through advisors (15%), networking groups (16%) or their own institute (16%). A significantly higher proportion of those who did not use an advisor found the changes difficult to understand (26% NET) than the proportion of those who did use an advisor (15%).

Of noteworthy value, no significant differences were found when assessing overall difficulty by the individual measures where changes had been made, or by industry type. However, as to be expected, significantly more companies who found the changes difficult to understand did not agree that changes made through the Companies Act 2006 had simplified company law (26% NET of those who disagreed found the changes difficult versus just 9% of those who agreed).

A higher proportion of companies who sought guidance through Companies House also found the changes difficult (30% NET), rather than those who used their accountant (13%) or solicitor (15%) as a source of guidance.

Figure 5.5 Ease of understanding the changes to the law overall and split by company size



Source: Q11a. On a scale of 1-5 where 1 means very easy and 5 means very difficult, how easy were the changes in the law to understand? Base: total (717); Quoted (47); public (193); large (199); medium (159) and small (119). Weighted by economic impact.

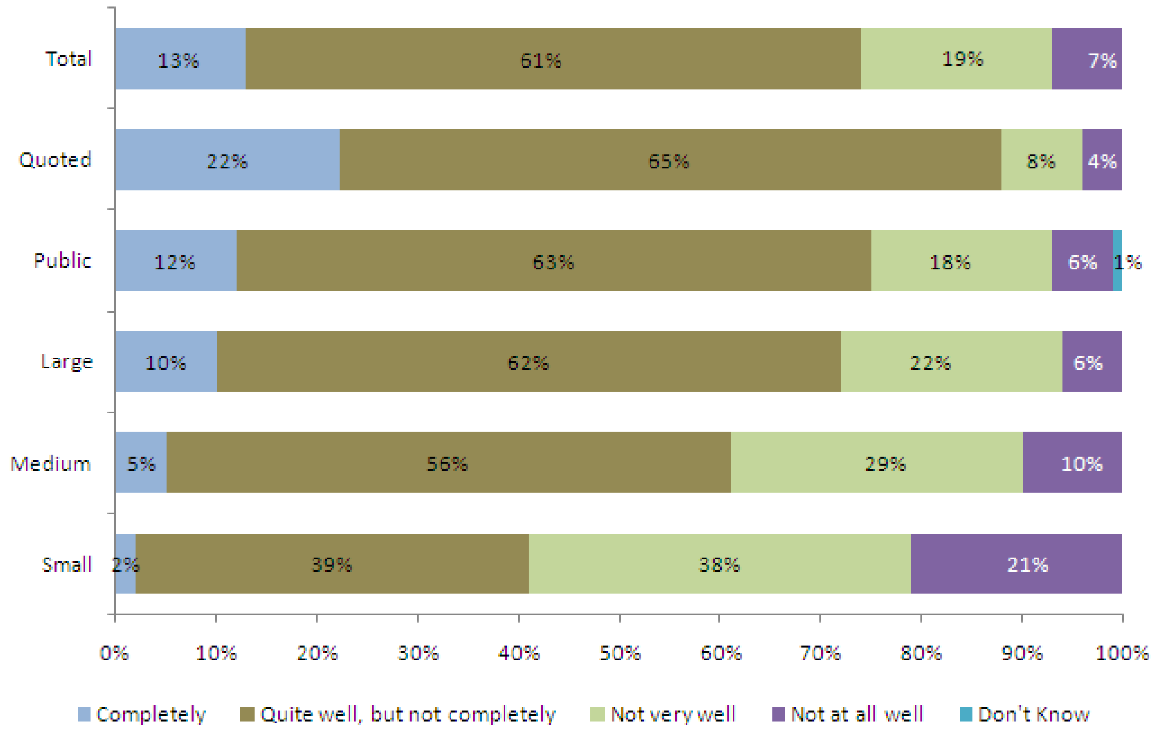
Interlinked with ease of understanding, was companies' level of understanding of company law overall (Figure 5.6). When asked to all respondents in the final section of the questionnaire, seventy-four per cent overall (NET[34]) said they understood the changes well, although significantly more small and medium sized private companies indicated that they did ***not*** understand them well (59% NET and 39% NET respectively[35]). Company directors also stood out as not understanding the changes well (69%), together with owner/ family member (60%), chief executive/ managing director (59%). Surprisingly, almost half of accountants interviewed also did not understand the changes well (47% NET). Industry wise,

[34] Includes those who understood the issues concerning the Companies Act 2006 'completely' and 'quite well but not completely' (Q132).

[35] Includes those who understood the issues concerning the Companies Act 2006 'not very well' and 'not at all well' (Q132).

over two-fifths (43% NET) of companies falling into wholesale and retail trade did not understand the changes well, opposed to those within manufacturing (23%), transport, storage and communication (25%), financial intermediation (12%) and real estate renting business activities (25%).

Figure 5.6 Level of understanding of the Companies Act 2006 overall and split by company size



Source: Q132. Overall, how well would you say you understand the issues concerning the Companies Act 2006 as they apply to your company? Base: 1001; small (258); medium (232); large (235); public (227); Quoted (49); weighted by economic impact.

5.2.3 Familiarisation and costs incurred

This next section details time and costs incurred by adopting procedures as a result of the Companies Act 2006. It must be stressed that the figures given here represent estimates of time as there was a reliance on the respondent remembering time spent over a three year period.

Companies were asked how much time they spent overall (taking into account all changes they had chosen to make; Figure 5.7). One third of companies estimated they had spent ten hours or less (33%) on all changes they had made, with just over a fifth of companies (21%) estimating that they had spent over forty hours[36]. Of the companies spending over forty

[36] Two outlier data points were captured within the over forty hours aggregate group of 5,000 and 20,000 hours.

hours, just over one third spent between 41 – 100 hours and almost half spent between 101 – 500 hours.

A greater proportion of small private companies spent just one hour on all changes (20%) compared with all other larger sized companies (6% NET[37]). Quoted companies however were most likely to have spent over forty hours responding to the changes in company law (38%), compared with public (18%), large private (15%), medium private (6%) and small private (6%) companies. The differences in time spent by company size can be found in Figure 5.8.

Significant differences were also identified when comparing time spent in responding to changes across the various measures. It transpired that those undertaking the following changes spent the most time in responding to the Act:[38]

- Enfranchising indirect investors (39% of those who made a change spent over forty hours on all changes made);
- Facilitating eCommunications (38% of those who made a change spent over forty hours on all changes made);
- Access to company information including reduction in filing times (35% of those who made a change spent over forty hours on all changes made);
- Trading disclosures (31% of those who made a change spent over forty hours on all changes made);
- Role of directors (29% of those who made a change spent over forty hours on all changes made).

Significantly fewer companies had spent over forty hours who had made changes to resolutions and meetings (21%; relevant to small, medium and large private companies only), company secretary (16%; again, relevant to small, medium and large private companies), and directors addresses (22%; relevant to all company sizes). In addition, a greater proportion of companies who had used Companies House (29%) as a source of guidance spent over forty hours responding to changes rather than those who consulted their accountant (17%). Given the higher proportion of small private companies using an accountant, this is in line with smaller companies spending less time on making changes; larger companies would however be more likely to have a company secretary able to deal with these changes.

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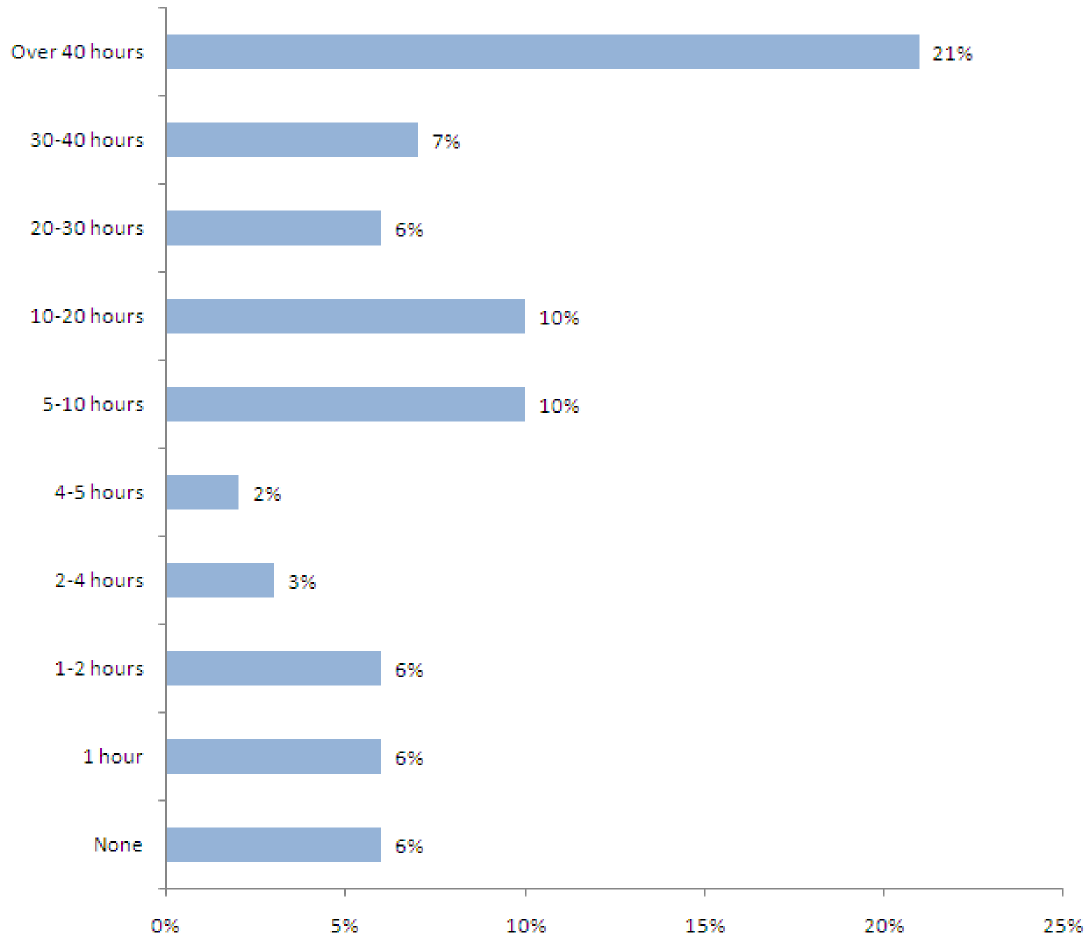
[37] Aggregate percentage for medium private, large private, public and quoted companies.

[38] Note that this refers to time spent implementing all changes if changes were also made in relation to other measures.

Figure 5.7 Time spent making changes as a result of the Companies Act (includes all changes made over the last three years)



Source: Q12. How much time did your company spend in responding to the changes in company law of which you are aware? Base: 717; all company sizes, weighted by economic impact.

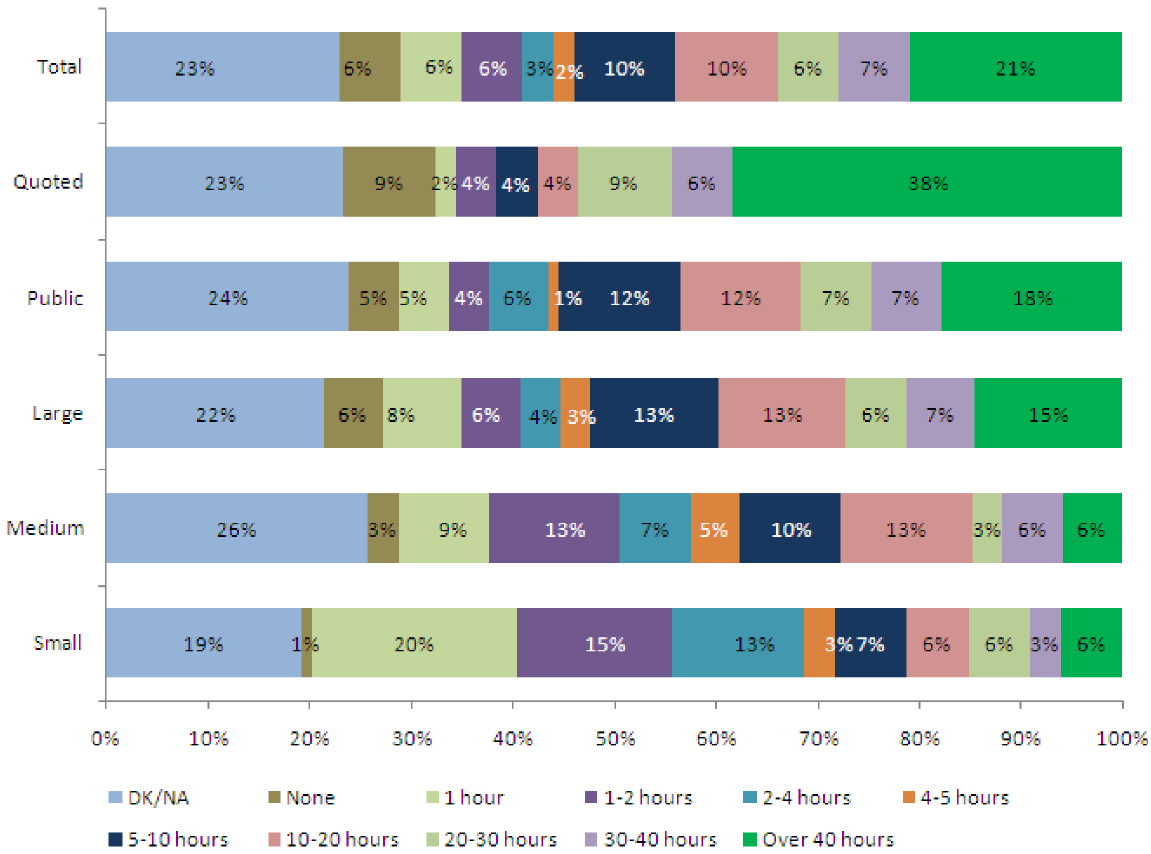
In terms of job roles involved in responding to changes regarding Company Law, company secretaries were found to be most heavily involved (63%; Figure 5.9), particularly so within quoted companies (79%) as opposed to small private (26%), medium private (40%), large private (60%) and public (56%) companies. Despite just over two-fifths of companies indicating that directors were involved in responding to changes (41%), it was small and medium sized private companies where this was most often cited (55% from small and 53% from medium-sized firms, which was significantly higher than that registered from large private (38%) and public (40%) companies.

Small private companies were also most likely to state that the owner/ family member had been responsible for changes (16% opposed to 2% NET of all other company sizes[39]). To

[39] Aggregate percentage for medium private, large private, public and quoted companies.

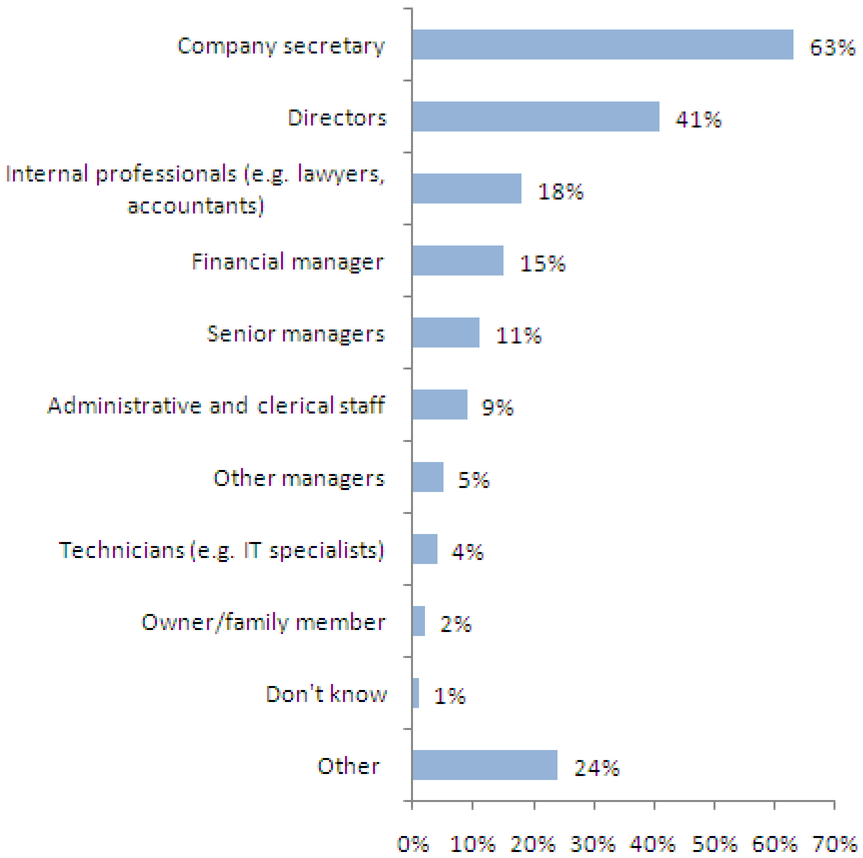
be expected, significantly fewer small companies claimed that a financial manager had been involved (6%) or a senior manager (3%). A wide range of other responses were also given; the majority of which included advisors (accountants and legal advisors), deputy company secretaries and finance controllers.

Figure 5.8 Time spent making changes as a result of the Companies Act by company size



Source: Q12. How much time did your company spend in responding to the changes in company law of which you are aware? Base: Quoted (47); public (193); large (199); medium (159); small (119); weighted by economic impact.

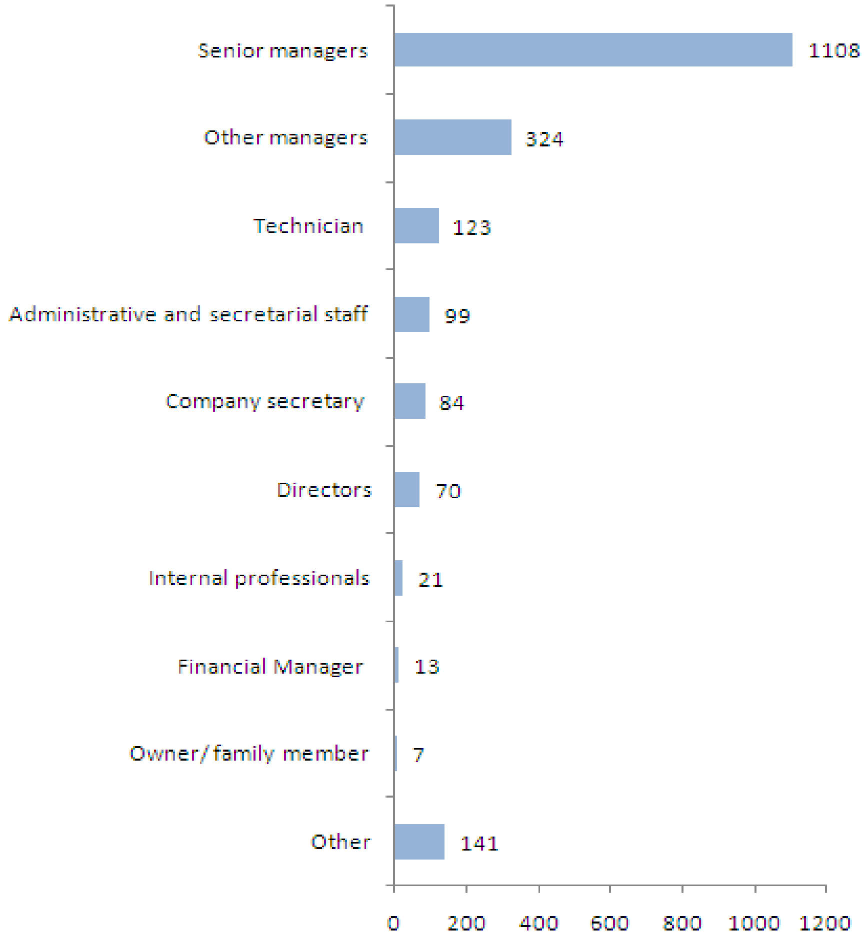
Figure 5.9 Job roles involved in related activities to do with changes implemented in the Companies Act 2006



Source: Q13. And thinking about the tasks involved in responding to this/these change/s, who within your company was mainly involved in carrying out this/these task/s? Base: 717; all company sizes, weighted by economic impact.

Companies were asked to breakdown the overall number of hours they had spent in responding to changes by who had been involved, assigning hours to all personnel involved. Despite company secretaries being the principal job role cited in response to responsibility for responding to changes, senior managers were found to have the most hours attributed to them for their role in responding to changes (Figure 5.10). Caution should be taken when assessing the time and cost figures that follow, due to the fact that companies were asked to think back over a three year time frame, covering all changes they had made, with no prior preparation time.

Figure 5.10 Hours spent split by job role carrying out tasks as a result of changes implemented through the Companies Act 2006



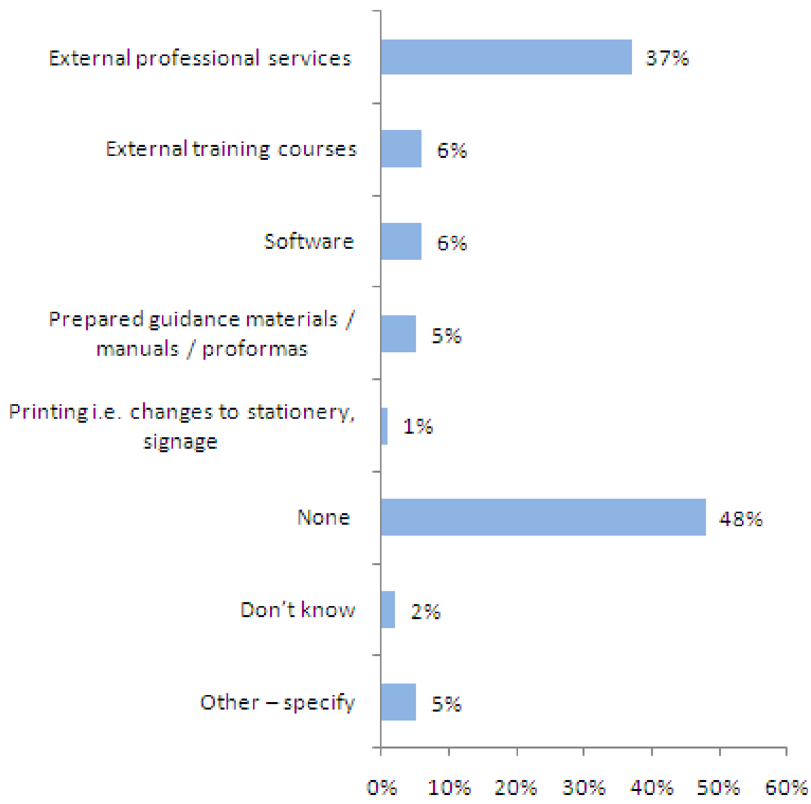
Source: Q14 And of the [CATI INSERT FROM Q12] hours, how do these hours allocate across these roles? Base: 717 (mean score), all company sizes, weighted by economic impact.

Together with the costs incurred from personnel time, companies were asked whether they had purchased external goods or services to prepare for the changes in company law. As shown in Figure 5.11, almost half of all companies who had made at least one change to the measures introduced through the Companies Act 2006 had ***not*** purchased external goods or services. Almost two-fifths however had purchased external professional services (significantly so for quoted companies, 53% of whom had purchased external professional services; see Section 2.5 in Volume Two for a full breakdown of external professional services purchased, split by company size). Purchasing software was the only other area of expenditure where differences arose amongst company sizes, with significantly more quoted companies making outlays in this area (11%) than small (1%) and large (4%) private companies.

The type of external goods purchased was also compared with the individual changes made, and significantly more companies who had made changes to the access of company information (53%), and enfranchising indirect investors (61%) had purchased external professional services than those who had made changes to the role of directors (44%), the business review (44%), resolutions and meetings (34%), company secretaries (22%), directors' addresses (38%) and trading disclosures (41%).

External professional services were also more widely purchased from companies within real estate renting business activities (36%), financial intermediation (46%), transport, storage and communication (46%), wholesale and retail trade (38%) and manufacturing (39%) than construction (17%).

Figure 5.11 External goods purchased in order to prepare for the changes



Source: Q15. Did your organisation purchase any goods OR services from external suppliers in order to prepare and/or take any necessary steps in the light of the changes? Base: 717, all company sizes, weighted by economic impact.

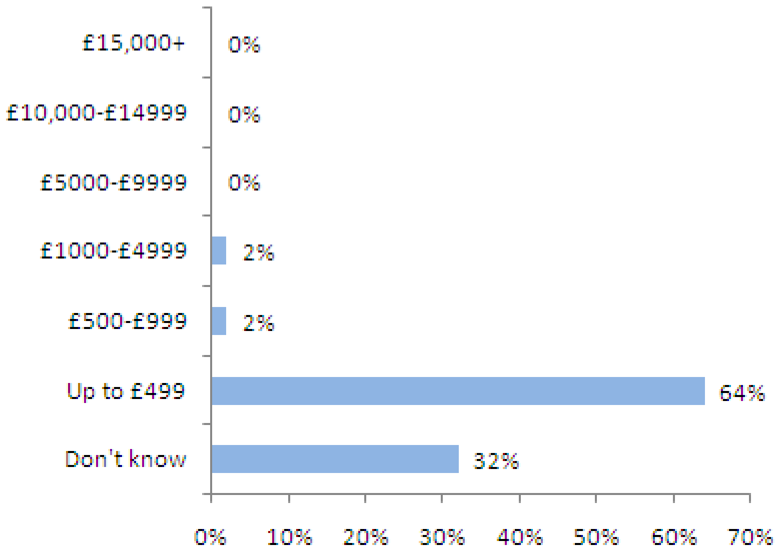
The estimated savings to be brought about from changes made in the Companies Act 2006 are from between £160m and £340m per annum[40], and as stated in the RIA 'there are only a

[40] *The Regulatory Impact Assessment, January 2007*

handful of areas where the Act introduces new or stricter regulatory requirements, of a sort that might in principle increase compliance costs'. These costs were furthermore estimated to lie between £2 million and £11 million per year, and to be generally confined to public/ quoted companies.

Companies who had purchased external professional services (37% previously shown in Figure 5.11) were asked to quantify the costs from doing so (Figure 5.12) and also a collective cost of acquiring other goods or services from external suppliers. As can be seen, over three-fifths of companies spent less than £500 on external professional services, and no differences were noted to this across the various measures that had been changed.

Figure 5.12 Total cost of external professional services purchased in order to prepare for the changes



Source: Q16.Could you tell us how much the external professional services cost? Base: 226, all company sizes, weighted by economic impact.

Numbers of companies making reference to other goods or services purchased from external suppliers (for example printing, software etc...) were unfortunately too small for inclusion, preventing statistical analysis in this regard. The collection of time and cost data however, indicated that time incurred has varied dependent upon changes made and type of company, but on the whole the consensus was that it has not been over burdensome…

'Most of the changes were made during our annual return to Companies House'

'We changed the articles of association to reflect the Act, other than that we're continuing as before, we will still continue without written resolutions'.

'It was for my accountant to deal with, with comparatively minimal costs'.

'We've graduated our approach. We implemented the Companies Act <u>*in tranches*</u> *by consultation with directors of their preferences and by following market practices'.*

'It's very straightforward; there wasn't a great deal to do'.

'We had a meeting with the board in terms of a discussion of what we would actually ratify. We had also discussions with our auditors of what we should and shouldn't include in our financial report'

(Selected from Q10 of the questionnaire: Thinking about the steps taken, to do with all changes you have made, please describe what it involved)

Case study 1: Large private company with high levels of awareness

The organisation is a large private manufacturer which is a subsidiary company and has a US parent company which is the sole shareholder. It was previously an independent company with 194 shareholders. It has a turnover of £15 million and 150 employees in the UK.

The Finance Director had a high level of awareness of the Act which he described as the ‘consolidating Act’. He also felt that it was trying to bring the Act up-to-date to take into account technological changes and new requirements in terms of transparency of information.

The organization has made minimal changes in respect of Directors’ duties and the Business review (reporting additionally on risk and performance indicators). He feels their organisation’s situation is now more straight-forward than it used to be given that they only now have one shareholder to consider rather than nearly two hundred. They used to hold Annual General Meetings but no longer do so because they no longer have shareholders rather than the change in the Act.

They have introduced an Auditor Liability Agreement which he felt was a positive:

> ‘*An audit is necessary but the detail to which they appear to go into is far greater- over and above the requirements...the agreement covers their backs, and will reduce the work they feel they need to do to, in turn reducing costs (on both sides)*’

The Finance Director also changed the Directors’ addresses to service addresses. He felt that this was fairly straight forward online procedure which only took minutes.

Overall he felt that the Act had simplified and modernized:

> '*Yes has been simplified. It’s consolidated the law… Made more relevant as written in the last ten years. Previously most law at least twenty years old. Uses the language of the day’*

He also felt that it had made it easier to set up and run a company identifying particular benefits for start up companies:

> ‘*Great supporter [of objective 3] - too much red tape. Anyone who is a self starter faces huge barriers - for one man band it was horrendous. Articles etc remove that barrier - just take the model and go*’

Case study 2: Company with high awareness but has made no changes

The company is a privately held gift shop based in the East Midlands. It has a turnover of approximately £1 million and seven full-time employees including the respondent's wife who is co-owner and the only other shareholder. Prior to the company being incorporated as a small private company in 2000, it was a partnership for 35 years.

The respondent became aware of the Act through advisers and Companies House communications but has made no real changes as a result of the legislation. Whilst he believes that there has been some simplification of procedures, the changes have made little material difference:

> *'it's very good for people like us as it was always a bit of a formality – paperwork that needed to be stamped…we are not doing anything differently [as far as running the business is concerned] – the accountant used to provide some forms and we would just file them'*

The respondent is aware of changes to some degree but believes that his behaviour has not needed to change as a result as *'I am not a director that does not know what is going on, as I am sitting in front of my computer every day'*. He also felt that some of the provisions were not relevant to him. They had made no changes to meetings and resolutions as they felt that their processes were not overly formal. He confirmed that he is aware that he no longer needs to have a Company Secretary, but made no changes:

> *'I haven't changed anything as in some ways it seems a bit glamorous to be a Company Secretary! If someone asks you what you do, it's better to say that you work in a shop. In the long term we might end up dropping it'.*

No changes have been made in terms of directors' addresses and they would only make changes if they moved house or were bothered by unsolicited calls or mail:

> *'I don't feel like I am hiding our existence from any of our creditors and our accounts are fairly brief – we only have to file a summary of the accounts'.*

The respondent cannot think of anything that would encourage him to make changes to the way he runs his business. '*Having run the business for so many years a certain way, I am used to things*'.

However, he did note that a start up company setting up shop now would find the process easier than he did. He concludes that '*now it's a lot simpler…if you were starting now it [setting up a new company] would be less inhibiting, less cumbersome, a lot more logical and straightforward*'.

6 Perceptions of individual measures

- Percentages of those aware, and proportions of those taking steps towards making a change for each measure, have been based on the total number of companies to which each measure relates, that is, not all measures are applicable to all companies of all sizes.

- Awareness of the measures relating to directors' duties was high (79%), and given the fact that the law has not changed, it is unsurprising that that the proportion of those responding to the codification was lower at 50%. Overall, one-fifth of those who had made a change agreed the statutory statement had had an impact on the way directors discharged their duties. Almost three-fifths of those who had responded to directors' duties were aware of the changes to the procedure for bringing about a derivative action for breach of duty (59%). Of those companies not initially aware of the law relating to directors' duties, over one-third indicated that they would now take advice from the company's accountant on the nature of directors' duties.

- Quoted companies who had made a change to the business review were asked how difficult they found providing the additional material and whether they found it easy to comply with new regulations. In spite of some concerns prior to the change about the burden of reporting, most felt neutral about this with 56% finding the extra material 'neither difficult nor easy' to provide. Similar proportions (54%) found the process the same in terms of compliance. Relatively low proportions of companies had indications on the usefulness of the information from shareholders or felt that shareholders would find it useful.

- Of those companies who had made a change to the improving shareholder access to information measure, awareness of the new filing dates was extremely high (98%).

- Companies who had made related changes to eCommunications were asked if they had sought and received shareholder approval to use website communications and whether they had used the website default procedure. Over three-fifths of companies indicated that they had in response to both questions.

- All companies which had made at least one change following the simplification measures were asked which had been adopted. Actions in response to two measures were most common: the removal of the requirement to hold an AGM (51%) and the ability to execute documents by a sole director (43%).

- Of those companies who had made any changes in relation to meetings and resolutions, 32% agreed that they no longer hold AGMs. Of these, 11% cited cost savings as the key driver for the change. Almost three-fifths of those who had made a change indicated that they had used the written resolution procedure.

- All small, medium and large private companies who had not made a change and who had a company secretary were asked if they would consider abolishing the role. Just over one-fifth (21%) indicated that they would do so, of which one in ten would expect associated cost savings.

- Of companies who had made a related change to directors' addresses, 60% had provided a new service address to Companies House. Of those who had not made a change, just under one-third indicated that they were likely to do so.

- Of those who had made a change, 98% were aware of their obligations in terms of the display of their company's name.

- Just under one-fifth of companies agreed that there had been benefits from the provision to remove shareholders' addresses from the annual return. Again 97% were unaware of concerns arising from their removal.

- Almost a fifth of companies (17%) had entered, or were taking steps towards entering an auditor limited liability agreement. This uptake was higher than anticipated by stakeholders, although companies were generally unable to cite advantages (to their companies) of entering such agreements.

- It should be noted that the data has been weighted according to scale of economic activity as described in the Methodology section.

6.1 Directors' duties (all company types; 50% taken steps to make changes)

Most stakeholders and businesses interviewed in the case studies were positive about the codification of directors' duties and the focusing of directors' minds on their responsibilities and obligations. Given that the law has not changed, it is somewhat unsurprising that a cultural shift has not been brought about and that the impact on business behaviour has been marginal.

Awareness of the change relating to directors' duties was high (79%), and given the fact that the law has not changed, it is unsurprising that that the proportion of those responding to the codification was relatively low at 50%. Of those who had responded, most were spontaneously aware of the statutory statement and conflict of interest provisions. However, prompted awareness was highest with at least one director being a 'natural' person, provisions relating to the appointment and removal of directors and provisions relating to liability.

Overall one fifth of those who had responded to the codification of directors duties agreed the statutory statement had had an impact on the way directors discharged their duties. However, one explanation for this relatively low impact given during the case studies is that their organisation has 'the right sort of culture already'.

Almost three-fifths of those who had responded to the codification of directors' duties were aware of the changes to the procedure for bringing about a derivative action for breach of duty (59%). Although these changes appeared to raise significant concerns prior to their introduction, less than one in ten agreed that changes had affected the behaviour of their directors.

The vast majority (95%) were aware of the requirement to 'have regard' to factors such as the long term consequences of their decisions and the impact of the company's operations on the community and the environment. However, only 17% felt that this had affected how they operated.

Of those companies not initially aware, over one-third indicated that they would now take advice from the company's accountant on the nature of directors' duties.

6.1 Directors' duties (all company types; 50% adopting procedures)

The introduction of a statutory statement of duties for directors represents the codification of their duties in legislation and not just in common law. This change was brought in on the 1st October 2007 and the provisions relating to directors' duties are mandatory; how they perceived or responded to the provisions is of interest when assessing the impact of this measure. The main elements of directors' duties assessed in this research related to conflicts of interest (Section 175), and the duty to promote the success of the company (Section 172).

6.1.1 Stakeholder views

Several stakeholders made reference to the concerns identified about the potential impact of the Act in terms of the threat of liabilities (as a result of the derivative claims procedure) and 'added obligations' (through, for example, documenting the decision making process). This sub section of the report looks into the effects of this change in more detail to assess whether these initial concerns were, in fact, realised.

The majority of stakeholders interviewed commented that the statutory statement 'codifies current law' and most were positive about the change for reasons such as 'it focuses directors minds', 'it gives directors a better chance to fully understand their responsibilities' and because 'it has led to better documentation of decision making'. Furthermore, and interlinked with narrative reporting (explored next in Section 6.2) it has helped to change the nature of the debate regarding corporate social responsibility:

'It has changed the nature of the debate in CSR. Now understood that companies do have responsibility to the environment and not just the company itself. It's shifted away. The purpose is now more to serve society'.

Others, however, were slightly more apprehensive, and concerns as to whether the codification of directors' duties have had the desired change on behaviour and have been promoted in a way that was originally intended were noted. One stakeholder made reference to the fact that directors are required to balance stakeholder interests and this was not conducive to behavioural change in the board room, and another, despite viewing Section 172 as a gesture in the right direction, was not convinced that it would have the intended impact:

'My personal view on this is that it is a gesture in the right direction, but the way that the particular section is framed is unconvincing in its potential impact, because it uses this phrase 'Directors must have regard to specified stakeholder related factors', nobody really understands exactly what the legal force of that is, and also directors are faced with a situation whereby they are required to have regard to a number of stakeholder factors, some of which are almost by definition mutually exclusive' (Stakeholder)

Although Section 172 was generally deemed to have the ability to affect the behaviour of directors in the long-term, as summed up by one stakeholder 'the problem is that it doesn't stop directors acting illegally'. Concern was furthermore noted through case studies that no guidance had been given on how directors can demonstrate that they are complying with the new duties, and of the impact in terms of additional paperwork.

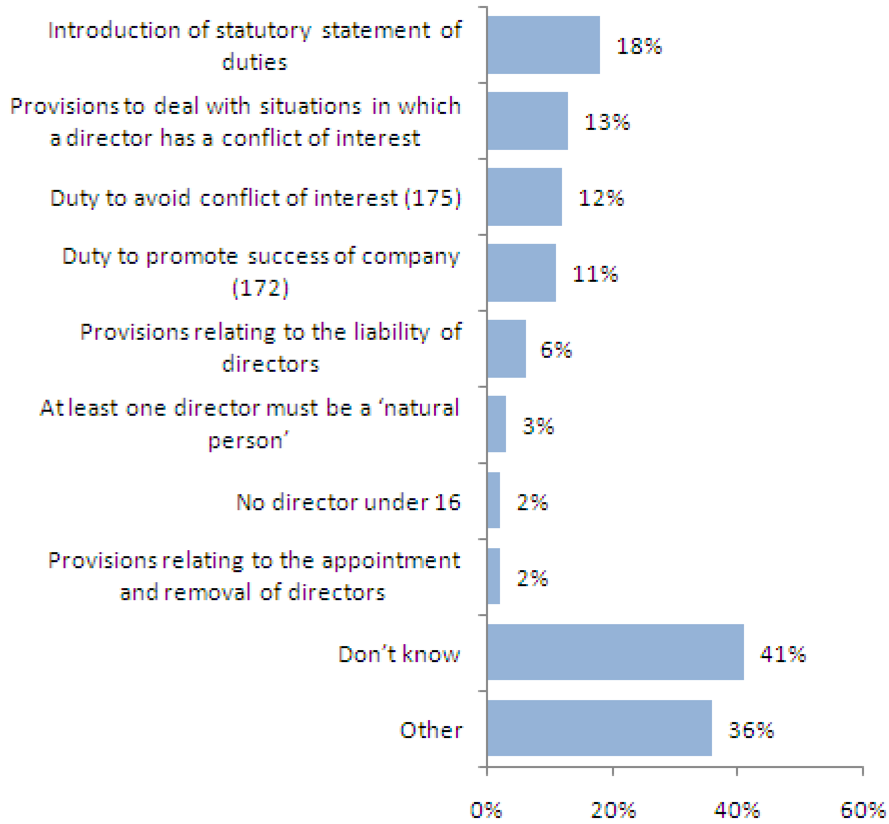
6.1.2 Findings from companies

In order to delve further into the views of companies on the codification of directors' duties, all companies who indicated that they had responded to this measure (note all directors must comply but not all companies indicated that they had responded to the duty, indicating that they previously complied with duties set out in the statutory statement) were asked questions on the codification of directors' duties (both directors duties and the business review were prioritised so that everyone who had made a change were asked about these measures; the other eleven measures were randomised and rotated within Section 1 of the questionnaire, asked to those who had made at least one change). As covered in the methodology (Section 2), directors' duties were one of the four measures selected for Section 2 of the questionnaire, which was asked to all those who had not responded to this particular measure (whether or not they had made a change to any other measure). The results from both sections on directors' duties have been amalgamated within this sub-section of the report.

Spontaneous awareness of any changes regarding the role of directors and related provisions was captured first, the results of which are displayed in Figure 6.1. Given the same question wording was used in both Sections 1 and 2 of the questionnaire, responses have been amalgamated and hence responses within Figure 6.1 and Figure 6.2 (which shows spontaneous and prompted awareness) represent the view points from those who had responded to the codification of directors duties and those who had not.

The introduction of the statutory statement of duties was most widely cited spontaneously when asked about spontaneous awareness of the detail of the changes, followed by the provisions to deal with situations in which a director has a conflict of interest. Provisions relating to the appointment and removal of directors and that directors can no longer be under 16 were least referenced.

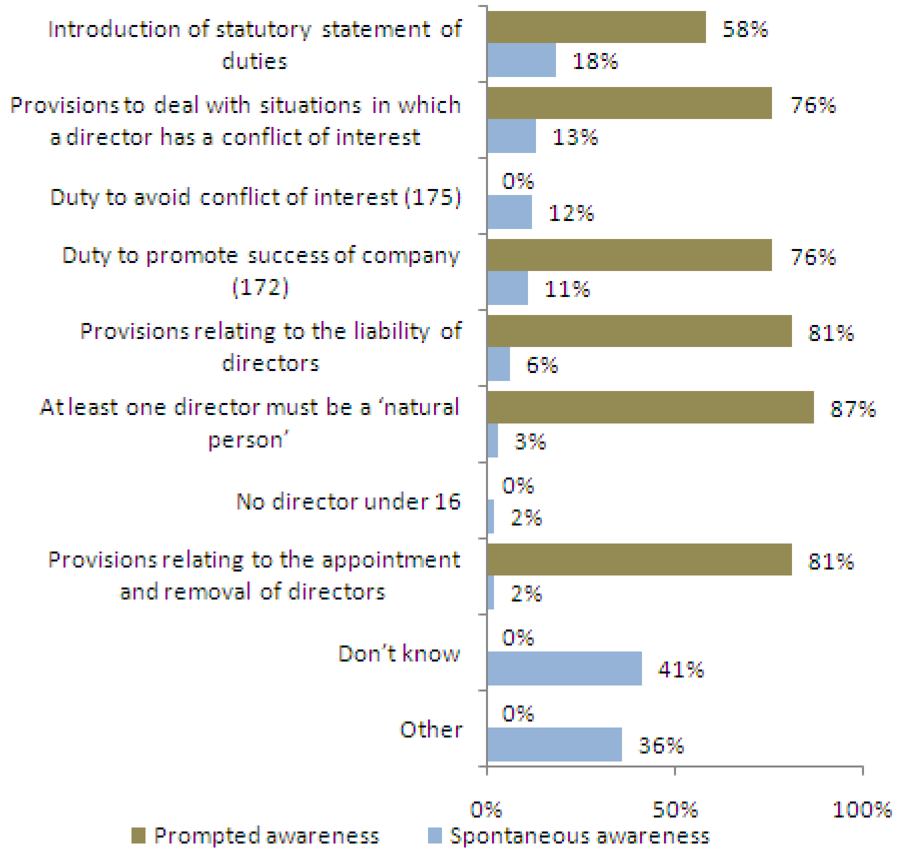
Figure 6.1 Spontaneous awareness of directors' duties



Source: Q19a/ Q107a. Firstly, what changes are you aware of regarding the role of directors and related provisions? (UNPROMPTED) Base: 350 (Q19a), 332 (Q107a); all company sizes, weighted by economic impact.

Companies were then prompted with general duties and requirements of directors and changes that had been introduced as part of the Companies Act 2006, and asked whether they were aware of such duties, the results of which are illustrated together with the previously captured spontaneous awareness in Figure 6.2. Highest prompted awareness was thus found with regard to at least one director being a 'natural' person, provisions relating to the appointment and removal of directors and provisions relating to the liability of directors. Despite inclusion of those who had responded to the codification of directors duties, companies were least aware on a prompted level of the introduction of a statutory statement of duties; inclusion of the term 'statutory statement' could explain this given not one stakeholder made reference to this term, but rather referred to the 'codification of duties'.

Figure 6.2 Prompted awareness of directors' duties



Source: Q19b/ Q107b. And are you aware of the following general duties and requirements of a director…? (PROMPTED). Base- 677; Q19b: 345; Q107b: 332 Q19c/ Q107c. Q19c. And are you aware of the following changes implemented by the Companies Act 2006…? Base- 676; Q19c:344; Q107c: 332; all company sizes, weighted by economic impact.

For those companies who had responded to the codification of directors duties, questions were asked to gauge whether the changes had led to a cultural shift internally and whether it had prompted directors to think differently about how they undertook the decision making process. This stems from the introduction of the widely discussed Section 172 and the duty to promote the success of the company (as illustrated in Figure 6.3).

Figure 6.3 Section 172

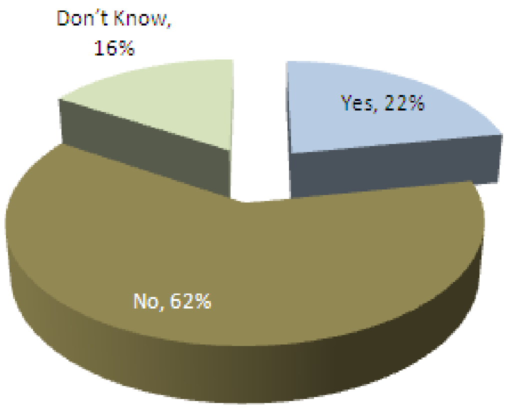
172 Duty to promote the success of the company

A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole and in doing so have regard to:

a) *The likely consequences of any decision in the long term*
b) *The interests of the company's employees*
c) *The need to foster the company's business relationships with suppliers, customers and others*
d) *The impact of the company's operations on the community and the environment*
e) *The desirability of the company maintain a reputation for high standards of business conduct*
f) *The need to act fairly as between members of the company*

When asked firstly as to whether the statutory statement as a whole had had an impact on the way directors discharged their duties, as shown in Figure 6.4, it transpired that just over a fifth of companies agreed that it had, whilst the majority disagreed that the statutory statement had had the intended effect of having an impact on the way directors discharge their duties, and sixteen percent were not sure either way. It should be noted that all respondents were asked this question regardless of job role, although the question wording was tweaked to allow for all other job roles other than directors to allow for their perception as to whether the statutory statement had had an impact on the way their directors discharged their duties.

Figure 6.3 Has the statutory statement had an impact on the way directors discharge their functions?



Source: Q20. Firstly, has the statutory statement had an impact on the way in which you discharge your functions as a director? Base: 350, all company sizes, weighted by economic impact.

Despite the high awareness already seen from the outset of those who had responded to the codification of directors duties overall (79%), it thus appears that despite being aware, the codification has not prompted an overwhelming change, as yet, in how they perceive or respond to their duties. There are a number of possible explanations for this. In the case study interviews, some respondents indicated that they had not made radical changes because their companies had 'the right culture' already and they were confident in their processes and procedures:

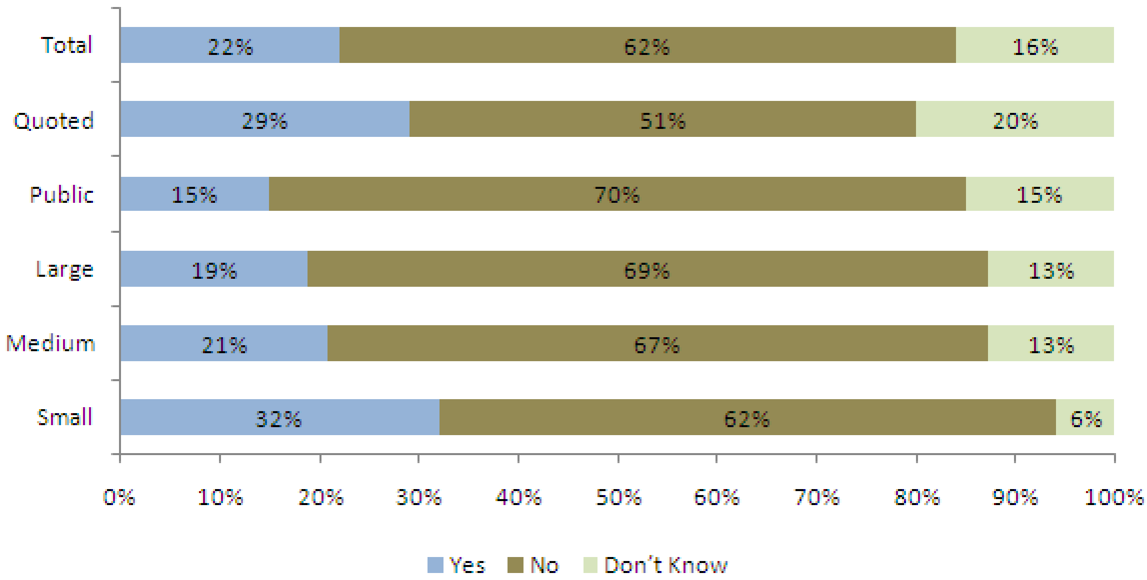
'*In some ways a responsible director ought to have been doing this before the change in the law so I did not see this as a massive change in the way I thought about my duties but it is a good thing that it's been codified better' (Case study 7)*

However, as quoted by Rt. Hon Margaret Hodge MP MBE *'For most directors, who are working hard and put the interests of their company before their own, there will be no need to change their behaviour'.*[41] Furthermore, it is relatively early days in terms of the legislation and it does take time for a cultural shift to be brought about within companies.

When broken down by company size (Figure 6.4), it was found that significantly more public companies claimed that the statutory statement had not had an impact on the way their directors discharged their functions as a director compared with quoted companies. The data from directors only was also analysed and no differences were found amongst the proportions agreeing that an impact had been felt, although significantly more directors (85%) in fact disagreed (compared with 63% of those not a director; please note this does not include quoted companies).

[41] Companies Act 2006, Duties of Directors, Ministerial Statements, DTI, June 2007

Figure 6.4 Has the statutory statement impacted the way directors discharge their functions (by size of company)?



Source: Q20. Firstly, has the statutory statement had an impact on the way in which you discharge your functions as a director? Base: 350 (small: 34; medium: 63; large: 108; public: 110; quoted: 35), weighted by economic impact.

Companies who agreed that the statutory statement has had an impact on the way directors discharged their duties were asked what this impact was, and amongst wide ranging responses the predominate response was that directors gave more consideration to their duties when considering how to exercise their functions as a director (20%); eleven per cent however cited an increase in formalities. Other responses were collected from sixty per cent of companies including wide ranging positive impacts such as more training, greater diligence, tighter board processes and better documentation. Example responses are listed below:

'Conflict of interest provisions are much clearer.'

'Reviewing our governance arrangements to give the board a broader view of stakeholder engagements'.

'The directors now consider the wider issues more fully and prominence is given to the quality of board reporting so that directors are in a position to make a fully informed decision on strategic and commercial issues'.

'Reviewing our governance arrangements to give the board a broader view of stakeholder engagements'.

Companies were also asked about, what from the outset was a hot topic in terms of changes to director's duties, derivative claims (Part 11) and the changes to the procedure in making such a claim. As from October 2007, the codified 'derivative claims' provisions made the procedure for minority shareholders to make a claim in the name of the company clearer, and thus may lead to pressure groups acquiring shares in order to instigate claims against the directors. Several stakeholders made reference to derivative claims when pressed on their general views of changes to directors' duties, with one stakeholder saying that she had just heard of the first claim that had been given leave and access to the High Court. However she went on to say…

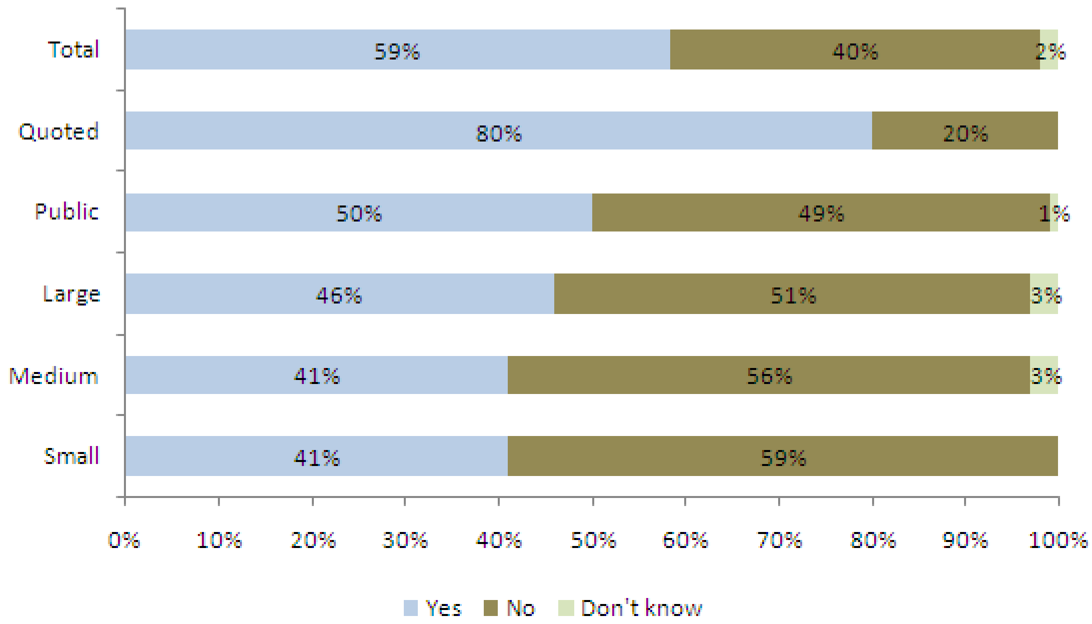
'But it's still a high hurdle to get to trial …'

Concerns were noted from stakeholders about the introduction of derivative claims, but it would seem, for the moment at least, that these concerns were unfounded, and that there was reluctance for UK shareholders to go down that route, for now. Predictions that derivative claims may increase were cited however, and a knock on effect should claims be approved against larger companies could be an eventuality not to be dismissed.

Almost three-fifths of those who had made a change to directors' duties were aware of the changes to the procedure for bringing about a derivative action for breach of duty (Figure 6.5); significantly more quoted companies were aware than any other company size (46% NET[42]). Of some concern was the discovery that respondents who were not a director were more likely to be aware of such changes regarding derivative claims (53%) than directors themselves (29%); company secretaries having the highest awareness levels (73%).

[42] Aggregate percentage of small, medium and large private and public companies.

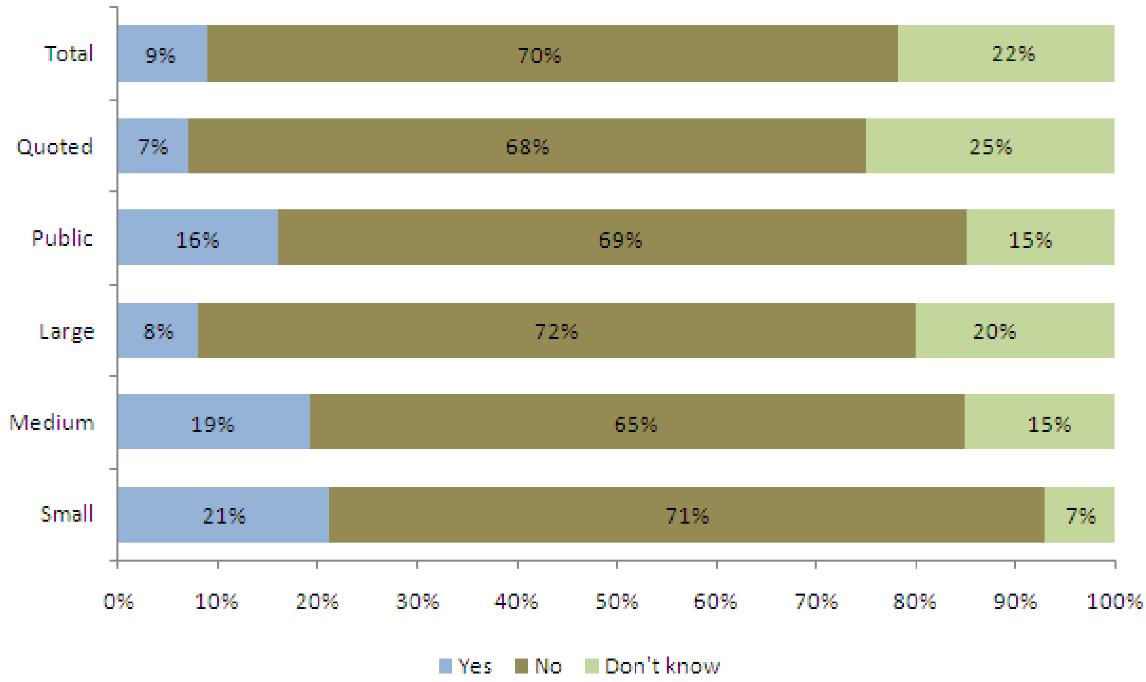
Figure 6.5 Awareness of the changes to the procedure for bringing a derivative action for breach of duty (by size of company)



Source: Q24.Are you aware of the changes to the procedure for bringing a derivative action for breach of duty? Base: 350 (small:34; medium:63; large:108; public: 110; quoted:35), weighted by economic impact.

Companies were then asked whether changes to the procedure for bringing a derivative action for breach of duty had affected the behaviour of directors, the results of which are displayed in Figure 6.6. Here it can be seen that the aforementioned concerns do indeed appear to have died down, with fewer than one in ten agreeing that the changes had affected the behaviour of their directors. Seventy per cent overall disagreed that the changes had influenced the behaviour of directors. No differences were noted across company size, yet again a higher proportion of directors disagreed that the changes have had an impact on their behaviour (93%) than those who were not directors (68%).

Figure 6.6 Have changes to the procedure for bringing a derivative action for breach of duty affected the behaviour of directors (by size of company)?

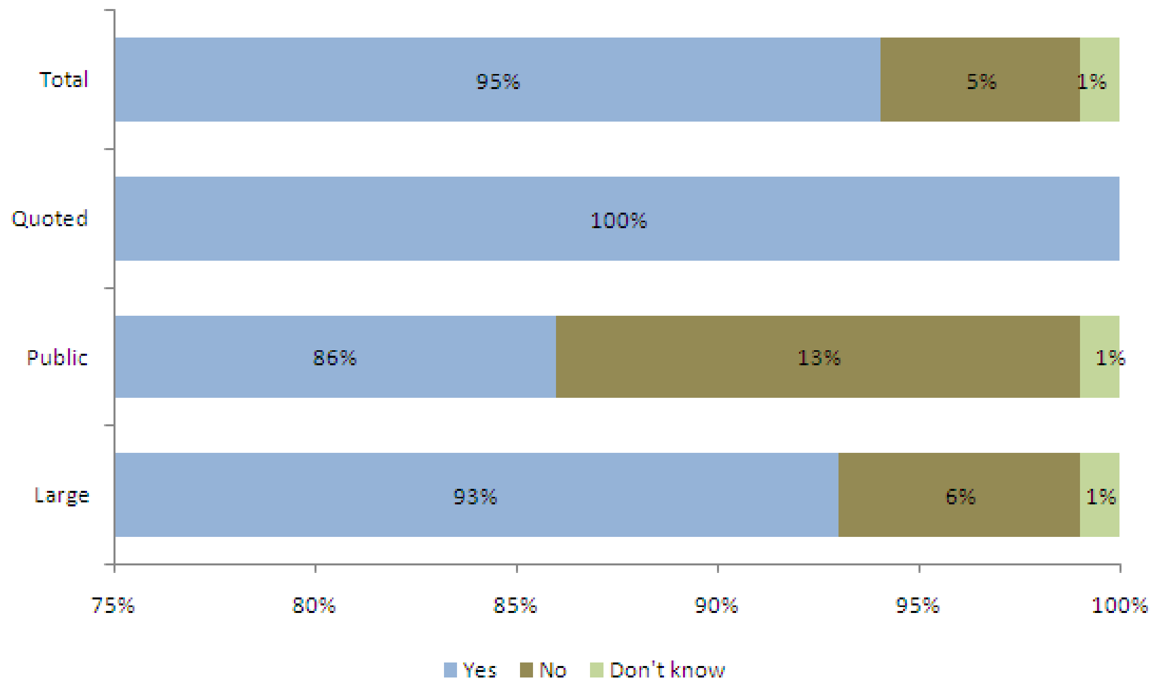


Source: Q25 Have these changes affected your behaviour as a director? 173 (small: 14; medium: 26; large: 50; public: 55; quoted: 28), weighted by economic impact.

As noted previously in Figure 6.3, Section 172 now sets the requirement for directors to themselves 'have regard' to factors such as the long term consequences of their decisions and the impact of the company's operations on the community and the environment. This represents the change from the previous system whereby the interest of the company rested with shareholders (deemed so by the courts).

Awareness of this duty (asked to large private, public and quoted companies only) was, consistent with other changes relating to directors' duties, extremely high, again particularly so for quoted companies (Figure 6.7). Given the context surrounding this change and the three year debate, this is positive news that the change has been promoted and awareness raised.

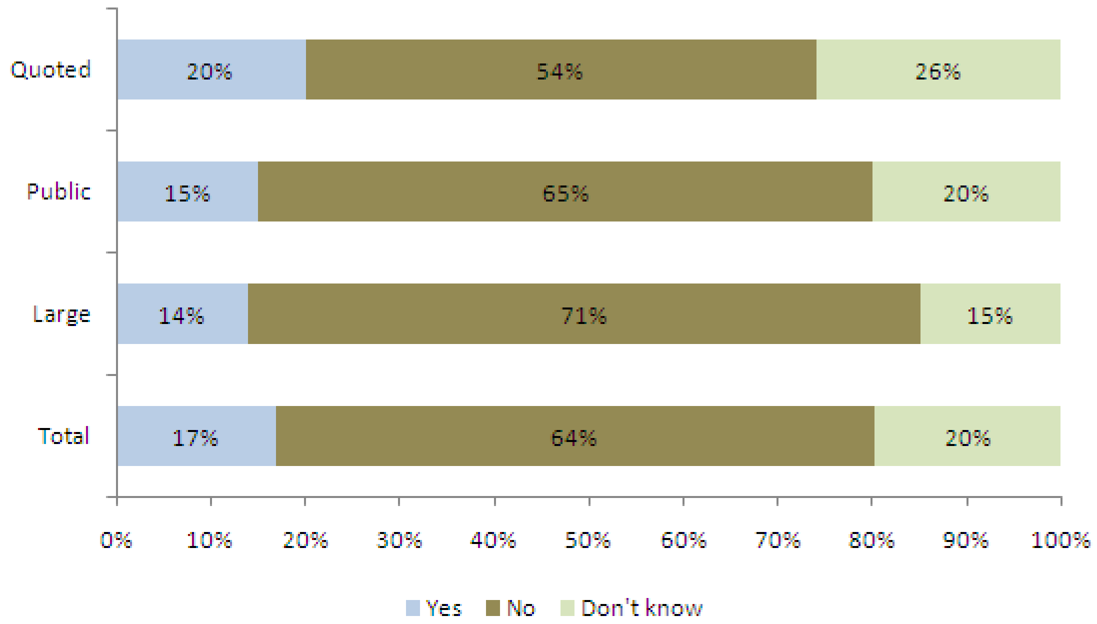
Figure 6.7 Awareness that the duty to promote the success of the company requires directors to have regard to factors such as the long term consequences of their decisions and the impact of the company's operations on the community and the environment (by size of company)



Source: Q26 Are you aware that the duty to promote the success of the company requires directors to have regard to factors such as the long term consequences of their decisions and the impact of the company's operations on the community and the environment? Base: 253 (large: 108; public: 110; quoted: 35); weighted by economic impact.

However, once again, lower levels of behavioral change were captured with regard to changes to the duty to promote the success of the company (Figure 6.8), with less than a fifth of companies overall aware of this duty agreeing that it had affected the behaviour of directors, and over three-fifths disagreeing that the change had impacted the behavior of directors. No differences were found across company type although again significantly more directors disagreed that the change had affected their behavior (91%) as opposed to non-directors (64%). This supports findings throughout this section that despite high awareness levels of specific changes, they have yet to have a large impact of changing behaviours (in terms of how directors are responding to their duties), a finding particularly frequent among directors themselves.

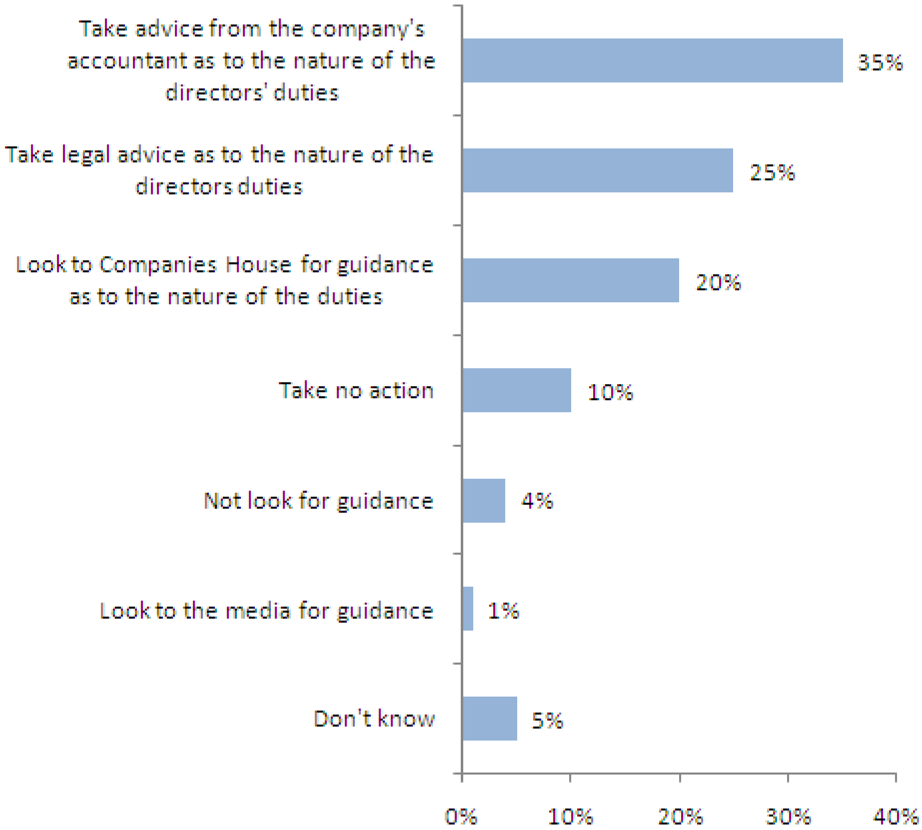
Figure 6.8 Has awareness of the duty to promote the success of the company affected the behaviour of directors (by size of company)?



Source: Q27 Has this affected your behaviour as a director? Base: 230 (large: 100; public: 95, quoted: 35); weighted by economic impact.

Those who had not responded to the changes introduced in the realm of directors' duties were informed of the introduction of the statutory statement of duties and then questioned as to what, if any, action this codification may prompt them to make. The results of this can be observed in Figure 6.9, with over a third indicating that they would now take advice from the company's accountant as to the nature of the directors' duties. Encouragingly however just one in ten said they would take no action, suggesting that even for those who have yet to make changes, they may still, but in the future.

Figure 6.9 Future intentions of those now aware of the statutory statement of directors' duties



Source: Q108. For the first time the Companies Act 2006 contains a statutory statement of directors' duties which apply to all directors. Now that you are aware of the existence of the statement, would you now…Base: 320; all company sizes, weighted by economic impact.

Case study 3 – Company that has made changes to directors' duties

The quoted company is a specialist house builder which has a turnover of £55 million and around 250 employees. It was incorporated in 1955 and has 2,000 shareholders (six of whom are major shareholders).

The Company Secretary felt that the Act 'absolutely needed to be updated…and needed to be dragged into the 21st century'. She felt that it had made lives simpler and focused minds on the good management of companies.

At the time of changes, the respondent wrote to all seven directors to inform them of the changes; a communication which was reviewed by the external lawyers.

> *'Directors' duties have now brought to the fore the future…focused their minds on the need for looking at all considerations'*

Procedures have not changed radically as she felt that they were already robust in terms of corporate governance. However, the new duties do feed into the board evaluation process and they have regular reviews of conflicts of interest within monthly board meetings. In terms of the latter, the respondent highlights this as an area where they have taken necessary precautionary action. There are two non-executive directors who are not deemed to be independent, as they represent significant shareholders. This is, therefore, taken into account and disclosed openly in reporting. The respondent found Section172 very useful as it focused on how to deal with this situation, and how to disclose the matter.

> *'Directors now must be aware of the need to wear a different hat and make decisions for the benefit of the entire community.'*

The respondent believes that the Companies Act 2006 has indeed modernised and simplified Company Law. The reasons for this were based on *'dispensing with paperwork, bureaucracy, and it has stream-lined regulation. It's a lot clearer'*

> *'It [the Section 172 duty] has sharpened up directors' attitudes and procedures rather than a cultural shift'*

Case study 4: Company that has made changes to directors’ duties

The company is a private limited company which is involved in food manufacturing. It has a turnover of around £230 million and 2500 employees. It is considered that its current shareholders are anticipating its sale in the short to medium term.

> *‘The shareholders are holding [the company’s shares] so that they gain an increase in value, in the net assets of the business [with a view] to make a sale…they are not here for the long term.’*

The respondent does not feel that Directors have had to significantly change the way they go about their day to day duties following the amendments to directors’ duties as set out in the 2006 Act. He feels that they have always promoted the company and supported its members.

> ‘*We just continued as we were. We do have an audit committee and we do consider the directors’ responsibilities to be paramount [in running the business] and indeed we do a paper each year to summarise what the director’s responsibilities are and each of the directors ascribe to that*’.

When asked if the shareholders’ short term focus might make it difficult for directors to have regard to the consequences of decisions in the long-term, the respondent felt that this was not an issue:

> *‘Having a good reputation and running a successful company are not at all at odds with making money, I think that in fact they are one and the same’.*

However, whilst no radical changes have been made, the respondent confirmed that all directors, including non-executive directors, are encouraged to enquire as to the status of the company so as to ensure that compliance is achieved with regards to directors’ duties provisions.

6.2 The business review (large private, public, quoted; 64% compliance)

Mixed perceptions of the business review were received from stakeholders: positively it was thought to provide a good framework that could enhance shareholder engagement, and new sections are able to be added, but some thought the quality of information was still not good enough and that businesses are 'still confused' about what exactly they need to submit, and inconsistency in the quality of reports was thus criticised.

The majority of quoted companies were neutral on the any increase or decrease in difficulty of providing the extra information required in the business review (56%), and over half (54%;) of quoted companies found the process the same as before in terms of difficulty in line with stakeholder perceptions, no more arduous).

Difficulties have been encountered for some companies, and these have been highlighted as being associated with the preparation of the review in terms balancing keeping the report down to a manageable size and with providing data that meets regulatory requirements and the needs of shareholders (case study 5).

Responsibility of preparing the business review was found to lie predominantly with directors (46%) and company secretaries (21%).

Quoted companies appeared to find providing extra information on the environmental, social and community matters affecting the company easiest (46% NET easy[43]); whereas almost half of companies were neutral on the difficultly of providing extra information on the essential contractual arrangements (49%) and trends affecting the future development of the business (46%).

As anticipated by stakeholders (given the measure was introduced in October 2007), the impact to changes on the business review to shareholders is yet to be seen and seventy-three percent of quoted companies had not yet had indications from their shareholders as to the impact of the additional information. The same was found to be true when public and large private companies were asked to rate how useful their shareholders found the information: a quarter of companies did not know (27%), yet almost equal proportions noted that their shareholders found the information unhelpful (25% NET[44]) as they did helpful (23% NET[45]).

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[43] Includes quoted companies scoring 4 and 5 on a 5 point scale where 1 is very difficult and 5 is very easy (Q31).

[44] Includes public and large private companies scoring 1 and 2 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q32b).

[45] Includes public and large private companies scoring 4 and 5 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q32b).

Reporting is one of the main ways company directors are able to demonstrate they are fulfilling the new duty in Section 172 of the Companies Act 2006. All companies, apart from small private companies, have been required to produce a Business review for financial years on or after 1 April 2005. With effect from 1 October 2007, quoted companies under Section 417 also needed to include, to the extent necessary for an understanding of the business, trends affecting the future development of the business, information on the environmental, employee, social and community matters affecting the company, and the essential contractual arrangements.

The intention of the revised business review within the Directors' Report was furthermore intended to inform members (shareholders) of the company and help assess how the directors have performed their duties (under s172). The following are all now included within the business review:

a) Trends affecting the future development of the business (quoted only)

b) The environmental, employee, social and community matters affecting the company (quoted only)

c) The essential contractual arrangements (quoted only)

d) A fair review of the business

d) Principal risks and uncertainties

e) Key performance indicators on both financial and non-financial matters

6.2.1 Stakeholder views

Perceptions of the revised business review were somewhat mixed from stakeholders - the majority were comfortable with its content and thought it provided a good framework that could enhance shareholder engagement, although others noted that the quality of information was still not good enough and that businesses are 'still confused' about what exactly they need to submit. However the fact that the business review in the UK is now internationally unique and 'in principle a significant step forward' were noted. One stakeholder applauded the fact that companies must now report on future plans:

'The business review is intended to some extent to be the other side of the coin to the provisions on directors' duties, in the business review, directors essentially report on how they have carried out their duty under Section 172 to promote the success of their company and again it's mirror for the requirements of Section 172 that they are supposed to talk about the different stakeholder factors set out in Section 172, but the more interesting aspect of the business review in my opinion are the provisions which require directors to talk in prospective terms not only about things that have happened historically, but which may happen in the future, so they are now require in the business review to talk about the principal risks and uncertainties that their companies face going into the future…this

relatively tentative attempt to get companies to talk about future possibilities as well as what has definitely happened in the past I think that is a very positive development and I would imagine that provided companies take this seriously, then these new provisions on prospective reporting are going to be well received by analysts and shareholders'

Additional positive comments surrounding the changes included that it reflects the changing times and in its current form allows new sections to be added e.g. carbon reporting, and also that it encourages forward risk planning. Furthermore, in the words of one stakeholder, 'It's an opportunity to talk about what's happening at the company'. Another stakeholder also noted that the business review is not as onerous to complete as first thought (their guidance booklets had not sold massively indicating that the change was not as big as first thought), and an appreciation for an exercise more than solely box ticking was being picked up on:

'We need an environment where reports are more meaningful showing desirable outcomes…not box ticking.'

The consistency of completed reports was however criticised and mentioned as being an influential factor in determining how useful shareholders find the revised report; one stakeholder cited that inconsistency was rife and that *'if it's well written it will be beneficial to shareholders'*. In terms of whether the change to the business review may act as a catalyst for change, one stakeholder exclaimed:

'The Act provides the basic framework, but change will be culturally driven not legislatively driven… changes in Accounting standards will drive change as well'.

6.2.2 Findings from companies who had made a change (or taken steps towards doing so)

The business review, as with directors' duties, was prioritised in the quantitative survey so that all companies who had made a change were asked questions on this measure. Quoted companies who had taken steps towards, or made a change to the business review were asked firstly how difficult they found providing the additional material now required in the business review, and, as can seen in Figure 6.10, the majority felt neutral on this issue with fifty-six percent finding the extra material 'neither difficult nor easy' to provide. Equal numbers of quoted companies found the business review difficult (17% NET[46]) as they did easy (17% NET[47]).

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[46] Includes quoted companies scoring 1 and 2 on a 5 point scale where 1 is very difficult and 5 is very easy (Q28).

[47] Includes quoted companies scoring 4 and 5 on a 5 point scale where 1 is very difficult and 5 is very easy (Q28).

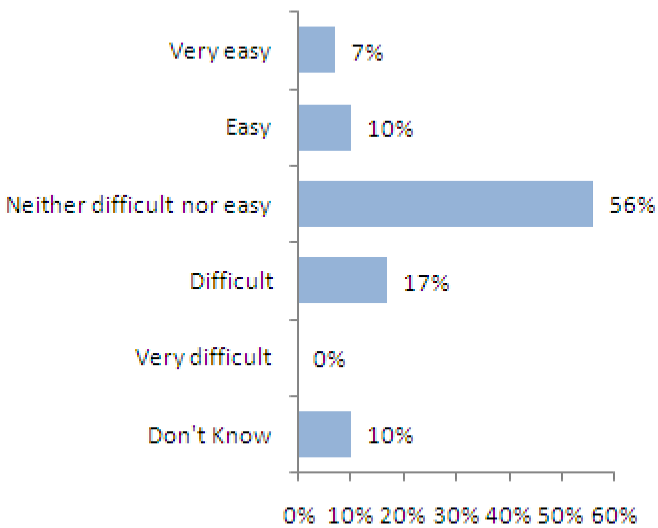
This neutral view was confirmed when it was then asked whether companies find it easier, more difficult or the same to comply with new regulations; over half (see Figure 6.12) of quoted companies found the process the same and thus in line with stakeholder perceptions, no more arduous. Given they have to provide additional material; it is unsurprising that just over a third thought it was more difficult than before. Information collated from a finance director within a quoted company for case study 10 (Section 6.9) however found that whilst they used to disclose the bare minimum (bland statements) in the review, they now have to submit a little more (including information on Key Performance Indicators and risk management). However he went on to say that:

'It now (the business review) takes longer to complete, but not extra days, extra hours'.

He also went on to say that the first time he had to provide the review it took longer, but now that he's in the second year he just updates it. It would be assumed therefore that as a rule of thumb once the template is put in place, it will not be as onerous to complete year on year.

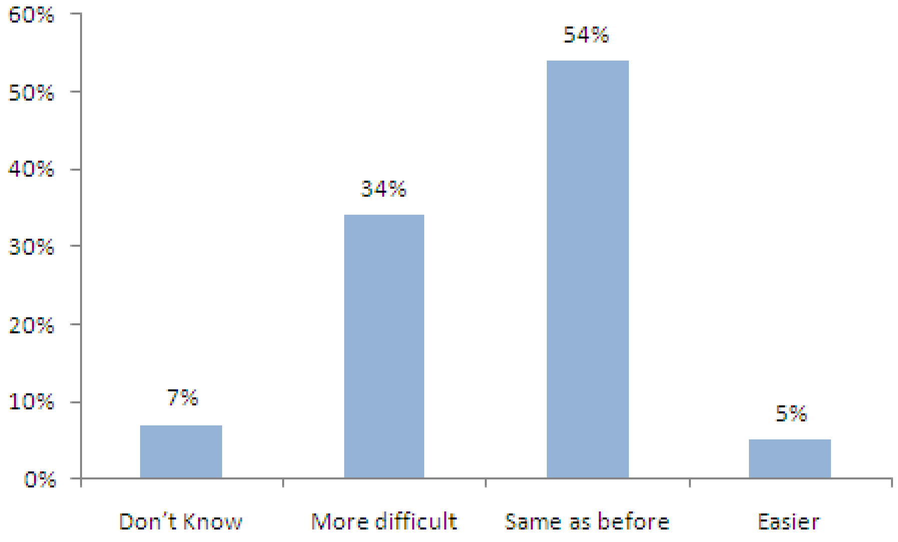
However, findings from case study 5 (Section 6.2) reveal that difficulties have been encountered for some companies, and these have been highlighted as being associated with the preparation of the review in terms of balancing keeping the report down to a manageable size and with providing data that meets regulatory requirements and the needs of shareholders.

Figure 6.10 Difficulty of providing the revised business review



Source: Q28. On a scale on 1 to 5 where 1 is very difficult and 5 is very easy, how easy has it been to provide a business review under the new provisions introduced on 1st October 2007? Base: 41, quoted companies only.

Figure 6.11 Comparison of providing the business review now compared with former requirements

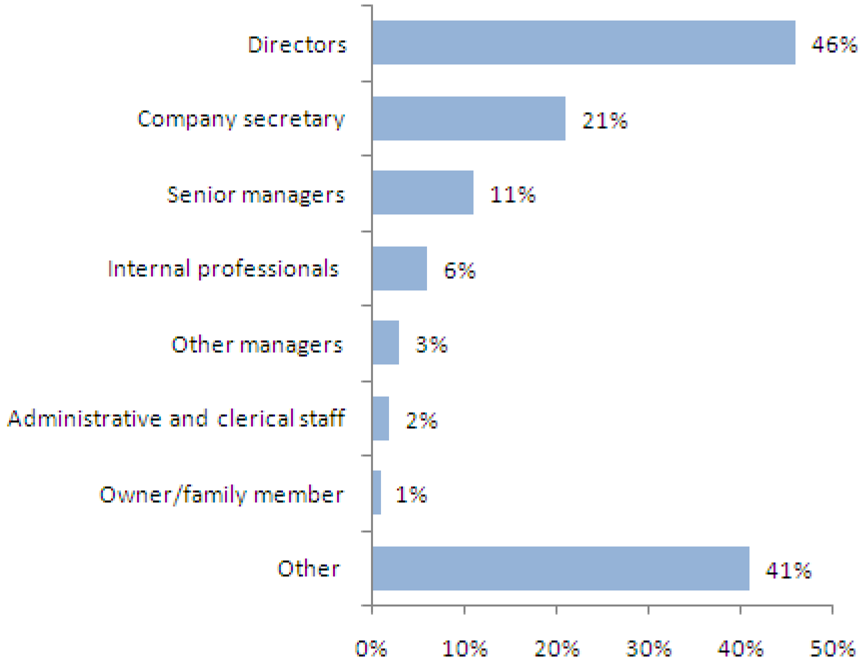


Source: Q29. And how easy is the business review to provide now compared with the requirement before 1st October 2007? Base: 41, quoted companies only.

Large private, public and quoted companies were also asked who within their company prepared the business review, the results of which can be seen in Figure 6.12. Directors were most widely cited as being involved in preparing the business review, with one in five companies stating company secretaries were involved. Other job roles were also noted, predominantly auditors, accountants, CEOs, assistant company secretaries, and finance directors and controllers.

Companies with 50-149 employees were more likely to indicate that directors prepared the business review (72%) than those with 10-49 employees (42%) and over 250 employees (44%).

Figure 6.12 Who prepares the business review?



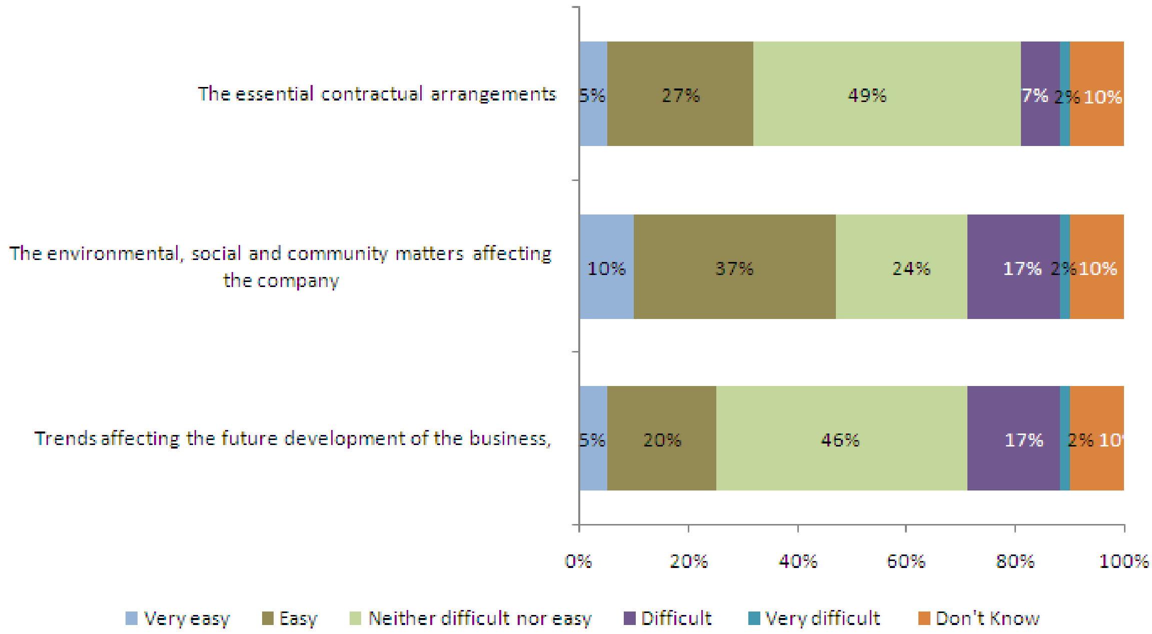
Source: Q30. And who within the company prepares the business review? Base: 299: Large (131), public (127) and quoted (41), weighted by economic impact.

Quoted companies alone were asked to rate the difficulty of completing the various new additional sections of the business review which they must now provide. As can be seen in Figure 6.13, companies appeared to find providing extra information on the environmental, social and community matters affecting the company easiest (46% NET[48]). The theme of neutrality is apparent again here with almost half of companies finding it neither easy nor difficult to provide extra information on the essential contractual arrangements and trends affecting the future development of the business. One in five companies found it difficult to provide information on the environmental, social and community matters affecting the company and trends affecting the future development of the business (20% NET for both[49]).

[48] Includes quoted companies scoring 4 and 5 on a 5 point scale where 1 is very difficult and 5 is very easy (Q31).

[49] Includes quoted companies scoring 1 and 2 on a 5 point scale where 1 is very difficult and 5 is very easy (Q31).

Figure 6.13 Difficulty of completing additional sections of the business review for quoted companies

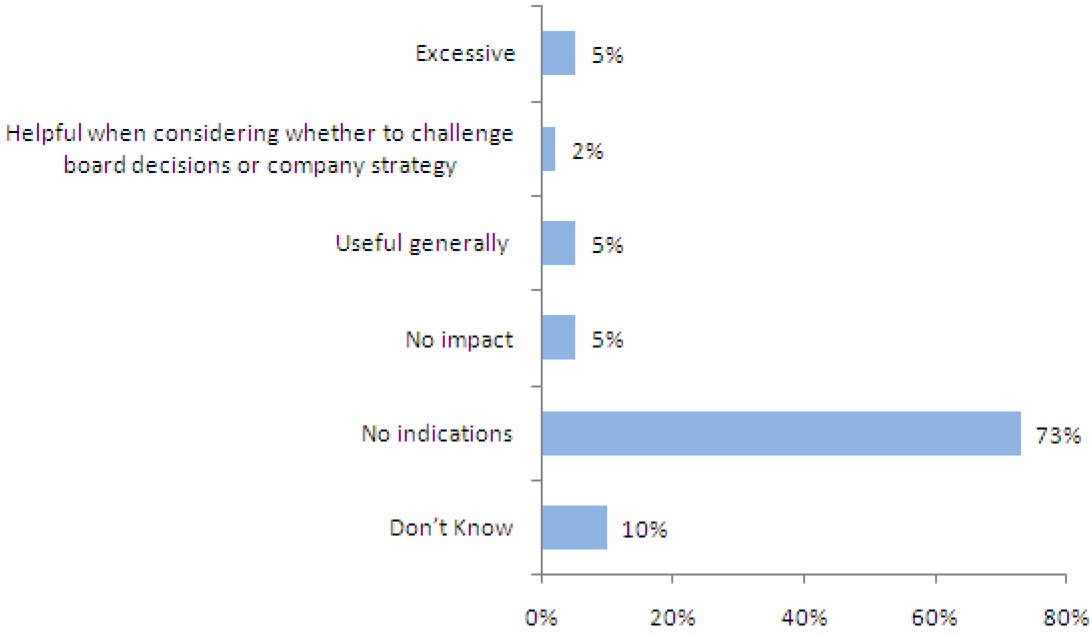


Source: Q31. And how easy has it been to comply with the obligation to provide extra information in the business review as to a) trends affecting the future development of the business, b) the environmental, social and community matters affecting the company c) the essential contractual arrangements? Base: 41, quoted companies only.

Quoted companies were furthermore asked how their shareholders have received the extra information, and a list of prompted possible reactions was read out. As illustrated in Figure 6.14, and another point echoed from stakeholder interviews was that it is still early, and the impact of certain changes, such as the business review which was introduced in October 2007, is not yet known, with seventy-three per cent saying they have not yet had indications. Furthermore, it is likely that many companies would not have mechanisms in place for collecting shareholder feedback on any changes.

Large private and public companies were also asked to rate how useful their shareholders found the business review , the response of which can be seen split by company type in Figure 6.15, but again exhibiting a sense of neutrality and of the unknown, with over a quarter of companies overall not knowing what the impact had been. Almost equal proportions noted that their shareholders found the information unhelpful (25% NET[50]) as they did helpful (23% NET[51]).

Figure 6.14 Feedback on business review from shareholders (of quoted companies only)

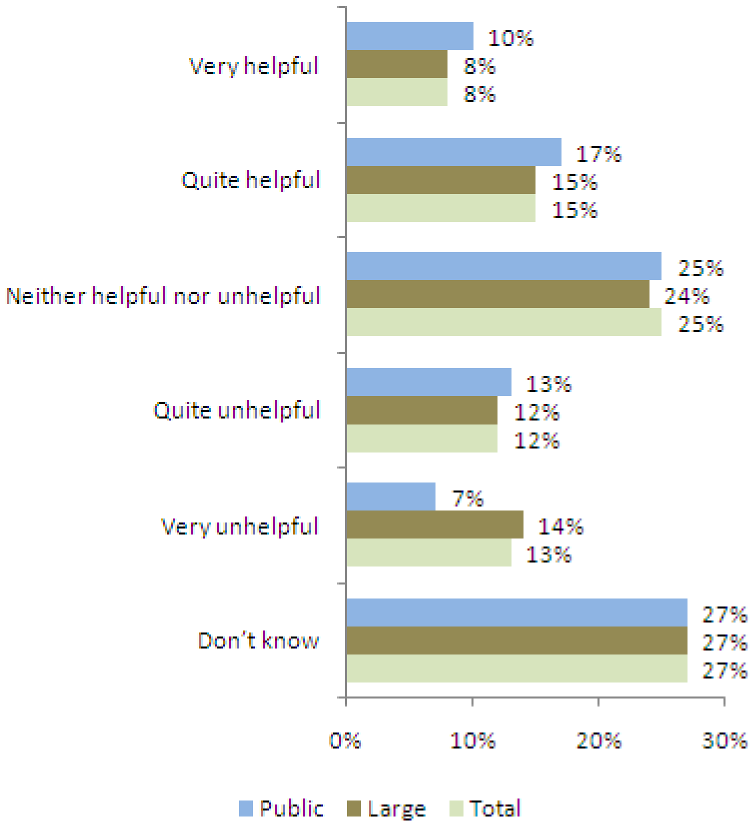


Source: Q32a. Have you had any indications from your shareholders that they find the additional information…Base: 41, quoted companies only.

[50] Includes those scoring 1 and 2 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q32b).

[51] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q32b).

Figure 6.15 Helpfulness of business review for shareholders (quoted and large private companies)



Source: Q32b.On a scale of 1-5, where 1 is very unhelpful and 5 is very helpful, how useful do your shareholders find the information within the business review? Base: 258- large (131) and public (127); weighted by economic impact.

Case study 5 – Company that has found changes to the business review difficult

The company is an international concern that is engaged in the development, delivery and support of advanced aerospace and defence systems for land, sea and air. It has 6,500 shareholders and a turnover of around £1,880 million worldwide.

The business review is collated by several departments and advisors working in different areas of the business with the bulk of it written by the Chief of Staff and Head of Communications. The deputy company secretary oversees and reviews the document to ensure compliance. The respondent indicated that it is a massive exercise in terms of the number of people and resources involved:

> *'Outside of Accounts, you have four or five people who spend an enormous amount of time on the annual report, then there will be a couple of people from my area [Governance], then Communication and Investment Relations and somebody else who looks after social responsibility would be very involved…as well as external help in the form of consultants for things like remuneration report'*

The respondent commented that the Board of Directors is not involved in the writing of the report and that '*we only take things to them to get them to approve…to make sure we are on the right track… we keep them involved throughout the process'*.

Although the company waits until the end of the year to include the latest financial details, they do '*look at it early to evaluate all the info, sections and documents that it needs to contain*'. The company has recently strived to make improvements to the reporting, for example in the area of KPIs around staff safety.

The respondent notes the difficulties associated with the preparation of the review in terms of balancing keeping the report down to a manageable size with providing data that meets regulatory requirements and the needs of shareholders.

> *'Most of the document included in the report actually forms part of other reports that have hit the board at one stage or another…it's updates, it's KPIs, it's info that you need to see on a day to day basis to manage the business…*
>
> *The risks are listed in a two page section of the review so they are not very detailed but they are the summary of absolutely massive amounts of data.'*

However, in spite of the considerable work involved in the collation of the business review, the respondent is not sure that more information equates to greater engagement on the part of shareholders.

'I don't think the Act has done much to enhance investment culture. The new Investor Code is more likely to have an impact on it…the more information, the better for investors but obviously there is a cost attached to it that the Company need to shoulder…the investors are paying for it in the longer term anyway'.

Case study 6 – Company that has found changes to the business review beneficial

The company is a development and construction holding Plc with an annual turnover of approximately £5 million and 40 employees (six of whom are director level). The company now comprises seven active companies and eight dormant companies. The company only has one main shareholder who is also the chairman; other shares are held within a pension fund.

The respondent, the company secretary and finance director for the group, became aware of changes in Company Law primarily through the Association of Chartered Certified Accountants. The company also has a legal partnership of advisors who they consult and seek guidance from.

Prior to the Act's implementation, the respondent used to just compile one business review for the group; now she submits a review for each company within the group.

The business review is prepared by the respondent and the managing director, and then sent to the board for approval. The draft can be drawn up during the course of a day, and it is also then sent to their external auditors for approval.

The respondent didn't feel that too much more information was required, apart from the KPIs which were not in place beforehand (an example given was the percentage of vacancies in their commercial property portfolio). As a qualified accountant, the respondent understands the requirements but felt that external auditors would need to be involved in writing the reviews of smaller companies. Despite her qualifications, the respondent still checked the extra information required with their auditor, as she wasn't entirely sure what had changed.

The respondent believes there to be benefits of the extended business review to creditors who do searches, banks and the Inland Revenue. Given they only have one shareholder, who is within the family business, he is already aware of all information included with the business review. However, when asked if she thought the business review to be valuable for shareholders of other companies where more than one, she replied

''It must be beneficial- they're relying on it for dividend income.''

Furthermore she added that they'll obviously be interested to see how the company is performing, and that it has investment value for public companies. She did not also think that the extended business review was too onerous to comply with.

6.3 Access to company information including reduction in filing times (public and quoted companies; 73% adapting procedures)

Companies were fairly neutral on the impact of the reduction of the timeframe for filing accounts yet positives were noted by stakeholders (for example the data is more up to date).

Awareness by companies who had made a change to this measure of new filing dates was extremely high (98%), and over three-fifths had filed accounts under these new time frames (61%).

For companies who had filed accounts in the new timeframe, almost three-fifths noted that there had been no impact (58%). For those who had not yet filed their accounts within the reduced time frame, similarly, over three-fifths did not anticipate this having any impact (66%).

The large majority of companies also said that the requirement to hold an annual general meeting and to file the company's accounts with the registrar of companies, within six months of the financial year end had not had an impact on procedures (92%).

In a bid to improve shareholder access to information, the timeframe for filing accounts has been reduced under the Companies Act 2006 from 10 months to 9 months (from the financial year end) for private companies and from 7 months to 6 months for public companies. The focus of responses within this measure is therefore with regard to filing times and the impact of their reduction.

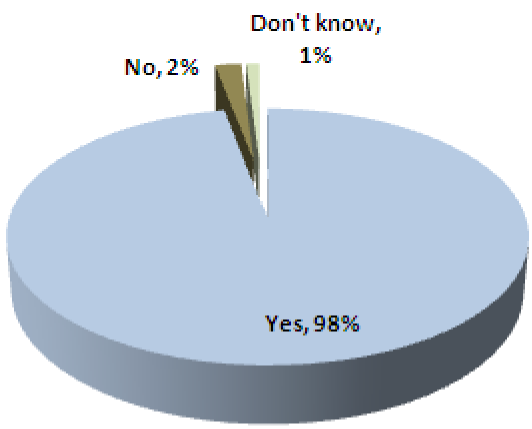
6.3.1 Stakeholder views

The majority of stakeholders interviewed were neutral on this matter, with no strong views noted either way. One stakeholder did however think it was a positive change as it means data is more up-to-date. Others felt that the change will have more effect in the case of Public companies and that it's more of a marginal change for SMEs. It was also felt that the improved shareholder information should be seen in light on the Company House's new financial penalties for late reporting, and that the driver might, in fact, be the avoidance of incurring penalties rather than the Companies Act 2006.

6.3.2 Findings from companies who had made a change (or taken steps towards doing so)

Awareness by the randomised group of companies who were asked questions in this section and had made a change to this measure of these new filing dates was extremely high (Figure 6.16). Please note that data included in this section is based on this randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure.

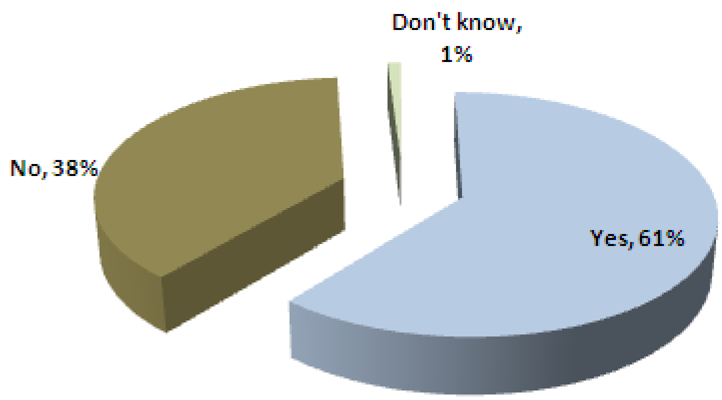
Figure 6.16 Awareness of new filing dates



Source: Q33. Are you aware of the time limits for filing your accounts with Companies House? Base: 63, public and quoted companies, weighted by economic impact.

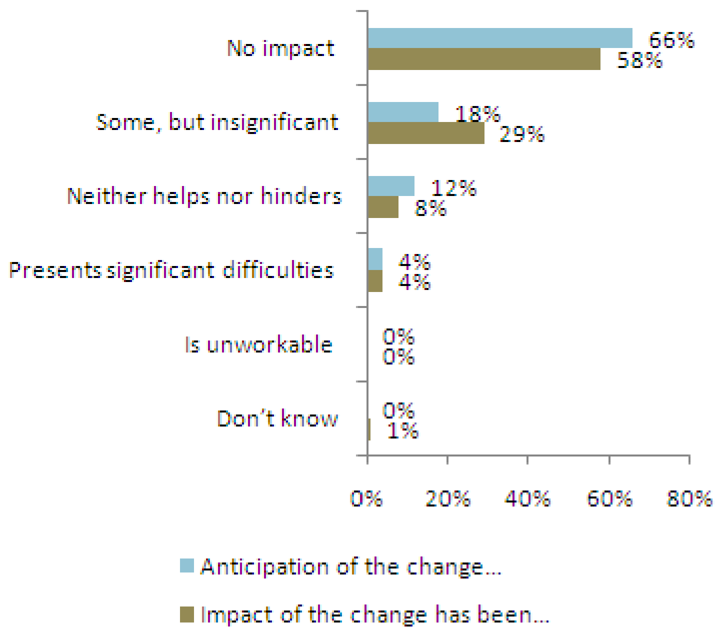
Given this change was implemented in April 2008, dependent on financial year end dates, not all companies had filed accounts under these new time frames during the fieldwork period. When asked if they had, as illustrated in Figure 6.17, over three-fifths agreed that they had. Positively, reducing filing deadlines by one month does not appear to be overly impacting companies, as when asked what the impact of the time reduction has been, almost three-fifths noted that there had been no impact. For those who had not yet filed their accounts within the reduced time frame, similarly, over three-fifths did not anticipate this having any impact (Figure 6.18).

Figure 6.17 Filed accounts under new timeframes?



Source: Q34. The period for filing has been reduced under the CA 2006 from 10 months to 9 months (from the financial year end) for private companies and from 7 months to 6 months for public companies. Have you filed accounts under these new timescales? Base: 63, public and quoted, weighted by economic impact.

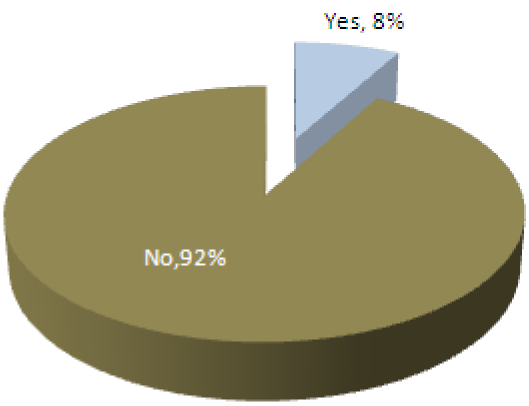
Figure 6.18 Impact of the change in filing times



Source: Q35a. Has the impact of the change been…Q35b. Do you anticipate the impact of the change being…Base: 63 (Impact: 35; anticipation: 28), public and quoted, weighted by economic impact.

Companies were next asked whether the requirement to hold an annual general meeting and to file the company's accounts with the registrar of companies, within six months of the financial year end had an impact on procedures, and again the large majority said it had not (Figure 6.19). Details of the impacts cited by the eight percent who indicated it had had an impact, and views of whether this would have an impact by companies who had not yet filed accounts under the new time frame were too small for inclusion.

Figure 6.19 Whether the requirement to hold an annual general meeting and to file the company's accounts with the registrar of companies, within 6 months of the financial year end had an impact on procedures



Source: Q36a. Has the requirement to hold an annual general meeting and to file the company's accounts with the registrar of companies, within 6 months of the financial year end had an impact on procedures? Base: 35 (caution, small base), public and quoted, weighted by economic impact.

Quoted companies only were finally asked whether they had had any feedback from shareholders on the requirement (quoted companies only) to publish a variety of information (poll results, annual financial statements and reports) on a website, and if so to rate how useful have these website requirements been according such feedback. Base sizes however were again too small in this regard to be used for purposes of analysis.

6.4 Facilitating eCommunications (large private, public, quoted; 38% taken any steps to make changes)

Facilitating eCommunications was seen by all stakeholders as a positive, necessary and worthwhile change brought about through the Companies Act 2006. It was generally regarded to bring about cost savings (although one stakeholder noted that it is more about better communication than cost savings).

Out of those companies who had made a change or taken steps towards doing so, over three-fifths (62%) had sought and received shareholder approval to use website communications; just under a third had not (31%) and seven percent did not know if they had or not.

Similarly, just over three-fifths of companies had used the website default procedure (62%), whilst over a third had not (35%).

Surprisingly, just over three-fifths (62%) of companies had in fact asked shareholders to provide an email address to fully utilise this deregulation; for those who had just over half stated there had been no impact as a result (53%), although thirteen per cent did note cost savings as the main impact.

6.4.1 Stakeholder views

Making electronic communications the default method for communication with shareholders was seen by all stakeholders as a positive, albeit somewhat necessary and worthwhile change brought about through the Companies Act 2006, as summarised by one stakeholder:

‘Yes, we were in favour of the measures taken to liberalise means of communication, certainly if you are going to revise the Companies Act to bring it more up to date and to make it less obsolete, then you couldn’t do that without addressing the issue of email and web posting of documents. So yes, in principal, this does provide the possibility of mutual improvements for both companies and their shareholders and stakeholders and there is a residual protection for those people who don’t want to receive material by email, so I’m quite positive about the way the Companies Act has addressed the issue of e-communications’.

It was also generally regarded to bring about cost savings (in some cases references to ‘marginal’ cost savings were made), although the danger, as cited by one stakeholder was that shareholders may not look online at company information. One stakeholder, despite their positive view overall, questioned the extent of cost savings that may arise:

‘It’s a means of communicating better rather than cost savings. It’s more to do with how communications have changed. Home printing costs may be incurred if can’t read reports on the screen so will there actually be savings? Are reports being written with a view to being seen on the screen? It does facilitate ease of use, lots of positives…’

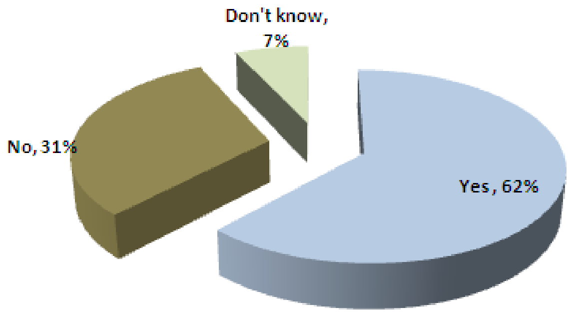
Positives were also noted for indirect shareholders, essentially because they can now capture information through the web or send votes electronically. The change furthermore allows non shareholders access to another company’s documents on the internet (if they want to make investment decisions and look into companies further), and thus could boost investment through expanding the availability of company information.

Despite shareholders having to now print reports and documentation themselves should they so wish to do so, as commented by one stakeholder, *‘the good thing about websites is that you can print the pages you need’.*

6.4.2 Findings from companies who had made a change (or taken steps towards doing so)

Companies who had taken steps to making changes in this regard were asked whether they had sought and received shareholder approval to use website communications[52], the results of which can be viewed in Figure 6.20. Over three-fifths of companies had done so, just under a third had not and seven percent did not know if they had or not.

Figure 6.20 Whether companies had sought and received shareholder approval to use website communications



Source: Q40. Have you sought and received shareholder approval to use website communications? Base: 60, large private, public and quoted, weighted by economic impact.

Similarly, just over three-fifths of companies had used the website default procedure (Figure 6.21), whilst over a third had not. Those who had not were then asked their likelihood of doing so in the future, but base sizes here were too small to be included.

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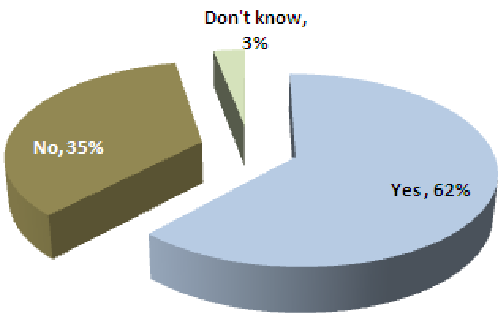
[52] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

Figure 6.21 Had companies used the website default procedure?

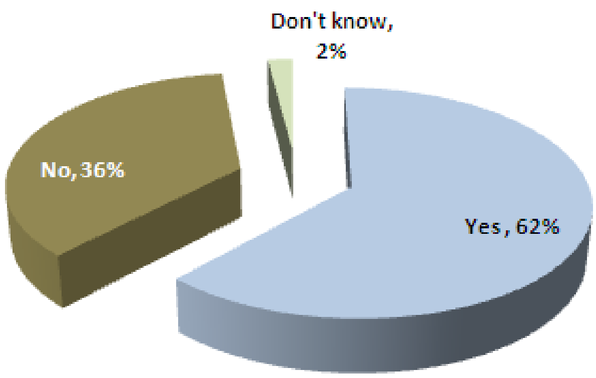


Source: Q41 Have you used the website default procedure whereby shareholders who do not respond to a request from the company for agreement to website communications are deemed to have agreed? Base: 32; large private, public and quoted, weighted by economic impact.

Figure 6.22 displays the proportion of companies who had asked shareholders to provide an email address for communications from the company. Surprisingly, given all of those asked had agreed to taking steps to making changes with the eCommunications measure, just over three-fifths had in fact asked shareholders to provide an email address to fully utilise this deregulation.

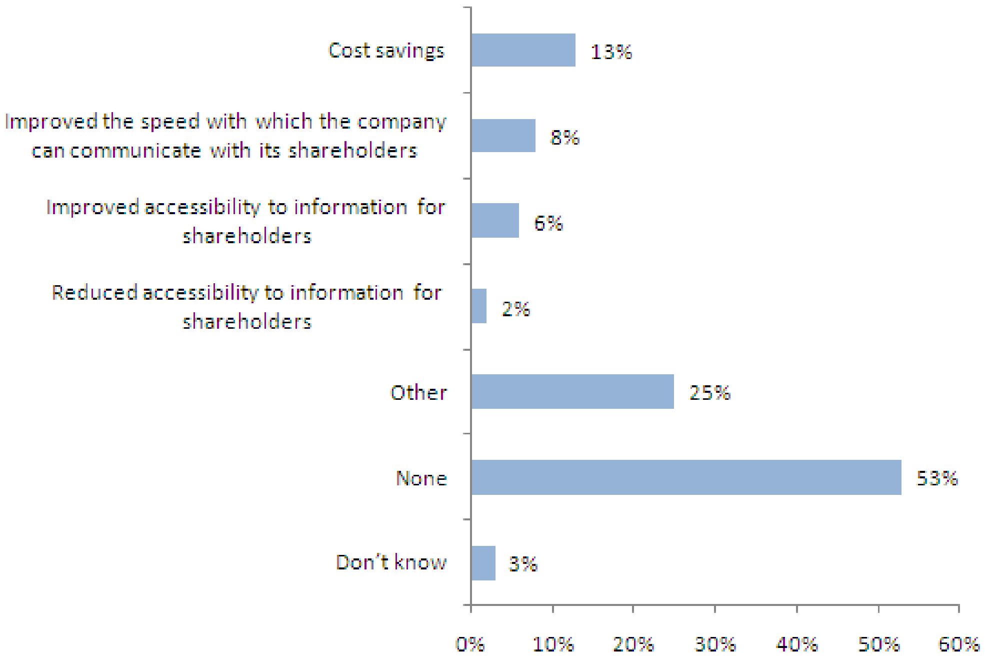
Those companies who had requested that shareholders provide an email address were asked what the impact of this change had been, and Figure 6.23 illustrates the outcome which appears to be somewhat apathetic, with just over half of companies stating there had been no impact; thirteen per cent did however note cost savings as the main impact. The base size of those who did state cost savings as the main impact was however too small to enable data quantifying those cost savings to be analysed (eight respondents). Case study findings however (see case study 7 and 15) suggest a more positive stance on cost savings, with one FTSE 100 company indicating that it's not a saving per se as they have re-invested costs saved into their online communications.

Figure 6.22 Had companies asked shareholders to provide an email address for communications from the company?



Source: Q43 Have you asked your shareholders to provide an email address for communications from the company? Base: 60; large private, public and quoted, weighted by economic impact.

Figure 6.23 Impact of using electronic communications with shareholders



Source: Q44. In the event that you use electronic communications with shareholders, what has been the impact? Base: 60; large private, public and quoted, weighted by economic impact.

Case study 7- Cost Savings from eCommunications

The organisation is a high profile FTSE 100 retailer which has over 200,000 shareholders. Three members of the governance team were interviewed.

The organisation consulted shareholders in 2007 by means of a communication which went out with the interim dividend payment. This had the dual benefit of saving mailing costs and also ensuring that individuals would read the mailing (given that it was in with their dividend). They now send out around 5,000 hard copies of the Annual Report (previously 20,000) and 40,000 copies of the Annual Review (previously 220,000). The respondents identified the notable changes the Companies Act 2006 had brought about with the introduction of the electronic communication enabling provisions.

> *'Previously we were required to send endless amounts of information to shareholders, whether they wanted it or not. This was inefficient, wasteful and went against our environmental objectives. Companies were just churning out endless amounts of paper. In my opinion, the introduction of electronic communications was a fantastic change for all companies'.*

The organisation has taken the opportunity to tailor its communications to shareholders' needs, providing the full Annual Report to those who request it but also keeping those shareholders who did not respond to the consultation engaged by sending them a much shorter, retail shareholder focussed document. There was awareness that some companies had retained the cost savings and just send a proxy card to those that had been defaulted to electronic communication. However, they had taken the active decision not to do so:

> *'The year end mailing is always going to be seen as a way of promoting the company's business and ethics as well as communicating the financial results.'*

The organisation also took the opportunity to use the money 'saved' to revamp the corporate element of their website and further develop the online version of the Annual Report. They feel these are now much more user friendly, provide greater transparency and are much improved to meet the needs of the wider stakeholder group.

> *'So I wouldn't say we've taken a huge pot of money from this and said 'Thank you very much, that's a nice saving', I'd say we've taken a reasonable amount of money and then invested that in the online communication so we can tell the people who actually want the information more.'*

In terms of shareholder feedback, the company mails a card with the reports asking shareholders to state any issues they would like to be raised at the AGM as well as requesting feedback on whether the documents they receive provide sufficient information for their needs. Shareholder responses confirm that the balance has generally been achieved.

6.5 Enfranchising indirect investors (public and quoted; 45% taken any steps to make changes)

Stakeholders were somewhat apprehensive about companies utilising this measure, thinking that due to cost brokers would not in fact initiate such a change in order to embrace shareholder democracy.

Despite some criticism noted, such as the fact that the owner of shares is not then on the share register, positive feedback on the theory was received from stakeholders.

However, almost half of companies able to make a change in this regard had done so (or taken steps doing so; 45%).

Of the eight companies interviewed, all had altered their articles to allow members to nominate others to exercise the member's rights to the extent permitted by the Act.

It, therefore, appears that this change is not as unpopular as first assumed, and that companies are in fact looking into this opportunity to further enfranchise indirect shareholders.

Provisions that provide rights to indirect investors through proxy and information rights were introduced through the Companies Act on 1st October 2007. The intention was to encourage greater shareholder democracy, by giving power to the pension fund trustees and other beneficial owners to actually be able to cast decisive votes as to the running of companies in which they have invested their shares.

6.5.1 Stakeholder views

This particular measure leaves the decision as to whether to enfranchise all members of the chain to the brokers (middle men) and this was generally regarded by stakeholders as the reason for the likely low up take. As summed up by one stakeholder:

'The process albeit democratic in theory, would seem chaotic in practice'.

By this comment, the stakeholder meant 'democratic' in the sense that by enfranchising indirect investors, all those who have invested in a company are given the opportunity to be able to influence the running of the company, but 'chaotic' given the millions of shareholders within collective trust funds that larger companies will have, and that this process would be extremely difficult logistically. Furthermore, an issue was flagged in that the owner of shares is not then on the share register and thus no one else can write to them apart from the stock broker- *'we don't know who the nominees are'.*

Another reason as to why companies appear not to be embracing the opportunity for shareholder democracy was also said to be based on the cost of doing so, and also that information is available anyway through other means:

'The cost for companies to set up the facility is why relatively few have taken up…It's easy to get hold of that information however without going through that process…can just surf the web. For the amount of expense there is little benefit'.

Cost aside, positive feedback on its intention was received from stakeholders, with one exclaiming: *'In theory it's fantastic. Ability to split the proxy is a good change'.*

However, contextual research discovered that companies are utilising the change as a means to increasing support for resolutions. As quoted in a recent news article on 19th May 2010 regarding Anglo-Dutch oil major Royal Dutch Shell, *'A key benefit of this (enfranchising indirect investors) is the ability to propose resolutions, or to work with clients to drum up support for a resolution*'.

6.5.2 Findings from companies who had made a change (or taken steps towards doing so)

This measure was only asked of public and quoted companies, but against this backdrop of uncertainty as to whether companies had taken up the change, it was found that 46% of companies able to make a change in this regard had taken steps towards doing so (from Q9b in the questionnaire). However, given this was a measure that was randomised (as mentioned, only directors' duties and the business review were prioritised and asked to all companies who had made a change within these areas), only eight companies were asked about enfranchising indirect investors, a base that is too small for data interrogation.

However, all eight companies had altered their articles to allow members to nominate others to exercise the member's rights to the extent permitted by the Act. Together with the take up level aforementioned, it appears this change is not as unpopular as first assumed, and that companies are in fact looking into this opportunity to further enfranchise indirect investors.

6.6 Simpler law/ accessibility including model articles (small, medium, and large private and public; 26% taken any steps to make changes)

Anecdotal feedback from stakeholders was positive regarding the new model articles, although it was widely regarded to be a minor change, and more useful for new companies than existing companies.

Out of all deregulatory measures within this section, the predominant changes carried out by companies were to stop holding AGMs (51%) and to utilise the ability to execute documents by a sole director (43%).

Take up of the new model articles appeared fairly low (10% either having adopted or amended the new articles), yet through case studies it became apparent that companies are likely to wait until they make other changes to change their articles- references to carrying out changes in tranches were again made.

Of those companies who had made a change in this area, a significantly higher percentage had used an advisor (21%) than those who did not use an advisor (11%).

All companies who had adopted new model articles had amended them (based on 7 companies).

Almost two-fifths (38%) of companies who had made a change to one or more of the deregulatory simpler law measures did not think there had been an impact from doing so, whilst over a third said it was too early to tell (36%); nine per cent of companies however noted cost savings.

Awareness that provisions in the memorandum of association now form part of articles of association was high for large private, public and quoted companies (87%).

Several measures were introduced on 20th January 2007 to further simplify Company Law, with a particular emphasis on private companies, including the introduction of new model articles written in plain English and applicable for each company type.

6.6.1 Stakeholder views

Positive comments were received from stakeholders on the introduction of new model articles: *'It makes sense to make amends to model articles to bring in line with other amends (memorandum). I'm happy with the change'.*

It was however noted that despite their usefulness for new companies, that it was a relatively minor change, albeit one that could increase awareness of the law, but that the model articles for existing companies 'are a bit of an unknown'. It was also mentioned that articles for subsidiaries were not as useful. That aside, feedback was generally positive, although on the whole anecdotal:

'I can't give you any scientific feedback on that on, but anecdotally my understanding is that companies are taking steps to review their articles of association to make sure that they are up to date and in a form which enables them to take advantage of some of the new liberalised provisions, in fact that is one thing that we have said to our members, that they should be considering speaking to their company clients about whether or not they need to refresh their constitutional arrangements. So I would have expected our members to be aware of the opportunities which are now open to their company clients and in some cases can only be taken advantage of if they revise their articles. So my feeling is that this is something which our members are encouraging companies to do over this past couple of years'. (stakeholder)

6.6.2 Findings from companies who had made a change (or taken steps towards doing so)

All companies that had made a change, or taken steps towards making a change within this area (and if this measure was randomly selected[53]) were asked which specific simplification measures had been adopted, the results of which are displayed in Figure 6.24. Two key measures stand out as being predominant actions: firstly, the removal of the requirement to hold an AGM and secondly, the ability to execute documents by a sole director (rather than the prior requirement to execute documents by two directors or one director and the company secretary).

However, take up of the new model articles appears fairly low (10% either having adopted or amended the new articles). It seems therefore that the benefits of new, up to date model articles written in plain English has yet to be seen, although for those companies encountering any difficulties or disagreements, this is when they will be sought after. It does appear that if left to their own devices, companies are not proactively choosing to change or amend their articles to ensure they are updated, despite the fact that it is not only good housekeeping, but will help the company run well and protect them if any disputes should arise. Stakeholders also noted that a surge has yet to materialise in this regard.

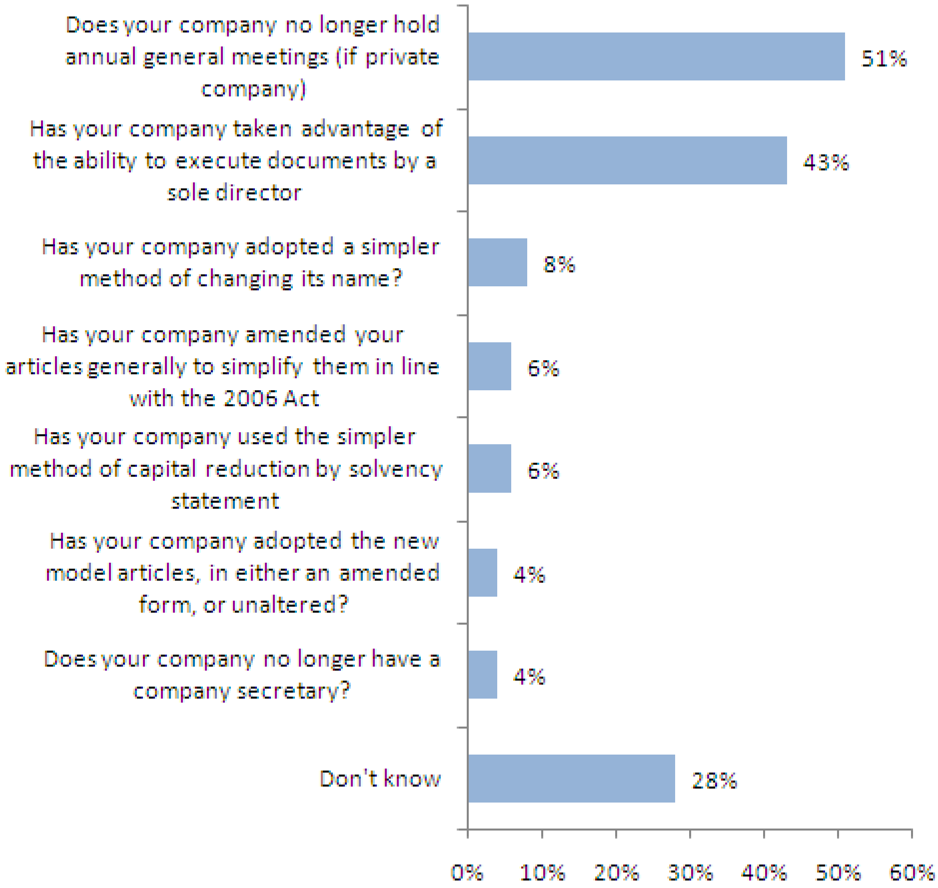
Case study exploration revealed that companies who had yet to amend their articles, were only likely to do so if they were looking to make other changes, in line with the emerging theme of companies making changes in 'tranches'.

One hypothesis for this time lag in taking advantage of the new model articles is that advisors may not be informing companies of potential changes. However, of those who had used an advisor, a significantly higher proportion had made a change in this area (30%) than those who had not (13%).There were no significant differences within those who amended

[53] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

their model articles having an advisor or not (due in large to small base sizes). There does however appear to be a time lag, and pattern of inertia taking place whereby the reach the majority of companies have yet to make this change.

Figure 6.24 Simplification measures adopted

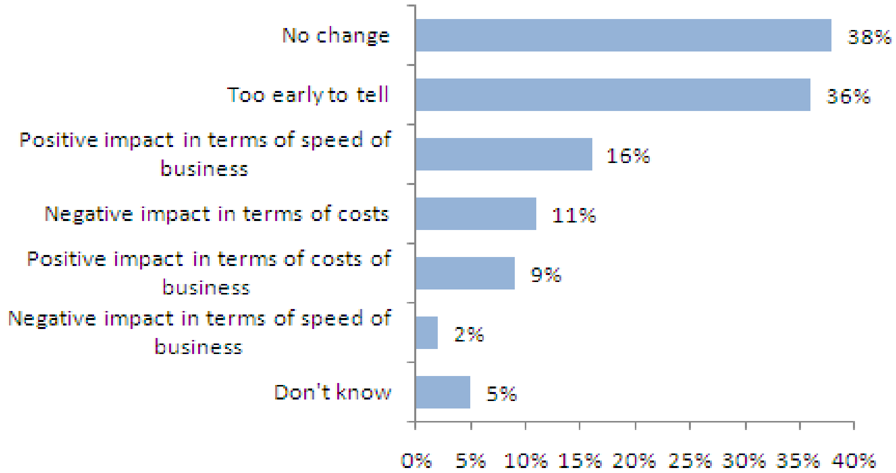


Source: Q51. And can you remind me, which, if any, of the following simplification measures have been adopted by your company? Base: 73; small private, medium private, large private and public companies, weighted by economic impact.

Of those companies who had adopted new model articles, all indicated that they had amended them (small base size of just seven companies).

All companies who had made one or more changes to deregulatory measures within the field of simpler law were also asked what impact this had brought about, and almost two-fifths said there had been no impact, whilst over a third said it was too early to tell (Figure 6.25). Just shy of 1 in 10 companies noted resulting cost savings.

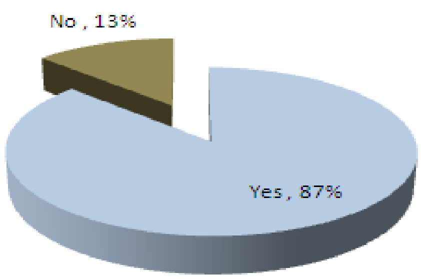
Figure 6.25 Impact of simplifications adopted on the conduct of the company's affairs



Source: Q52. What has been the impact of the simplifications adopted on the conduct of the company's affairs? Base: 73; small private, medium private, large private and public companies, weighted by economic impact.

Medium private, large private, and public companies were finally asked whether they were aware that provisions in their memorandum of association now form part of articles of association (and are now the one document which needs consulting rather than the two former cumbersome documents of memorandum of association and articles of association), and as illustrated in Figure 6.26, awareness was high at eighty-seven percent, with just thirteen per cent not being aware of this change.

Figure 6.26 Awareness that provisions in memorandum of association now form part of articles of association



Source: Q52a. Are you aware of changes implemented in CA 2006 which mean that some provisions in your memorandum of association now form part of your articles of association? Base: 63; medium private, large private and public companies, weighted by economic impact.

6.7 Resolutions and meetings (small, medium and large private companies; 43% taken any steps to make changes)

Stakeholders perceived this change to be a practical measure that would be utilised.

Just under a third of companies who had made changes to resolutions and meetings were no longer holding AGMs (32%), with over three-fifths still holding AGMs.

The principal reason for deciding not to hold AGMs was also found to be due to practical convenience (41%), whilst just over a fifth (22%) admitted they did not hold AGMs previously (a point reinforced through case studies); eleven per cent cited cost savings.

Almost three-fifths of companies had used the written resolution procedure, (57%), whilst a third did not (33%); a high proportion of companies who had made changes in this area however had just one shareholder. Time savings was cited as the principal benefit of the written resolution procedure.

Just over a fifth of companies (22% NET[54]) who did not currently use the written resolution procedure would consider doing so in the future, yet seventy-one per cent (NET[55]) would not.

Companies who had not made changes were firstly asked whether they themselves held AGMs and almost two-fifths (39%) did not, particularly significant amongst small private companies (49% of whom did not hold AGMs compared with 34% of medium private companies).

Positively, for those companies who still held AGMs, almost two-fifths agreed, when informed of the new deregulation, agreed that this would in fact be beneficial for their company.

Almost half of companies who had not made a change (45%) would consider using written resolutions in future (significantly more medium and large private companies than small private companies).

The changes introduced with regards to resolutions and meetings included provisions that removed the need for private companies to hold AGMs, and introduced changes to the law around making decisions through written resolutions and meeting notices; these changes came into force on 1st October 2007.

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[54] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unlikely and 5 is very likely (Q58).

[55] Includes those scoring 1 and 2 on a 5 point scale where 1 is very unlikely and 5 is very likely (Q58).

6.7.1 Stakeholder views

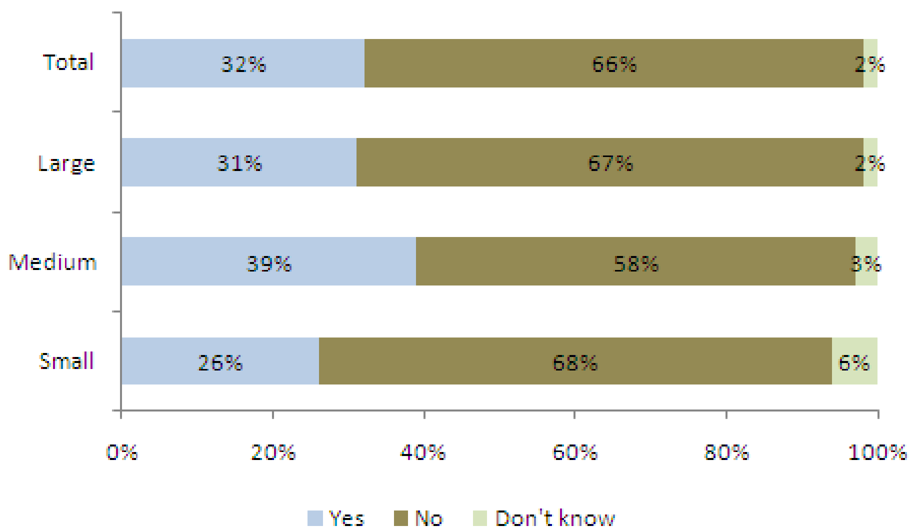
Stakeholders interviewed perceived this change to be a practical implementation that '*simplifies the matter nominally*'. As a result, the general perception was that the provisions will indeed be used.

6.7.2 Findings from companies who had made a change (or taken steps towards doing so)

Companies that had made a change, or taken steps towards making a change in this area were asked further questions to explore the changes that had been made and possible cost savings that arose as a result[56]. All companies that had not (regardless of whether they had made a change to any other measure), were asked questions (in Section 2 of the questionnaire) of their awareness of changes and likelihood to make changes in the future.

When firstly asked if they no longer hold AGMs, just under a third of companies who had made changes (or taken steps towards making changes) agreed (Figure 6.27), yet over three-fifths disagreed and thus indicated that they were in fact still holding AGMs. Companies with 50-249 employees were however significantly more likely to no longer be holding AGMs (67%) than companies with fewer than 10 employees (45%). This suggests that small private companies are more likely, as revealed through case studies, to not have been 'holding' AGMs previously.

Figure 6.27 Companies no longer holding AGMs (by size of company)

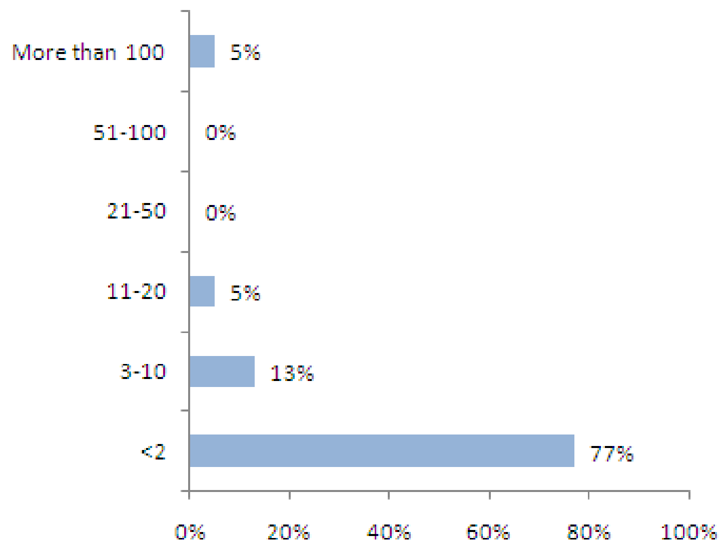


[56] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

Source: Q52b. Firstly, does your company no longer hold annual general meetings? Base: 117 (small: 31; medium: 38; large: 48); weighted by economic impact.

Companies no longer holding AGMs were then asked how many shareholders they had, and as displayed in Figure 6.28, over three-quarters of companies had only one shareholder, with just five per cent having over 100 shareholders.

Figure 6.28 Number of shareholders

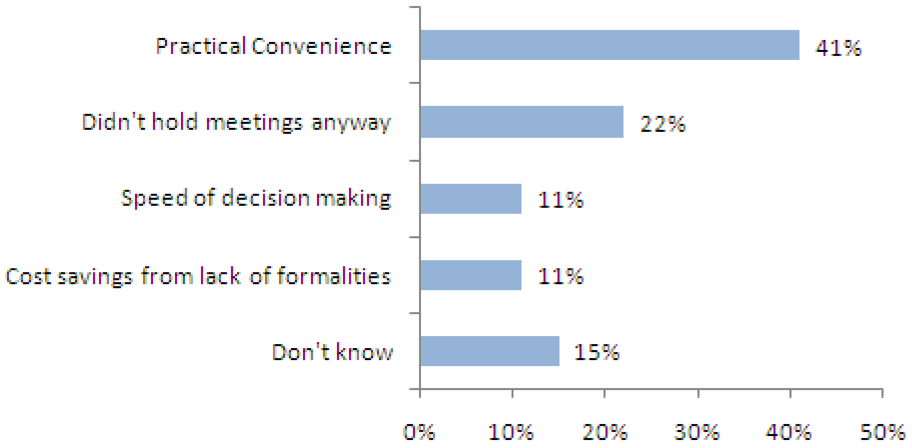


Source: Q53. And how many shareholders do you have? Base: 43; small, medium and large private companies, weighted by economic impact.

The principal reason for deciding not to hold AGMs was also found to be due to practical convenience, whilst just over a fifth admitted they did not hold AGMs previously (Figure 6.29). Eleven per cent cited cost savings as a reason for no longer holding AGMs and these companies were then asked to quantify these cost savings. Again, due to small base sizes, the results of which could not be included in chart format.

Extra insight derived from case studies has revealed that this change has had limited impact. Companies were holding AGMs previously but ‘tacking’ them onto another meeting that meant they were able to ‘tick the box’ with little associated expense.

Figure 6.29 Reasons for not holding AGMs

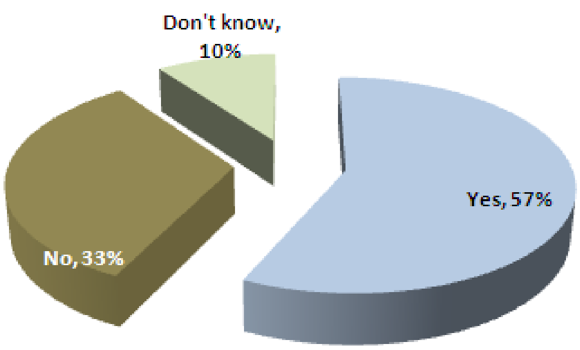


Source: Q54. What was the main reason for you deciding not to hold annual general meetings? Base: 43; small, medium and large private companies, weighted by economic impact.

All companies were asked if they used the written resolution procedure, and almost three-fifths reported that they did (Figure 6.30), whilst a third did not. Despite expectations for this to be possibly higher, given the high proportion of companies here with just one shareholder, usage of written resolutions will not be required. Furthermore, given ninety per cent of companies have ten or fewer shareholders, informed unanimous consent may be an option being utilised instead.

Further feedback during case studies however revealed that this change has been positively received and is indeed being utilised.

Figure 6.30 Usage of the written resolutions procedure

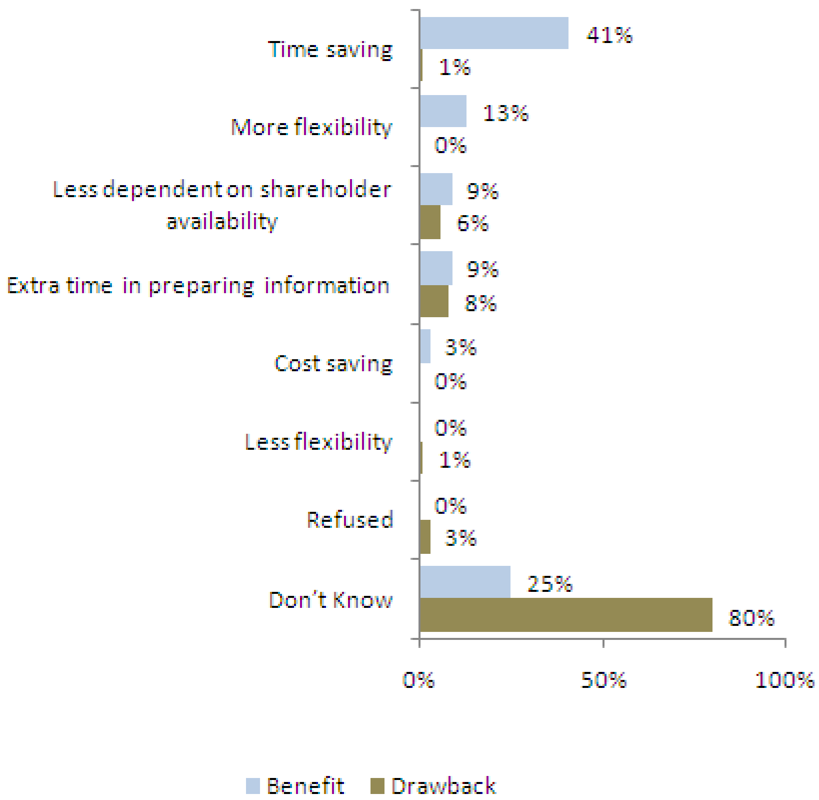


Source: Q56. Do you use the written shareholder resolution procedure? Base: 129; small, medium and large private companies, weighted by economic impact.

No significant differences were found when analysing the data for those using written resolutions by company type, industry or whether they had used an advisor.

In terms of benefits and drawbacks of using the written resolution procedure, time saving was the predominate response (Figure 6.31). Companies were less decided on drawbacks of this new procedure, with the vast majority saying they did not know; eight per cent however cited extra time in preparing information.

Figure 6.31 Benefits and drawbacks of the written resolution procedure



Source: Q57. Please can you give me one key benefit and one key drawback of using the written shareholder resolution procedure? Base: 68; small, medium and large private companies, weighted by economic impact.

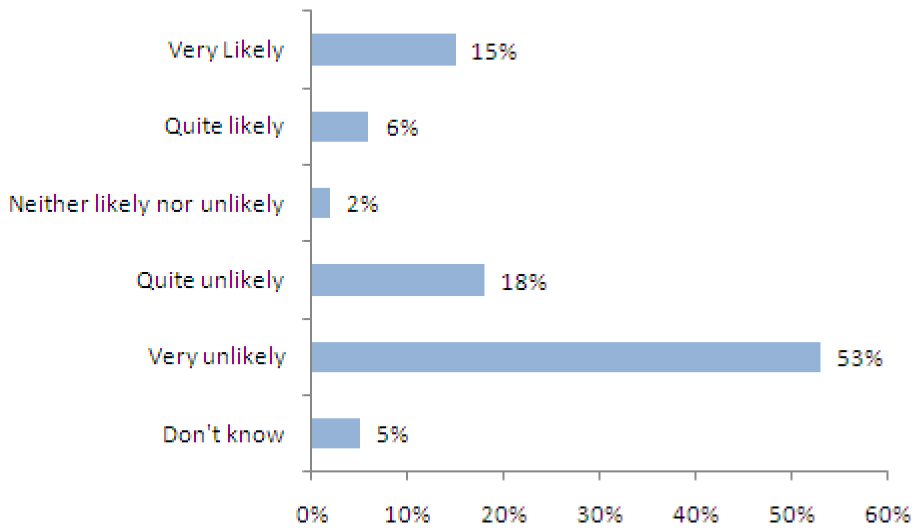
Companies who did not currently use the written resolution procedure were asked whether they would consider doing so in the future, and as can be seen in Figure 6.32, just over a fifth of companies (22% NET[57]) would consider using this procedure, yet seventy-one per

[57] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unlikely and 5 is very likely (Q58).

cent (NET[58]) would not. Again, no significant differences were denoted across company type, industry or whether they used an advisor.

These findings do point to the fact that decisions are being made informally amongst companies with ten or fewer shareholders.

Figure 6.32 Likelihood of using the written resolution procedure for those not currently doing so



Source: Q58. How likely would you be to consider doing so in the future? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely. Base: 48; small, medium and large private companies, weighted by economic impact.

6.7.3 Findings from companies who had not made any prior changes

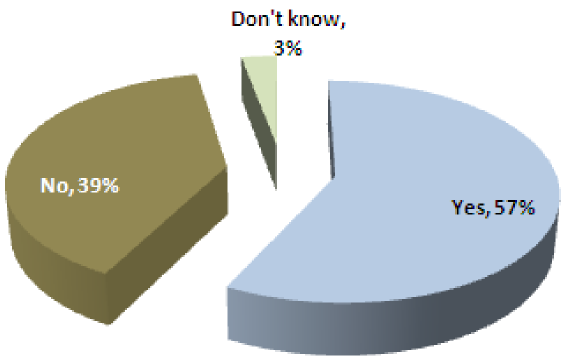
Companies who had not made changes, or taken steps towards making changes to this measure were firstly asked whether they themselves held AGMs (Figure 6.33). Interestingly, almost two-fifths did not, particularly significant amongst small private companies (49% of whom did not hold AGMs compared with 34% of medium private companies; full breakdown by company size in Section 2.6 of Volume Two). Despite no cost savings being realised for these companies, this is an example of where the Companies Act 2006 has brought law in line with existing practice, thus increasing compliance.

A significantly higher proportion of those not holding AGMs also referenced BIS publications and alerts as their original source of awareness of Company Law changes (63% of whom did not hold AGMs). Of those companies who did not hold AGMs, almost three quarters

[58] Includes those scoring 1 and 2 on a 5 point scale where 1 is very unlikely and 5 is very likely (Q58).

agreed that the Companies Act 2006 reduces the regulatory burden of Company Law (71% vs. 32% who were neutral and 28% who disagreed; to be explored further in Section 8).

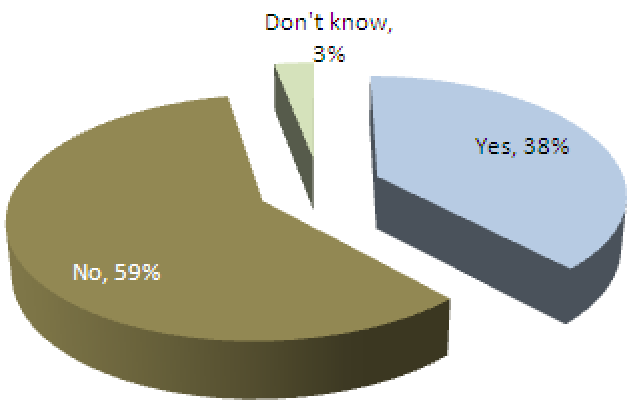
Figure 6.33 Companies who had not made a change: do they hold AGMs?



Source: Q118. Do you hold AGMs? Base: 504; small, medium and large companies; weighted by economic impact.

Positively, for those companies who still held AGMs, almost two-fifths agreed (Figure 6.34), when informed of the new deregulation, agreed that this would in fact be beneficial for their company, suggesting that with raised awareness take up of this change will in time increase. No significant differences were unearthed as to the profile of companies likely to utilise this deregulation.

Figure 6.34 Usefulness of removing requirement to hold an AGM



Source: Q119. The Companies Act 2006 no longer requires private companies to hold an annual general meeting, is this change something which is of assistance to your company? Base: 284; small, medium and large private companies, weighted by economic impact.

Companies were then informed that shareholder decisions may now be taken by a majority of the shareholders by a written resolution (rather than the unanimity that was previously required), and asked whether they would now consider using written resolutions. As shown in Figure 6.35, almost half of those questioned agreed that they would, again suggesting that raised awareness levels would lead to higher usage of these procedures.

Significantly more medium and large private companies agreed that they would consider using written resolutions than small private companies (43% and 48% vs. 28% respectively). Companies within manufacturing and wholesale and retail trade and real estate renting business activities also exhibited a higher agreement to use written resolutions than those in construction (44%, 43% and 42% vs. 20%). A higher proportion of those who used advisors also agreed they would consider using this revised procedure compared with those who did not (49% vs. 35%).

Companies who neither held AGMs nor would consider using written resolutions were asked how they currently undertook decisions. Given the high incidence of companies with ten or less shareholders, the predominate means cited was that of verbal communication and mutual agreement[59].

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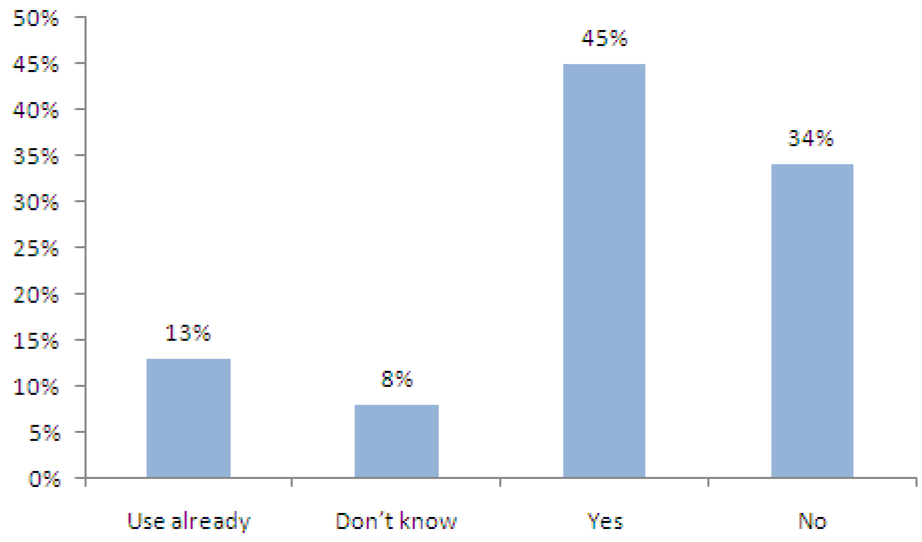
[59] A higher incidence (67%, unweighted) of those not holding AGM's nor considering using written resolutions was found in small private companies. Significantly more small private companies did not hold AGM's compared with medium private companies (49% vs. 34%).

Figure 6.35 Likelihood to consider using written resolutions



Q120. Shareholder decisions may now be taken by a majority of the shareholders by a written resolution (rather than unanimity that previously required). Are written resolutions something that you would now consider using? Base; 504; small, medium and large private companies, weighted by economic impact.

Case study 8 – Private company that has made changes to resolutions and meetings

The company is a privately owned medium sized company originally founded in Denmark offering paint and paint solutions to marine customers. It has a turnover of £15 million and 50 full-time staff in the UK. It was incorporated in the UK in 1945.

The respondent, the Company Secretary and Regional Finance Director, indicated that he found out about the 2006 Act '*just through general awareness of the accounting press and having seen some of Companies House's forms changing – in terms of structure and layout'.*

He felt that he found out about the changes almost by accident and that they had received a small list of implications from their auditors but nothing extensive. In spite of this generally low level of awareness the company has made some small changes as a result of the introduction of the Act, including changing procedures relating to resolutions and meetings.

The company still holds annual general meetings (AGMs) but following the 2006 Act they are '*nowhere near as formal as they used to be'*. The respondent feels that a less structured approach has resulted in less paperwork and bureaucracy to deal with. They have had no negative repercussions from the change with no shareholders raising concerns about this less formal approach to AGMs.

The organisation has also used written resolution procedures using an electronic voting method. They were aware of the need to send through the proposed resolution to their auditors and this procedure was followed. Members have the same number of votes whether passing a poll or a written resolution.

When asked about the cost-benefits of the new approach, the respondent indicated that there had been no obvious cost-savings to date because senior management had to spend time familiarizing themselves with the new system. Whilst they have not incurred costs for any external advice, the AGMs were previously held together with other meetings and so their abolition has not resulted in any tangible cost-savings. The respondent is unable to quantify any actual cost benefits resulting from changes to resolutions and meetings, but notes that the diminished requirement for paperwork has resulted in time savings *'which are nearly impossible to quantify'*.

Overall, the respondent felt that the 2006 Act, especially with reference to resolutions and meetings, has increased flexibility '*to some extent'* and that simplified and modernised company law '*which can only be a good thing*'.

> *'It's modernised things a little and [allowed us to] do away with some of the stuffy nonsense'*

Case study 9: Company that has made changes to meetings and resolutions

The organization is a private company working in the hospitality arena with 350 employees. It was incorporated in 1983. The limited company is owned by a holding company.

The respondent was aware of the Companies Act changes through her advisers and her attendance of a Companies Act implementation roadshow and felt that the objective of simplification had been achieved. She adds that '*it seems very easy to set up [a new company] now*'.

At present the Company still holds AGMs though they have passed a resolution to abolish them. The respondent feels that there are no risks associated with not holding AGMs '*as shareholders are the Company's directors'* and they have been promised *'an annual meeting instead of an annual general meeting instead...to keep them informed'*.

The respondent confirms that a copy of the proposed resolution to abolish AGMs was sent to the Company's auditors in advance of the shareholders' vote and that they were happy with it and raised no query. The respondent does not believe that there will be costs savings as a result of not having to hold AGMs as '*these are internal meetings anyway*'.

She believes that the changes to resolutions and meetings has not really affected the way the Company operates and that in terms of flexibility '*it seems very much the same'*. She notes though that they haven't had to do anything 'major' yet so accepts that her view might change once new and fundamental resolutions are passed in the future.

However, the respondent states that overall the 2006 Act '*is so easy that we keep looking at the book [listing all the changes] and thinking – are we sure we are doing it right? It can't be that easy*'.

In spite of her general positivity she did feel that whilst it had made it easier to set up a new company, some might abuse this provision to 'do dodgy dealings' and that '*more checks might be needed to ensure you are dealing with a true person...a real company*'.

6.8 Company Secretaries (small, medium, and large private companies; 12% taken any steps to make changes)

Stakeholders were unanimous in their views that the role will still be needed within large, listed companies, but agreed it made good business sense to remove the requirement for small private companies.

Just over a quarter (26%) of companies who had made a change did not have a company secretary, of which almost three-quarters used to have a company secretary and had abolished the role (small base).

Ninety-five per cent of companies who had not made a change had a company secretary- when informed of the abolition of the requirement to have a company secretary, over a fifth of companies agreed they would now consider abolishing the role (21%).

The removal of the requirement for private companies to have a company secretary was introduced on 6th April 2008, and aimed to bring about substantial cost savings for companies.

6.8.1 Stakeholder views

Stakeholders were unanimous in their views that the role will still be needed within large, listed companies. However, it was noted that it makes good business sense to remove the requirement for small private companies ('e.g. where the wife of the business owner was named the company secretary for sake of '85 Act'), and that it was not having a negative impact on the profession as a whole.

In terms of who would undertake the functions of a company secretary should a company cease to have one, it was suggested that 'for a few borderline companies the director will take on responsibilities'.

One stakeholder was however less positive about the development:

'This hasn't provided any real benefits. Many outsource and still have to fulfil certain admin duties anyway so can't save money. Some call another director (say the Finance Director), the company sec as well so not actually saving…'

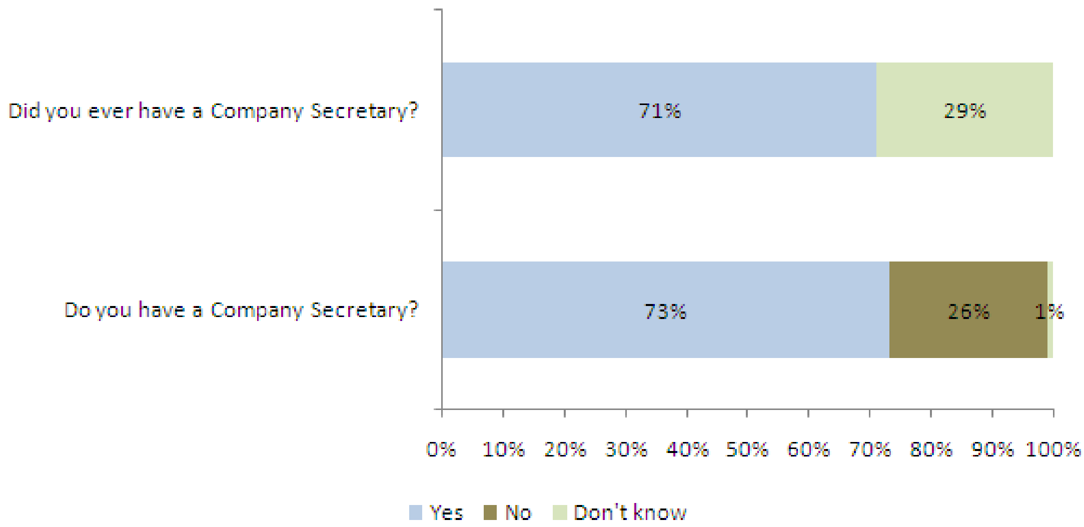
Furthermore another stakeholder commented that the benefits of this particular measure are 'illusory' as no qualifications were in fact required beforehand:

'Always remember that in the private company context you never were obliged to make sure your company secretary was qualified, if so, it could have been anyone, any business supporter, adviser, even before 2006, so I don't think the goalposts in that respect have changed, but that's why I say that the deregulatory benefits of this particular change are I think illusory'.

6.8.2 Findings from companies who had made a change (or taken steps towards doing so)

Of those companies who had made a change, or taken steps towards making a change within the remit of company secretaries, it was asked whether they currently had a company secretary; just over a quarter did not[60]. Of this quarter, almost three-quarters used to have a company secretary and had abolished the role (as seen in Figure 6.36; note: low base).

Figure 6.36 Prevalence of abolition of company secretaries



Source: Q59. Do you have a Company Secretary? Base: 53 Q60. Did you ever have a Company Secretary? Base: 16; small, medium and large private companies, weighted by economic impact.

For those who had made the change and abolished their company secretary role, the base size was too small to quantify the cost savings that nine percent agreed had been obtained (14) However, verbatim comments revealed that no negative impacts had been brought about, rather that no impacts had been noted or in the words of one company:

'it's less expensive, easier, simpler, less people involved, easier to control and easier to meet compliance'.

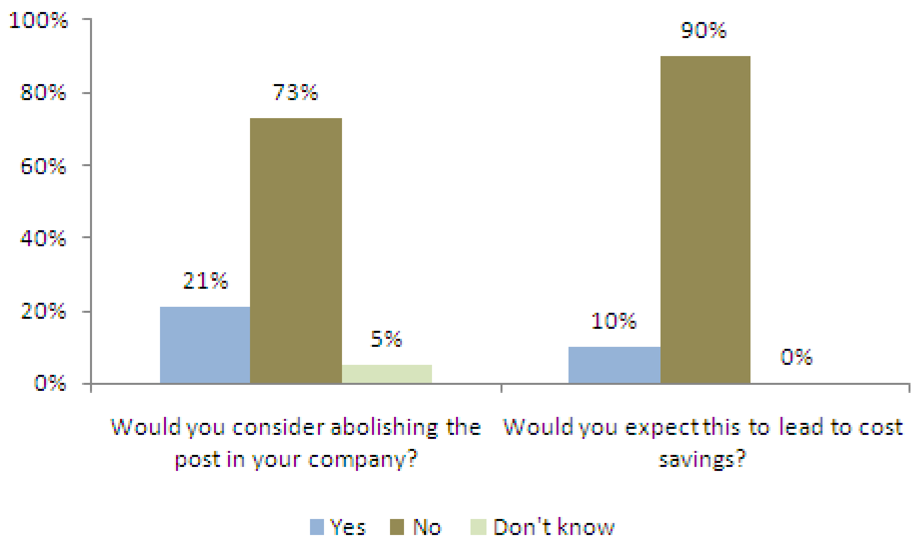
6.8.3 Findings from companies yet to make a change

All small, medium and large private companies who had not made a change (or taken steps towards making a change) within this measure were asked if they currently had a company

[60] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

secretary; ninety-five percent agreed, four per cent did not and one per cent did not know. All those who did have a company secretary were informed of the abolition of the requirement to have a company secretary and asked whether in light of this knowledge they would consider abolishing the role. Figure 6.37 illustrates the results, with just over a fifth of companies indicating that they would now consider abolishing the role, of which one in ten would expect this to lead to cost savings.

Figure 6.37 Likely abolition of company secretary role



Source: Q123. The Companies Act 2006 abolishes the requirement for private companies to have a company secretary. Would you now consider abolishing the post in your company? Base: 445. Q124. And would you expect this to lead to cost savings? Base: 125; small, medium and large private companies, weighted by economic impact.

6.9 Capital Maintenance (large private only; 11% taken any steps to make changes)

A degree of scepticism was detected surrounding the reduction of capital by way of a solvency statement from stakeholders, due to the effect the removal of the courts would have on public trust. Only one stakeholder thought the introduction of solvency statements was eagerly anticipated.

Issues with the statement of capital (as to how to classify shares) for quoted companies were identified by stakeholders and through case studies.

Eleven per cent of companies were however found to have made changes or taken steps towards making changes towards measures included within the broad area of capital maintenance.

Six out of eight respondents agreed that there had been cost savings from the relaxation of the prohibitions on financial assistance.

Time and cost savings were found to be the drivers of the solvency statement through case study 10 (Section 6.9); reference was made to companies not having used the former process as it was not financially viable.

Changes to the broad measure of capital maintenance included measures such as allotting share capital, alterations of capital, reductions of capital, alterations to the prohibition on financial assistance, redenomination of share capital. The two focal measures asked within the quantitative study included the prohibition on financial assistance for the purchase of a company's own shares, and the introduction of the solvency statement; the latter was introduced on 1st October 2008 and represented a simplified method of reduction of capital. Rather than employing a barrister and going to the high court, companies are now able to just send forms straight to Companies House.

6.9.1 Stakeholder views

A degree of scepticism was detected surrounding the introduction of the solvency statement from stakeholders, with frequent reference made to the public trust that was formerly associated by reducing capital via the courts:

'The simplification of statements a good idea, but there is a need to do things properly and to encourage public confidence - courts do this and the statements less so.'

Others did not think there would be a large take up in usage of solvency statements, and one stakeholder commented that he generally felt companies rated the importance of the security of court involvement above the tangible saving of money.

One stakeholder made reference to the fact that companies were '*chomping at the bit'* for the solvency statement to come in and, regarding financial assistance, that despite it not being something new, it did remove the 'whitewash procedure' formerly associated with it which would be a comfort to directors. Conflicting views, on solvency statements, were thus garnered as to whether or not companies (large private) were in fact utilising the new solvency statement as a facilitated route to reducing their share capital.

One teething problem regarding the statement of capital for quoted companies as to how to classify different shares was also identified by stakeholders (despite not being a focal area for this evaluation study), yet it is understood that discussions are already underway as to how to resolve this. Confusion was noted over the particulars, as the complexity was not anticipated[61]. This issue on a lack of clarity around what information to provide on particulars of complex share dealings was also noted within case study 14 on cost savings (Section 8).

6.9.2 Findings from companies who had made a change (or taken steps towards doing so)

From the quantitative study, it was found that 12% of all large private companies surveyed had in fact made a change (or taken steps towards making a change) in the broad field of capital maintenance. However, given the randomisation element of selection measures to be questioned in further depth, only eight companies were asked further questions on this measure, all of whom were aware of the relaxation of those prohibitions on financial assistance in the CA 2006. Furthermore, six out of eight respondents agreed that there had been cost savings from the relaxation of those prohibitions on financial assistance, which supports further findings derived from case studies (case study 10), where cost savings are heavily cited as the key driver in this regard. Impacts from the relaxation also included:

‘I think it’s a helpful step for business...saves money...cuts down red tape...’

‘Just ease of administration really’

‘Less cost and ease of administration.’

‘We pay less money to the lawyers for advice.’

Only a quarter of the eight companies had used the new method of reduction of capital supported by a solvency statement, although both agreed that this was an easier approach than the existing court-based route.

[61] http://www.icsa.org.uk/assets/files/pdfs/Press/socguide.pdf

Case study 10: Company that has made use of capital reduction by solvency statement

The organisation is a private limited company which specialises in property investment and development. It has a turnover of £60 million and four shareholders; three individuals and an Employers Benefit Trust that owns some of the shares on behalf of the employees.

The respondent, the Finance Director, attended several seminars and training sessions on the new Company Act run by the law firms his company deals with and so became aware of the process of reducing share capital through this means.

With regards to capital maintenance, the respondent notes that '*the way we do things is we incorporate a new company to buy a property, then we would buy another company and incorporate that and so on so that each company has its own property. As we then sold these properties, we were left with a lot of dormant companies that don't do anything. Some of them…had been founded by capital, shared capital and shared premium, other were founded by loans – so that they might just have £2 per share capital'*. The company wanted to remove all of these dormant companies that were no longer needed and were advised by their lawyers to make use of the capital reduction by solvency statement.

The respondent felt that the whole process was very simple and much faster in terms of timings, compared with having to go to court, taking just two days in total. He felt it was difficult to estimate how much they had saved in cost terms accurately but that it had probably saved them from employing another member of staff in order to deal with associated paperwork. According to the respondent '*even the lawyers said that [the new process] was a lot simpler…and they had gone to court in the past'* so it was easy for them to make comparisons.

Furthermore, he indicated that the process would not have been financially viable or of interest to them if they had had to use the court system:

> *'This is not something we would have done – the cost would have been enormous…instead we would have probably had the companies liquidated…but then we were looking at paying liquidation fees'.*

The respondent confirms that he would definitely recommend the revised process and adds that '*since we have done it, I have read in the professional journals that I read more and more people writing about it...it's becoming more widely known and used*'.

6.10 Directors' residential addresses (all company types; 52% taken any steps to make changes)

The majority of stakeholders thought this to be a helpful facility, but the key criticism was that previous addresses still remain on the register. Keeping two sets of records (one with home addresses and one without) was also thought to be increasing the administrative burden for companies.

Identity theft was cited by a stakeholder as a more pressing concern than personal intimidation and privacy.

Three-fifths of companies who had made a change had already provided a new service address to Companies House for the public record (60%); almost two-fifths had yet to do so (37%).

The majority of companies had chosen change their address because the option was available (58%); fewer companies stating that it was due to privacy from creditors or shareholder (5% NET[62]), or due to security from personal threats or intimidation (24%).

One percent of companies had had complaints about the failure to provide a residential address: the nature of these complaints included one from animal rights protestors and one from banks/ counterparties.

Those who said they had made a change but had not yet submitted a service address were asked their likelihood of doing so in the future, and just over two-fifths agreed that they intended to do so (44% NET[63]).

For companies who had not made a change to directors' addresses, seventy eight per cent had not provided a new address, although ten percent actually agreed they had.

Just under a third of companies who had not made a change would likely change their address (30%), whilst over two-fifths would still not (44%).

The address on the public record for all directors is now a service address. Residential addresses are now protected. But for any director in post on 1 October 2009, the residential address is given as the service address until a different service address is filed.

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[62] Aggregate percentage of those stating separately they had changed their address due to privacy from creditors and shareholders.

[63] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unlikely and 5 is very likely (Q74).

6.10.1 Stakeholder views

Whilst the majority of stakeholders thought this to be a helpful facility, it became apparent that it is widely known that the new measure does not apply retrospectively (with risk having to be demonstrated in order to block out previous addresses used); this was the key criticism of this amendment. It was also referenced that credit agencies can still access home addresses and there were security implications of this, yet another pinpointed a distinct issue with former details remaining on the public record:

'It's a big thing. Directors were upset as their previous address remains. One director had their identity stolen...it's not so much to do with animal rights'.

Another downside that was mentioned was that it can be difficult to determine who are actually directors (e.g. four J. Smiths), and that it has actually increased red tape as companies now have to keep two sets of records - one with home addresses and one without.

That aside it was generally conceded by stakeholders interviewed that the Act had '*done the right thing'*.

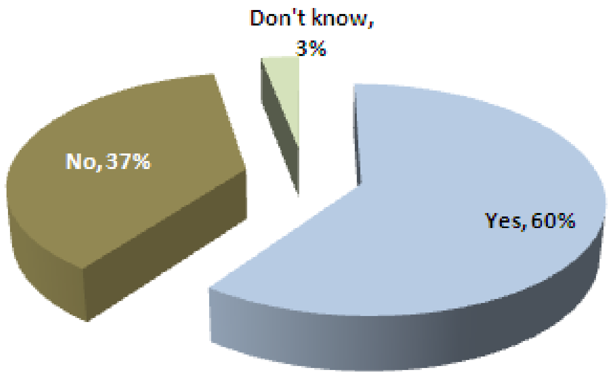
6.10.2 Findings from companies who had made a change (or taken steps towards doing so)

All companies who had taken steps towards making a change relating to directors' addresses were asked if they had already provided a new service address to Companies House for the public record[64]; it was found that three-fifths had done so, almost two-fifths had yet to do so and three per cent did not know (Figure 6.38). Companies incorporated by Companies House over ten years ago were found to be more likely to have submitted a new service address (69%) than those incorporated 4-10 years ago (41%).

Industry wise, companies within wholesale and retail were also significantly more likely to have provided a service address (77%) than those in manufacturing (52%) and real estate renting business activities (55%). Companies who described their understanding of Company Law as 'quite well, but not completely' were also more likely to have changed their address (62%) than those who described their understanding as 'not very well' (45%) or 'not at all well' (44%).

[64] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

Figure 6.38 Companies who had made a change: Provided a new service address to Companies House for the public record?

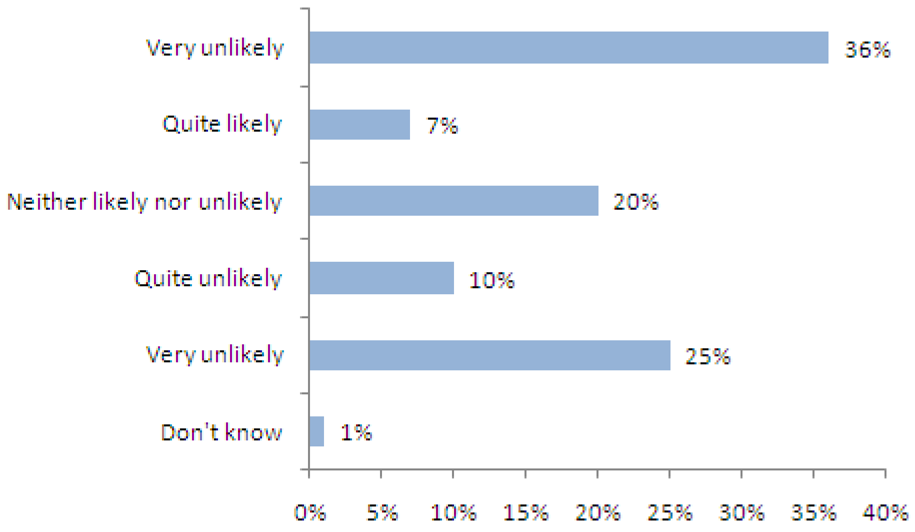


Source: Q73.Have you provided a new service address to Companies House for the public record (to replace the use of the residential address as the service address)? Base: 265; all company types, weighted by economic impact

Those who had not yet submitted a service address were asked their likelihood of doing so in the future, and just over two-fifths agreed that they intended to do so (44% NET[65]; Figure 6.39), although just over a third, despite saying that they had taken steps towards making a change to this measure, would not in fact be likely to consider providing a service address to the public record.

[65] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unlikely and 5 is very likely (Q126).

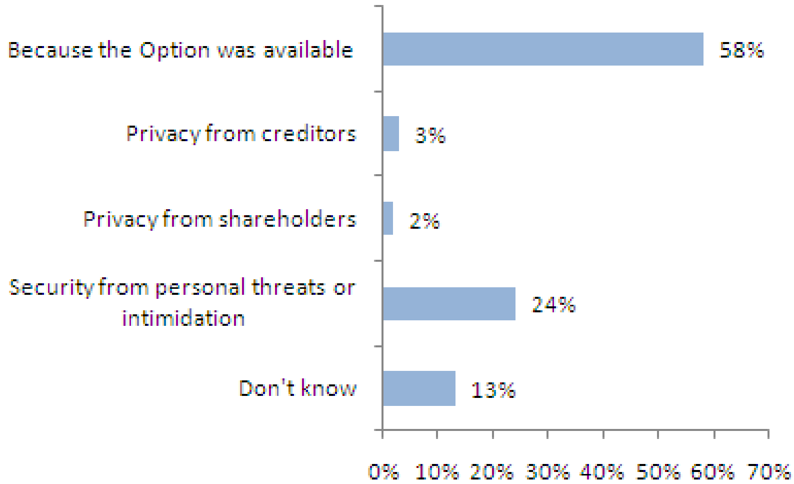
Figure 6.39 Likelihood to consider providing service address in future if not yet done so



Source: Q74 How likely would you be to consider doing so in the future? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely. Base: 95; all company types, weighted by economic impact.

Companies who had changed their address were asked why they had chosen to do so; the results of which are displayed in Figure 6.40. For the majority, they had chosen to do so because the option was available with far fewer companies stating that it was due to privacy from creditors or shareholder (5% NET), and just under a quarter saying it was due to security from personal threats or intimidation. Significantly more companies incorporated by Companies House over ten years ago (31%) cited the latter as the reason for changing their address than companies incorporated 4-10 years ago (7%).

Figure 6.40 Why companies chose to change the address listed on the public record



Source: Q75 Why did you choose to change the address listed on the public record? Base: 159; all company types, weighted by economic impact.

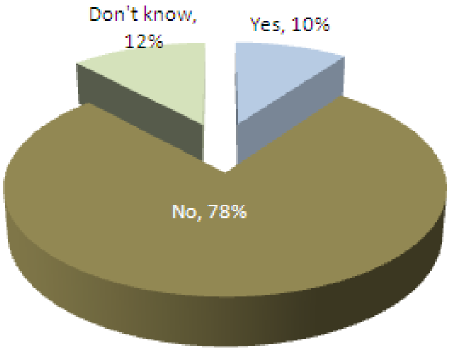
Companies were next asked if they had had complaints about the failure to provide a residential address, and it transpired that just one percent had, whilst ninety-eight per cent had not (base: 265). In terms of the nature of the complaint, one respondent cited they had received a complaint from animal rights protestors (but was not willing to expand on why), whilst another gave a more in depth response:

'I suppose our main complaint is from banks and counterparties who require answers to KYC (know your customer) questions. They ask for director residential addresses for money laundering - sorry, ANTI-money laundering purposes. Previously we would refer them to Companies House, because that's the regulatory body. And now they ask for copies of more personal documentation which we are unhappy to provide, because we are not always sure what is going to happen to that copied documentation once it's in the hands of counterparties. An example ; on a number of occasions we have had to provide multiple copies of the same documentation because the counter party had mislaid it, and it could be a serious fraud risk. Yes; that's our main difficulty there'.

6.10.3 Findings from companies yet to make a change

Companies who had not made changes relating to this measure were also asked whether, in fact, they had provided a new service address to Companies House for the public record, and it transpired that ten percent had, seventy-eight per cent had not and twelve per cent did not know (Figure 6.41).

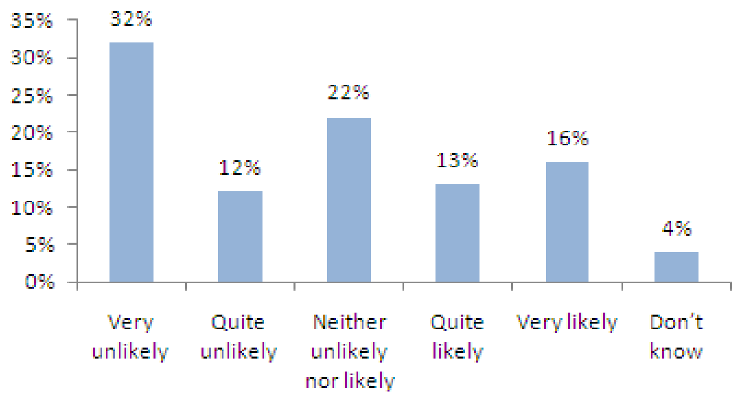
Figure 6.41 Companies who had not made a change: Provided a new service address to Companies House for the public record?



Source: Q125. Have you changed the service address registered at Companies House for the public record (to replace the use of the residential address as the service address)? Base: 550; all company types, weighted by economic impact.

As with those who had taken steps towards making a change, companies who had not were informed of the change in proceedings and then asked the likelihood of their providing a service address in the future (Figure 6.42). Just under a third of companies would likely change their address, whilst over two-fifths would still not. Significantly more small private companies were unlikely to provide a service address than medium and large private companies (44% and 36% respectively).

Figure 6.42 Likelihood to consider providing a service address in the future



Q126. The address on the public record for all directors is now a service address. Residential addresses are now protected. But for any director in post on 1 October 2009, the residential address is given as the service address until a different service address is filed. How likely would you be to take advantage of this so as to change your address on the public record? Please rate your likelihood on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely. Base: 446; all company types, weighted by economic impact.

6.11Trading disclosures (all company types; 50% taken any steps to make changes)

Stakeholders held neutral views on this measure, although protection against new businesses encroaching on the goodwill of existing companies with similar names was cited as a positive.

All companies asked were aware that a company's name and the address of its registered office must be included in business letters and websites.

Ninety-eight percent of companies were aware of the obligations to display the company's name in all company documentation and in signs at the registered office and at all other business premises.

The Companies Act 2006 brought in provisions governing what details a company must include on signs, stationery, and websites on 20th January 2007. With the exception of the requirement to include information on websites, all requirements were restatement rather than changes in the law.

6.11.1 Stakeholder views

Stakeholders did not proffer strong views one way or the other on this measure although generally saw no associated disadvantages. One stakeholder noted that the Act provided protection for new businesses encroaching on the goodwill of existing companies with similar names and thought that this, in particular, was a positive protection.

6.11.2 Findings from companies who had made a change (or taken steps towards doing so)

Companies who indicated that they had made a change (or taken steps towards making a change) were firstly asked whether they were aware that a company's name and the address of its registered office must be included in business letters and websites[66]; one hundred per cent awareness to this was captured. In terms of awareness of the obligations to display the company's name in all company documentation and in signs at the registered office and at all other business premises, ninety eight percent of those asked were also aware (base size of 186).

All companies were then asked whether they had taken steps to ensure that their company complies with these disclosure requirements, and a summary of responses given follows below.

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[66] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

‘Well as far as disclosure is concerned all company documents show the trading title of the company directors, our terms of trading are normally attached to the company. We show the fax machine email address and website.’

‘Yes we have we issued a notification to all staff regarding their requirements to the letterhead. We also updated our website and we issued a notification to all staff regarding their email signoff’.

‘Yes we have actually put up signs in all our cinemas and premises.’

6.12 Register of shareholders/ annual return (all company types; 52% taken any steps to make changes)

Register of shareholders

Stakeholders were generally neutral on this change too, although some admitted it was an area ‘not well understood’; criticisms included that the same rules should apply to shareholders as directors (regarding the removal of shareholder addresses).

No examples were given by stakeholders whereby a company has referred someone seeking access to the register to the courts, and they believed the barrier to doing so to be cost.

The majority of companies were not aware that the period for keeping details of former shareholders on the register had decreased (57%), although over two-fifths were aware (42%).

In line with stakeholder perceptions, no company interviewed had applied to the court to prevent someone having access to the company’s register of shareholders; thirteen percent (NET[67]) however thought it likely that someone may seek access to their register of shareholders in the future for dubious reasons.

Just over two-fifths (64%) of companies were aware that they could apply to the court to prevent access to the register if they thought it was wanted for dubious reasons, yet over a third were not (36%).

Just fewer than 1 in 10 companies were aware of other impacts as a result of the changes to the rules governing access to the register.

Annual return

Just under a fifth of companies (18%) agreed that there had been benefits to companies or shareholders from the provision to remove shareholders’ addresses from the annual return.

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[67] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unlikely and 5 is very likely (Q83).

Three per cent of companies were aware of concerns as a result of the removal of shareholders' addresses; these were based on lack of access to credit assessments.

The register of shareholders/ annual return involved changes so that for most companies, shareholders' addresses were not included in annual returns. Public companies only provide names and addresses of those with significant shareholdings. This change was introduced on 1st October 2009.

6.12.1 Stakeholder views

Stakeholders were mostly neutral on this matter, with one saying that it was not well understood, but '*not a significant issue*'. It was however noted that the change did not include the removal of all shareholder addresses- a task that was deemed too complicated to carry out. Despite this not being an issue, it was thought that '*the same rules should apply to both directors and shareholders'.*

No examples were given whereby a company has deferred someone seeking access to the register to the courts. One reason given by a stakeholder as to why this has not occurred is included below:

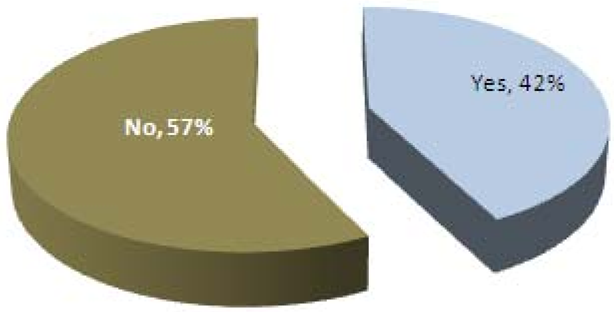
'In practice there has not yet been a case where someone has applied to the register and for reasons of not proper practice, the company has deferred them to the courts…they are put off by the cost of doing so. Possibly not working, as companies are releasing registers? But the fact they have to provide a reason in the first place may deter people from asking. But in the end they are not prepared to take the financial risk to fight'.

6.12.2 Findings from companies who had made a change (or taken steps towards doing so)

All companies who had made a change, or taken steps towards making a change were firstly asked if they were aware that the period for keeping details of former shareholders on the register[68] (from twenty to ten years); unsurprisingly (given some stakeholders were unaware), the majority of companies were not in fact aware of this change (Figure 6.43).

[68] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

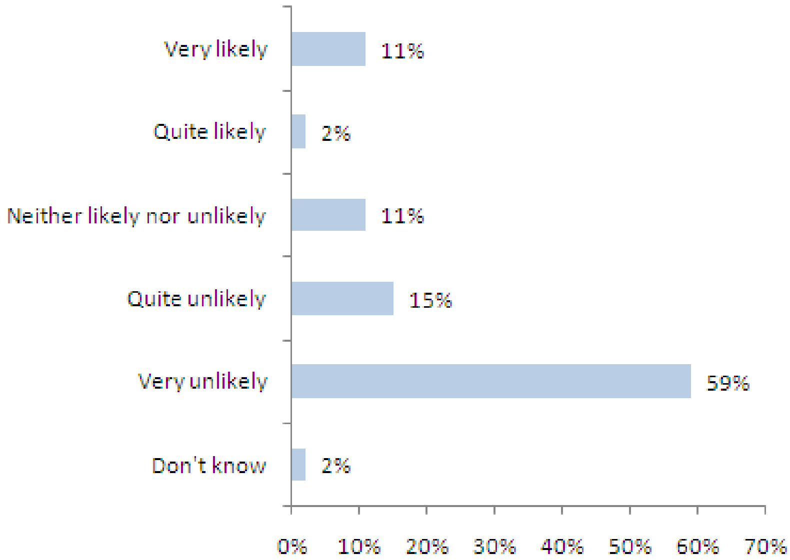
Figure 6.43 Awareness that the Act reduces the period for keeping details of former shareholders on the register



Source: Q81. Are you aware that the Act reduces the period for keeping details of former shareholders on the register? Base: 222; all company types, weighted by economic impact.

When asked whether companies had applied to the court to prevent someone having access to the company's register of shareholders, in line with stakeholder perceptions, no one had in fact done so (base of 222). However, when asked whether they thought it likely that someone may seek access to their register of shareholders for dubious reasons, thirteen per cent (NET) indicated that they thought this to be likely (see Figure 6.44 below). This response was given by a greater proportion of directors (19%) than non directors (5%), and by those with an awareness of Company Law (14%) than those not (1%). Companies within real estate renting business activities were furthermore more likely to think that someone may seek access their register for dubious reasons (23%) than those in manufacturing (1%). It was finally more widely cited by those who used an advisor (15%) than those who did not (1%).

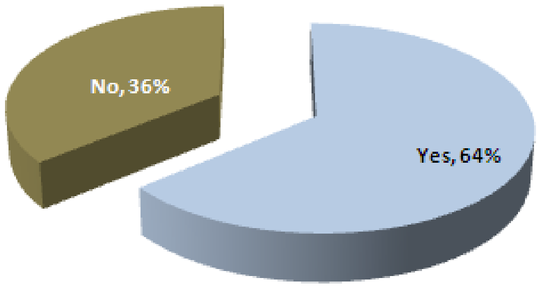
Figure 6.44 Likelihood that someone may seek access to their register of shareholders for dubious reasons



Source: Q83. How likely do you think it is that someone may seek access to your register of shareholders for dubious reasons? Please rate on a scale of 1 to 5 where 1 is very unlikely and 5 is very likely. Base: 218; all company types, weighted by economic impact.

Companies were additionally asked if they were aware that they could apply to the court to prevent access to the register if they thought it was wanted for dubious reasons (Figure 6.45). Over two-fifths of companies were found to be aware of their right to do so, yet over a third were not. Large private companies were significantly more likely to be aware than both small and medium sized private companies (65% vs. 36% and 38% respectively; see Section 2.7 in Volume Two for a complete breakdown by company size).

Figure 6.45 Awareness that companies can apply to the court to prevent access to the register if wanted for dubious reasons

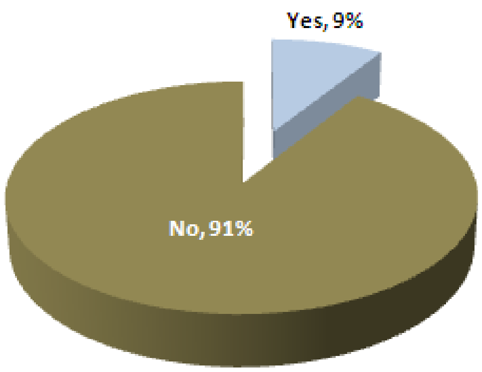


Source: Q84 Are you aware that you can apply to the court to prevent access to the register if you think it is wanted for dubious reasons? Base: 218; all company types, weighted by economic impact.

When asked if they were aware of any other impacts as a result of the changes to the rules governing access to the register, nine per cent in fact were, possibly higher than anticipated (Figure 6.46). Examples of these other impacts revolved primarily around returning the confidentiality of shareholder records and only having to disclose details of substantial shareholders on the public register. One example (as interpreted by the respondent) included:

'We were aware of the ability to prevent what we would describe as non bona fide searches of companies registers, there was initially some uncertainty as to what constitutes bona fide and non bona fide'.

Figure 6.46 Aware of other impacts as a result of the changes to the rules governing access to the register?

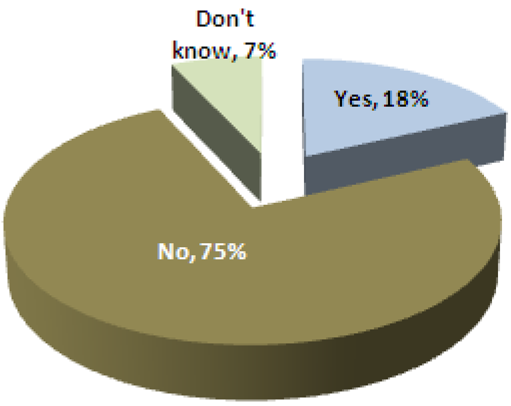


Source: Q87. And, are you aware of any other impacts as a result of the changes to the rules governing access to the register? Base: 222; all company types, weighted by economic impact.

6.12.3 Annual Return

When asked whether there had been benefits to companies or shareholders from the provision to remove shareholders' addresses from the annual return, just under a fifth of companies agreed that there had been (Figure 6.47). Public companies registered the highest incidence of agreement (19%), significantly higher than that stemming from small private companies (4%). Companies in real estate renting business activities also agreed strongly with this (28%) opposed to those in manufacturing (5%).

Figure 6.47 Were there benefits from removing shareholder addresses from the annual return?



Q89. Have there been benefits to you or your shareholders from the provision to remove shareholders' addresses from the annual return? Base: 222; all company types, weighted by economic impact.

Companies were also asked if they were aware of any concerns arising as a result of the removal of shareholders' addresses, and just three per cent agreed that they were, whilst ninety-seven per cent were not. When probed as to what these concerns were, comments collated included:

'It makes credit assessment extremely difficult.'

'The money laundering regulation required the shareholders' addresses and the removal of the shareholders from Companies House makes the regulation harder to indentify.'

'Knowledge of the shareholders enables us to more thoroughly investigate the ownership and providence of a company. Removal of that requirement means it's more difficult for us to access that company'.

6.13 Auditor limited liability agreements: (medium and large private, public and quoted; 17% taken any steps to make changes)

The majority of stakeholders were sceptical as to whether companies, particularly large private companies, are entering or will enter such agreements, due mainly to the lack of identifiable advantages for companies themselves. The issue of companies with US dual listing not being able to enter such an agreement was also referenced by more than one stakeholder.

Seventeen per cent uptake was, therefore, higher than anticipated by stakeholders.

Amongst companies who had entered an agreement, a significantly higher proportion of public companies had done so compared with medium private companies (21% vs. 14%).

Just over half of companies asked this section (and who had therefore made a change or taken steps towards doing so) had actually entered an agreement (55%), and one fifth had not but had taken steps towards doing so (20%).

When asked what benefits had been derived from entering an agreement, several companies did not see there to be any advantages, indicating that directors, unwittingly, in these cases, may in fact contravening their duties (within Section 172).

Other companies referenced cost savings as an advantage, indicating that companies could be viewing these agreements as a trade off in terms of limited liability for reduced auditor fees.

A theme picked up on through case studies was that of continuity; two respondents noted that a hypothetical cost saving was derived as anticipated rises in costs were avoided by entering into such agreements, and in order to stay with the same firm and not increase such cost increases, they opted for the agreement. The effect may have been to avoid hypothetical cost increases.

A third of auditor limited liability agreements were put in place from January to October 2009, whilst a fifth from October 2009 to present (19%).

Reduced fees and longevity of relationship would incentivise further companies who had not yet entered an agreement to do so, although a cluster of companies who would not be incentivised was evident.

Auditor limited liability agreements were introduced through the Companies Act on 6th April 2008, and put in place provisions allowing companies to enter into an agreement with an auditor, limiting the liability of that auditor in cases of professional negligence. They are of topical debate in the business world, and in the media. Recent publications point to auditors facing increasing indemnity fees due to the banking crisis which '*may lead to professional indemnity increases… Insurance companies will then probably start to raise premiums if they see claims in the offing, or the likelihood of claims*.'[69] (also cited by a case study respondent), thus results will be analysed whilst taking into account contextual information.

[69] http://archives.tcm.ie/businesspost/2010/05/09/story49130.asp

6.13.1 Stakeholder views

Only one stakeholder made reference to the fact that companies had entered into agreements; the majority were sceptical whether companies, particularly large companies, are entering or will enter such agreements, for reasons such as:

'This hasn't happened as it's only in the auditors interests rather than companies so there's no drive to make it happen.'

'Companies are not entering these agreements...It singles out auditors...shareholders do not want change'.

One stakeholder posed the interesting question interlinking directors' duties with auditor limited liability agreements and which will be discussed later in this section:

'They can only be used if the director's view is that it is in the interests of the Company…limiting liability is unlikely to limit the size of the auditor's fees - so what would be the benefit to the company of agreeing to limited liability?'

The unforeseen problem of not allowing companies with US dual listing to enter such an agreement was also referenced by more than one stakeholder.

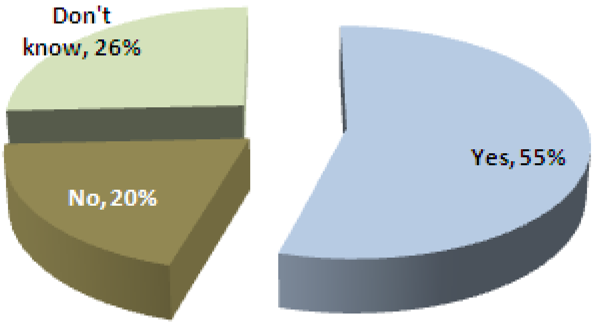
6.13.2 Findings from companies who had made a change (or taken steps towards doing so)

As already seen, seventeen per cent of companies eligible to enter into an auditor limited liability agreement had either done so or taken steps towards doing so; a higher proportion than anticipated by most stakeholders interviewed. Amongst companies who had entered an agreement, a higher proportion of public companies were discovered (21% of total sample) compared with medium-sized (14%) private companies. Despite no significant differences to other levels, twenty-two percent of quoted companies were also found to have taken steps towards, or having entered an auditor limited liability agreement.

Industry wise, the highest incidence occurred in the transport, storage and communication sector (28%) compared with wholesale and retail trade (8%) and real estate renting business activities (15%). Finally, there was a higher proportion of those who found the changes in Company Law difficult to understand (26%) amongst those who had entered an agreement compared with those who found the changes easy who had entered an agreement (17%).

To verify numbers of those who had actually already entered into an auditor limited liability agreement, a randomised selection of companies were initially asked this[70] (Figure 6.48); just over half had actually entered an agreement, and one-fifth had not but had taken steps towards doing so. However, given the general consensus amongst stakeholders was that companies have not and likely will not enter such agreements, this is still a significant finding, and numbers entering would be expected to increase if the twenty percent who have not yet entered such an agreement (but taken steps towards doing so) in Figure 6.44 is representative of the wider UK business population.

Figure 6.48 Had companies entered an Auditor Limited Liability Agreement?



Source: Q93. Has your company entered into an auditor liability agreement? Base: 60; medium private, large private, public and quoted, weighted by economic impact.

For those who had entered an agreement, it was asked what the benefits had been; a selection of example responses can be seen below:

'Nothing. They were more looking to us. It was more for their benefit than us'

'There is a reduced cost involved as far we're concerned'.

'I suppose comfort. Our agreement with our auditor is to do the audit'.

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[70] Please note that data included in this section is based on a randomised sub group of companies and not on all companies who indicated that they may have taken steps towards or had made changes to this measure. Therefore, throughout this section data cannot be generalised with the overall sample as to the proportion of companies making set changes.

'No benefits obtained because the liability is restricted now whereas before it was unrestricted. It is more relevant to us than the auditors because there is more emphasis on us getting the figures right than the auditors. This is due to various malpractices that have taken place such as at Enron'.

'I don't think we get any benefit from it'.

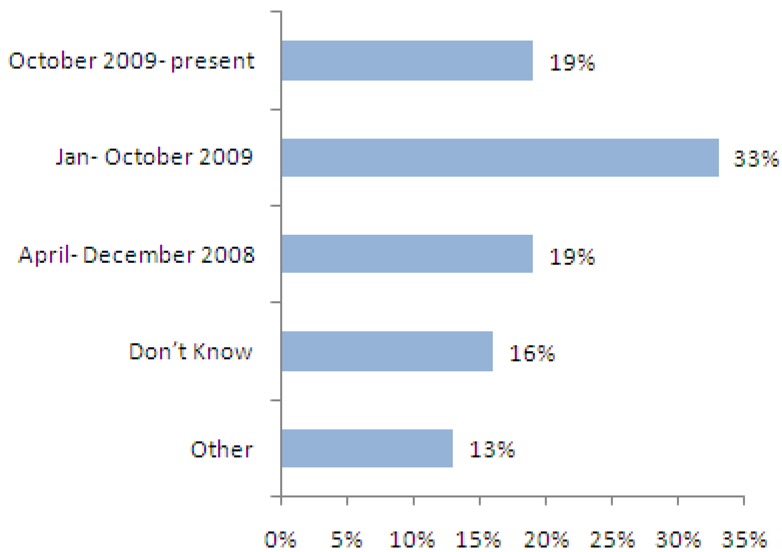
'At the moment very little, may be a slight reduction in audit costs'.

'We have had good professional advice.'

References to no benefits, as depicted by one stakeholder, do however reveal that directors, unwittingly, may in these cases be in fact contravening their duties (within Section 172) as they do not see there to be advantages to the company. Other references to cost savings however indicate that companies could be viewing these agreements as a trade-off in terms of limited liability for reduced auditor fees. A theme picked up on through the case studies was that of continuity; two respondents noted that a hypothetical cost saving was derived as anticipated rises in costs was avoided by entering into such agreements (the increase in indemnity insurance was noted as a reason for cost increases), and to stay with the same firm and not incur such cost increases, they opted for the agreement.

A third of auditor limited liability agreements were put in place from January to October 2009 (Figure 6.49), whilst a fifth from October 2009 to present. Thirteen per cent cited dates outside of the implementation dates and were captured separately.

Figure 6.49 When was the auditor liability agreement put in place?



Q95. And when was the Limited Liability Agreement put in place? Base: 38; medium private, large private, public and quoted, weighted by economic impact.

Those who had not yet entered into an agreement were asked what would incentivise them to make use of this option. Three key themes emerged: reduced fees, longevity of relationship, and those who would not be incentivised:

‘We don't wish to because we believe in not limiting the liability of our auditor.’

‘Reduced audit fee. No advantage for us unless they have a reduced fee with the limited liability.’

‘Auditors have been taking care of us for a long time…the long relationship is the incentive.’

Case study 11 – A company that has undertaken an auditor limited liability agreement

The organisation provides high-profile sporting events and activities in Scotland. It is a public company with a turnover of almost £30 million.

The auditor limited liability agreement was introduced in 2008. The agreement was first suggested by the auditors themselves, but the company board had several accountants sitting on it and all were aware of the precedent that the demise of Arthur Andersen had created. The management team were, therefore, understanding of their auditors requesting such an arrangement.

For both the company and the auditors, the motivation for introducing the agreement was financial. The agreement helped protect the auditor, but it also meant that the costs of audit work were kept under control. The alternative for the company was continuing with their existing arrangements but fees for audit increasing significantly. No reduction in fees was achieved as a result of the agreement, but an anticipated rise in costs was avoided.

The agreement in place in this instance is quite straightforward, a ‘plain vanilla’ agreement covering audit and some tax advice. Under the agreement the auditor’s liability is capped rather than liability being shared.

There was only limited debate at board level on introducing the agreement. The finance sub-committee worked over the agreement in detail and this was passed to the board for approval. As mentioned, as part of their own Continuing Professional Development, the members of the board with accountancy backgrounds were aware of the increasing pressures on auditors following the Arthur Andersen debacle. No external advice was sought or considered to be needed. The shareholding structure of the company meant that no shareholder approval was required to make the change.

Overall, the company is happy with the agreement. It has allowed them to retain their existing auditors while avoiding a substantial increase in fees and with no anticipated negative consequences for the firm, given their lines of business are mature and well understood.

7 Advice, guidance and third parties

Stakeholder views

Stakeholders interviewed collectively imagined that professional advisors would play a key role in instigating awareness of the changes in Company Law, and too in initiating change; the consensus was that advisors were an appropriate and sensible means of knowledge transfer.

Reinforced through case studies, stakeholders believed that advisors will have sent out briefings but only where companies needed to make a change. As suggested by one case study respondent, the push from third parties may have made companies who needed to know about changes a bit sceptical about their necessity and relevance.

The extent to which BIS helped raise awareness was applauded by stakeholders but it was larger companies who were perceived to be the key beneficiaries of such activity.

Business views

One in five companies became aware of changes to Company Law through BIS publications or alerts (20%), almost three quarters became aware through their advisor (71%), and over half through their own institute (56%).

Companies aware of the Act but who had made no changes predominantly had become aware of the Act through other wide ranging means, such as training courses, personal investigation, and other publications.

Companies House

Stakeholders made positive references to Companies House as a source of guidance for companies and an awareness channel, and positive ratings were also received in terms of Companies House being instrumental in raising awareness (59% NET[71])

Overall, over three-fifths of companies had used the Companies House website as a source of information on company law (64%).

Almost three-fifths of companies who had used the Companies House website as a source of information were satisfied with the usefulness of the website (59% NET[72]), and almost half agreed it was helpful (45% NET[73])

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[71] Includes both those who became aware through Companies House Roadshows and Companies House publications.

[72] Includes those who scored 4 and 5 on a five point scale where 1 is very unsatisfied and 5 is very satisfied (Q143).

Third parties

Eighty-three per cent of companies overall used an advisor; significantly more large private, public and quoted companies were found to do so than small private companies (81%, 82%, 90% vs. 73%)

Solicitors were the over-riding source of advice for companies (68%) overall, followed next by accountants (39%); auditors were also heavily cited as another source of advice.

The principal tasks of solicitors/ accountants were to deal with HMRC (42%) and draw up accounts (37%); contact with whom was found to be for over a third of companies ‘as and when required’.

Enhanced guidance would make companies feel less compelled to use an accountant or solicitor, and communications should be targeted by company size

Companies would rather receive news of changes to Company Law via email, although significantly more small private companies would prefer to receive direct mail than other company sizes.

Measure specific, highest usage of advisors was found with capital maintenance, enfranchising indirect investors and access to company information; lowest use was found with regards company secretaries.

7.1 Overall sources of awareness

7.1.1 Stakeholder views

Of utmost interest in this evaluation study was the source of guidance in determining levels of awareness of compliance with or adoption of the measures. This has been closely assessed whilst detailing findings to enable solid conclusions to be drawn and consolidated. Stakeholders interviewed collectively imagined that professional advisors would play a key role in instigating awareness of the changes in Company Law, and too in initiating change. Several institutions interviewed actively produced their own guidance material and encouraged awareness for companies of changes through this means. Guidance on the business review (Quoted Companies Alliance), directors’ duties (CORE) and capital maintenance measures (ICAEW) were examples of such guidance produced and disseminated to relevant membership bases.

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[73] Includes those who scored 4 and 5 on a five point scale where 1 is very unhelpful and 5 is very helpful (Q144).

One stakeholder summed up the general consensus by stating:

'Financial and legal advisers will be instrumental in initiating change'

Stakeholders by and large reflected on the use of advisors positively, with one stakeholder stating that advisors represented 'an entirely appropriate and sensible means of knowledge transfer'.

It was also noted that it would be the Law firms rather than companies who had pushed for change with their clients, thus suggesting that changes may not have been proactively taken by companies themselves, and the particular changes made or not made could have been influenced by what advice they had been given by their advisors. This reactive relationship from the third party was referenced on more than one occasion, but it was furthermore pointed out that advisors will have sent out briefings but only where companies needed to make a change. Case study 12 (Section 8) was a prime illustration of the latter, and the respondent felt that companies may ignore the changes because they felt that they were being sold something by advisors that they didn't in fact need. He felt that the push had all come from advisors yet recognised disadvantages of this route:

'This might have made some companies who could have done with knowing about this a bit sceptical as you know if lawyers are involved it is going to cost. I think a lot of companies would be wondering if this was all smoke and mirrors and it might have been better if some of this push had come from somewhere else' (case study 12)

The Practical Law Company[74] was cited as a 'know how' of guidance by one stakeholder; they deliver and maintain the guidance, analysis and materials front-line lawyers need and were, as explained by this same stakeholder, very much involved in the preparation of guidance material made available on changes implemented through the Companies Act.

As noted through analysing awareness of individual measures, press releases, according to one stakeholder *'did not make enough of key changes*'.

In terms of BIS's role in promoting awareness, the general perception from stakeholders was that together with Companies House they did indeed help to raise awareness, but not on '*the guidance on the kind of behavioural changes that could be made (with reference to directors' duties)'.* It was noted by another stakeholder however, that to act as an interpreter of guidance could have been *'a legal minefield*' for BIS, and that *'it is the role of professional advisors to do this'*.

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[74] http://www.practicallaw.com/4-200-8304

Guidance booklets produced by BIS and directed at small private companies were referenced by more than one stakeholder, yet the outreach of such guidance is questionable given the results shown in Figure 7.1, whereby despite one in five companies becoming aware of changes to Company Law through BIS publications or alerts, only eleven per cent of small private companies had become aware through this channel (significantly lower than quoted companies, 28% of whom had become aware through this channel).

One stakeholder furthermore noted that the BIS website (if companies knew of it) had lots of information, and that BIS tried to promote changes to stakeholders, who in turn would promote these to their members (which was seemingly done). References to road shows and conferences were also made, with one stakeholder surmising his view through saying:

'There were no gaps in what they were not doing'

However, on the flip side, despite publications aimed at small private companies, it was felt that larger companies were the key beneficiaries of efforts to raise awareness on the Companies Act 2006:

'For large companies it was information overload (from road shows to breakfast seminars); smaller companies could have been missed'.

7.1.2 Business views

When companies were asked how they had originally become aware of recent changes to Company Law, particularly the Companies Act of 2006, as can be seen in Figure 7.2, almost three quarters of all companies became aware through their advisors (this was noticed significantly more so by large private (73%) and quoted (78%) companies than small private (46%), medium private (49%) and public (59%) companies). All differences amongst company classifications can be observed in Figure 7.1 below.

Figure 7.1 Differences in source of awareness of recent changes regarding Company Law by company size

	Total	Small	Medium	Large	Public	Quoted
Advisor	71%	46%	49%	73%	59%	78%
Own institute	56%	26%	48%	55%	54%	63%
Press comments	55%	38%	38%	53%	50%	63%
Companies House Publications	49%	48%	36%	48%	54%	50%
Business seminar	41%	21%	32%	43%	37%	41%
Networking groups	37%	13%	19%	33%	33%	52%
BIS publications or alerts	20%	11%	17%	17%	17%	28%
BIS website	17%	14%	12%	15%	15%	22%
Companies House Roadshow	10%	4%	6%	9%	7%	15%
Other	21%	17%	15%	23%	22%	17%

Source: Q8a. And how did you become aware of any changes? Was it through…Base: 709; all company sizes, total column weighted by economic impact.

As can be observed, key differences were noted with regard to:

Press comments: Most widely cited by large private and quoted companies than small and medium private companies.

Business seminars: Prompted higher awareness levels from large private, public and quoted companies than small private companies.

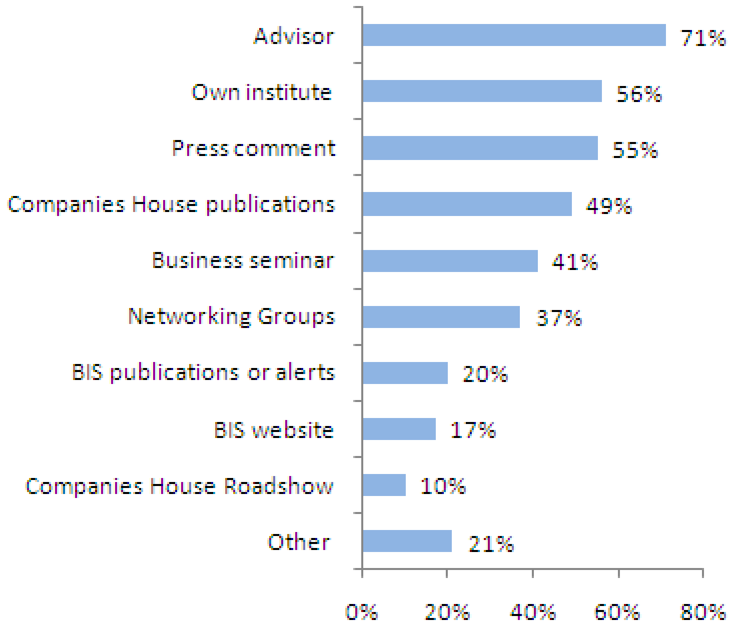
Networking groups: Most widely cited by quoted companies than all other company sizes.

Own institute: Small private companies were significantly less likely than all other company types to have become aware through this channel (26% vs. 57% NET[75]).

BIS publications or alerts: Noted by more quoted companies than small private companies.

Other sources of awareness captured also included, training courses (e.g. Common Professional Development (CPD)), industry magazines, other publications, if it was their day job (company secretary), legal panels, through colleagues, and via meetings.

Figure 7.2 Overall Source of awareness of recent changes regarding Company Law



Source: Q8a. And how did you become aware of any changes? Was it through…Base: 709; all company sizes, weighted by economic impact.

75 Aggregate percentage for medium private, large private, public and quoted companies.

To look more closely at where companies had gained awareness of changes to Company Law but had made no subsequent changes, they too were asked separately where they had become aware (in Section Two of the questionnaire if they had agreed to having an awareness previously), and Figure 7.3 depicts the results. As can be seen, the majority of companies cited other wide ranging sources of awareness, perhaps a reason in itself as to why they had not been encouraged to undertake any subsequent changes, given the over-riding catalyst to bring about change was found to be advisors, their own institute and also contact with Companies House and BIS publications. Other sources of information may not have been as informative and key advantages of changes may not have been communicated. Examples of these 'other' sources included:

'Reading the Act, reading up date sheets from Law Firms'.

'Through practice with trade'

'ACCA seminar'

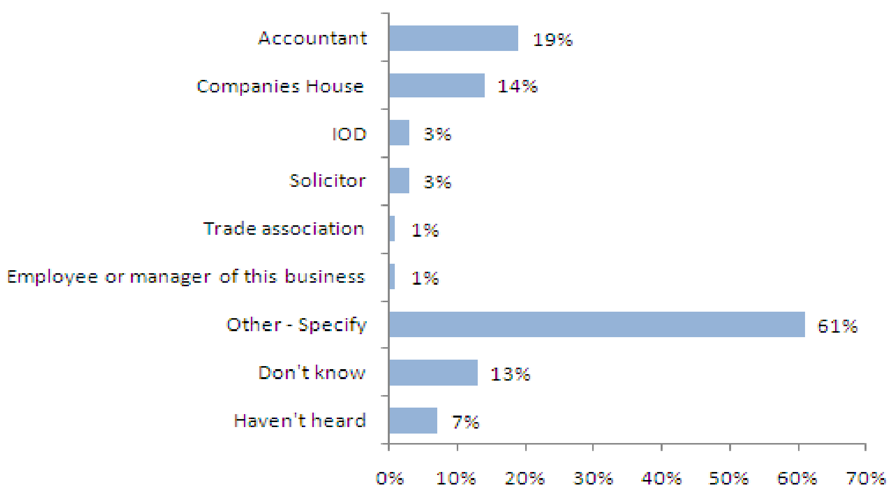
'The government, Federation of Small Businesses'

'Subscribe to UK training a training company who provide training on Companies Act'

'Just through letters and postal advice'

The only difference of significance found was that medium private companies were more likely to have become aware of any changes in Company Law, but not yet made any changes through a solicitor (17%) than small private companies (3%; full breakdown of differences can be found in Section 2.4 of Volume Two).

Figure 7.3 Source of awareness for those aware but made no changes



Source: Q104. How did you hear about these changes? Base: 113; all company sizes, weighted by economic impact.

7.2 Companies House

There are about 2.6 million UK companies registered at Companies House, the official UK government register of UK companies. They range from the smallest of start-up businesses to large long-established companies operating internationally. There are relatively few companies at the larger end of the scale - only 2,450 or so have their shares publicly traded on the London Stock Exchange[76]. Stakeholders made positive references to Companies House a source of guidance for companies and an awareness channel:

'Companies House, I think, has placed a large amount of useful information on its website in the form of guidance notes and there is quite a lot of information made available by BIS as well, I know they put together at least one dedicated guidance booklet on what the Act means primarily for private companies' (stakeholder)

Companies House also received positive ratings in terms of being an instrumental source of bringing about initial awareness (as seen in Figure 7.1; 59% NET[77]); large private and public companies were most likely to have found out about changes to Company Law through Companies House publications than other company sizes (48% and 54% respectively vs. 36% of medium private companies), whilst quoted companies were most likely to have acquired awareness through Companies House roadshows (15% vs. 4% of small private and 6% of medium private companies). This success as a channel for awareness-raising is logical given the relationship that Companies House has with businesses and interaction through the filing of accounts.

Overall, over three fifths of companies had used the Companies House website as a source of information on company law (Figure 7.4) again reinforcing its key role in facilitating knowledge transfer to companies. Small private companies were found to have had least contact (47% had used the Companies House website compared with all other company types (65% NET[78]; see Section 2.10 of Volume Two for a full breakdown by company size).

Companies who had used the Companies House website were unsurprisingly found to be more likely to be aware of changes to Company Law, particularly the Companies Act 2006 (66% vs. 51% of those who had not used the website).

Furthermore, companies who had used the Companies House website were more likely to be aware of 5-12 of the measures asked within the survey (71%) than those with no awareness (18%) and those with awareness of 1-4 measures (41%).

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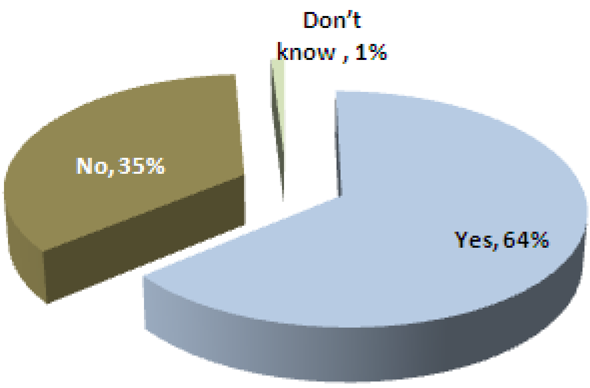
[76] *Modern Company Law for a Competitive Economy, Company Law and Investigations Directorate part of Corporate and Consumer Affairs, March 1998.*

[77] Includes those whose source of awareness was through Companies House publications and Companies House roadshows.

[78] Aggregate percentage for medium private, large private, public and quoted companies.

Industry wise, significantly fewer companies within wholesale and retail trade had used the Companies House website (53%) than those in manufacturing (68%), transport, storage and communication (72%) and real estate renting business activities (64%).

Figure 7.4 Usage of Companies House website as a source of information on company law



Source: Q142. Do you use the Companies House website as a source of information on company law? Base: 1001; all company sizes, weighted by economic impact.

Overall, of those companies who had used the Companies House website (Figure 7.5) as a source of information, almost three fifths were satisfied with the usefulness of the website (59% NET[79]; greater levels of dissatisfaction were observed from quoted (13%) and public (9%) companies compared with medium private (1%) companies).

In terms of the helpfulness of the guidance provided by Companies House, as shown in Figure 7.6, almost half of companies who had used the website agreed it was helpful (45% NET[80]), whilst a large proportion did not have an opinion either way (39% scored 3 on a scale of 1-5 where 1 was very unhelpful and 5 was very helpful); less than 1 in 10 companies however felt the website was unhelpful (8% NET[81]).

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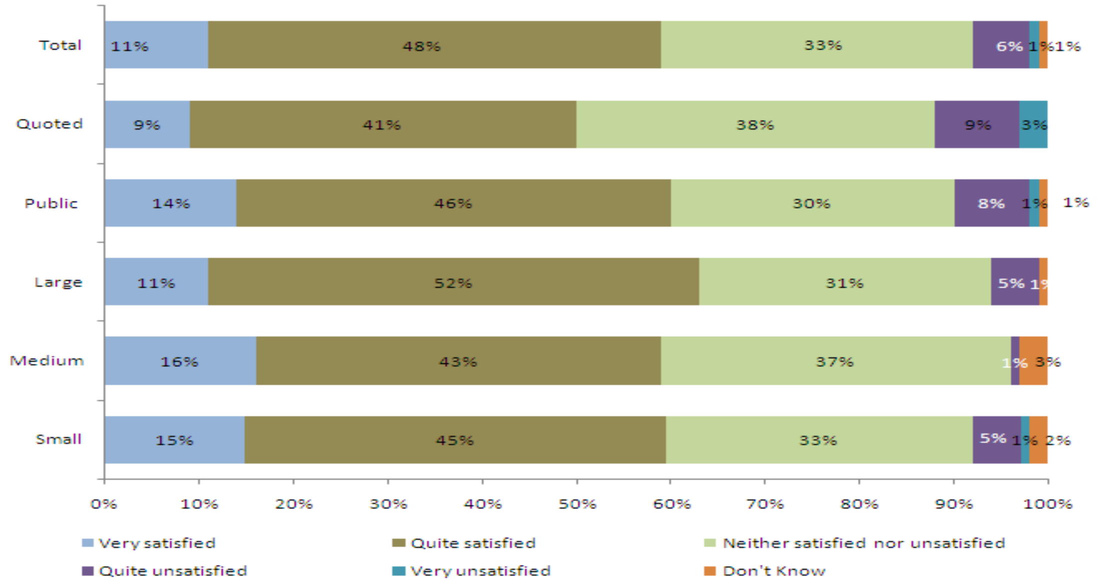
[79] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unsatisfied and 5 is very satisfied (Q143).

[80] Includes those scoring 4 and 5 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q144).

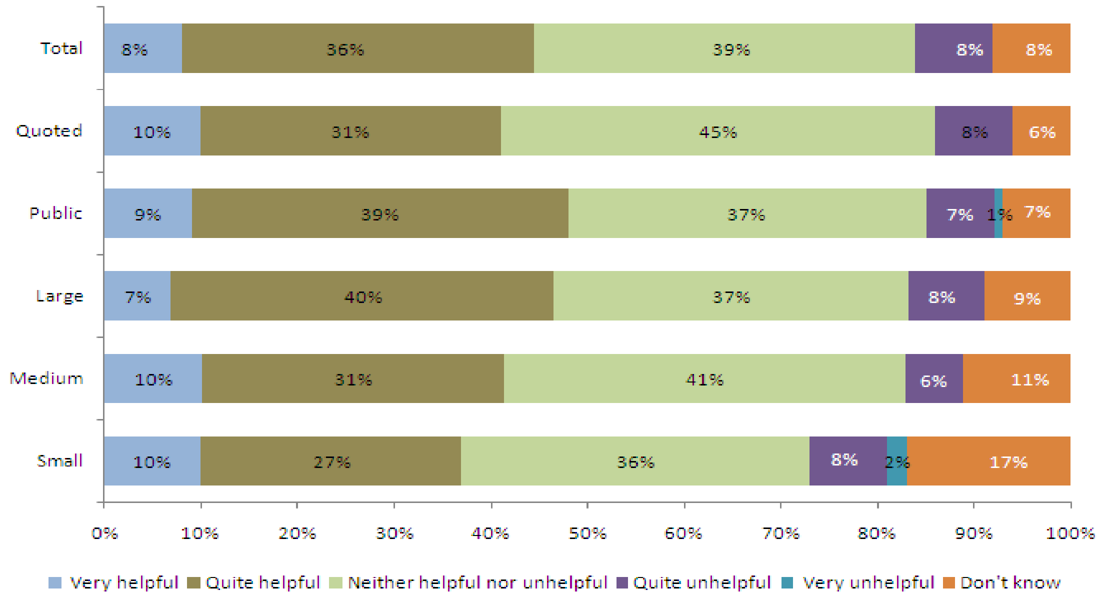
[81] Includes those scoring 1 and 2 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q144).

Figure 7.5 Satisfaction with the usefulness of Companies House website (by size of company)



Source: Q143. And how satisfied are you with the guidance and usefulness of the information provided on the Companies House website? Please rate on a scale of 1-5 where 1 is very unsatisfied and 5 is very satisfied. Base: Base: 590; small (120); medium (134); large (154); public (150); quoted (32); weighted by economic impact.

Figure 7.6 Helpfulness of guidance provided by Companies House (by size of company)



Source: Q144. How would you rate the guidance provided by Companies House overall, on a scale of 1-5 where 1 is very unhelpful and 5 is very helpful? Base: 1001; small (258); medium (232); large (235); public (227); quoted (49); weighted by economic impact.

7.3 Third parties

All companies were asked whether they used an advisor or information from other sources, during company formation, when running a company or when considering specific company law issues, the results of which are displayed in Figure 7.7. Despite eighty three percent of all companies indicating that they used an advisor or information from other sources, significantly more large private, public and quoted companies were found to do so compared with small private companies (81%, 82% and 90% vs. 73%). This finding was also supported when the statistical technique known as cluster analysis (also known as segmentation) was used to group all companies according to their attitudes relating to the Companies Act 2006 (see Section 3, Volume Two for further details). Sixteen percent of all companies fell into the 'disconnected' cluster, which tended to have a skew towards small private companies and those not using advisors. The only cluster where a positive skew towards the use of advisors was detected was that of the 'enthusiastic' category, who have embraced the changes and agreed that Company Law had been simplified.

Unsurprisingly, those who used an advisor or information from other sources were more likely to be aware of recent changes to Company Law than those who had not (85% vs. 71%), and to be aware of 5-12 measures (88%) rather than of none of the measures (68%) or 1-4 of the measures (59%).

As with usage of the Companies House website, companies within wholesale and retail trade (74%) were less likely to have used an advisor or information from other sources; significantly less than companies in financial intermediation (91%), real estate renting business activities (84%), construction (88%).

Furthermore (and to be discussed in Section 8), companies who used an advisor or information from other sources were more likely to agree that changes made through the Companies Act 2006 reduced the regulatory burden of Company Law (95% who agreed, compared with 86% of those who were neutral and 82% of those who did not agree).

Finally, companies who had consulted third parties were more likely to understand the Companies Act 2006 'well' (86% NET[82]) than those who claimed they did not understand it well (74% NET[83]).

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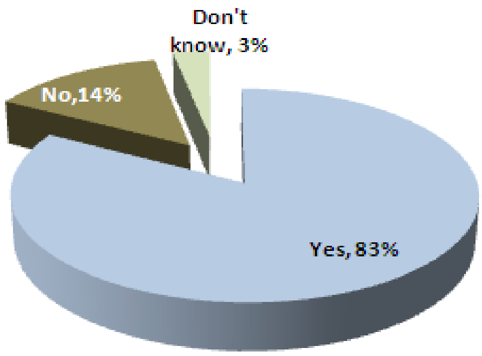
[82] Includes those who claimed to understand the issues concerning the Companies Act 2006 'completely' and 'quite well but not completely' (Q132).

[83] Includes those who claimed to understand the issues concerning the Companies Act 2006 'not very well' and 'not at all well' (Q132).

Figure 7.7 Use an advisor or information from other sources, during company formation, when running a company or when considering specific company law issues?



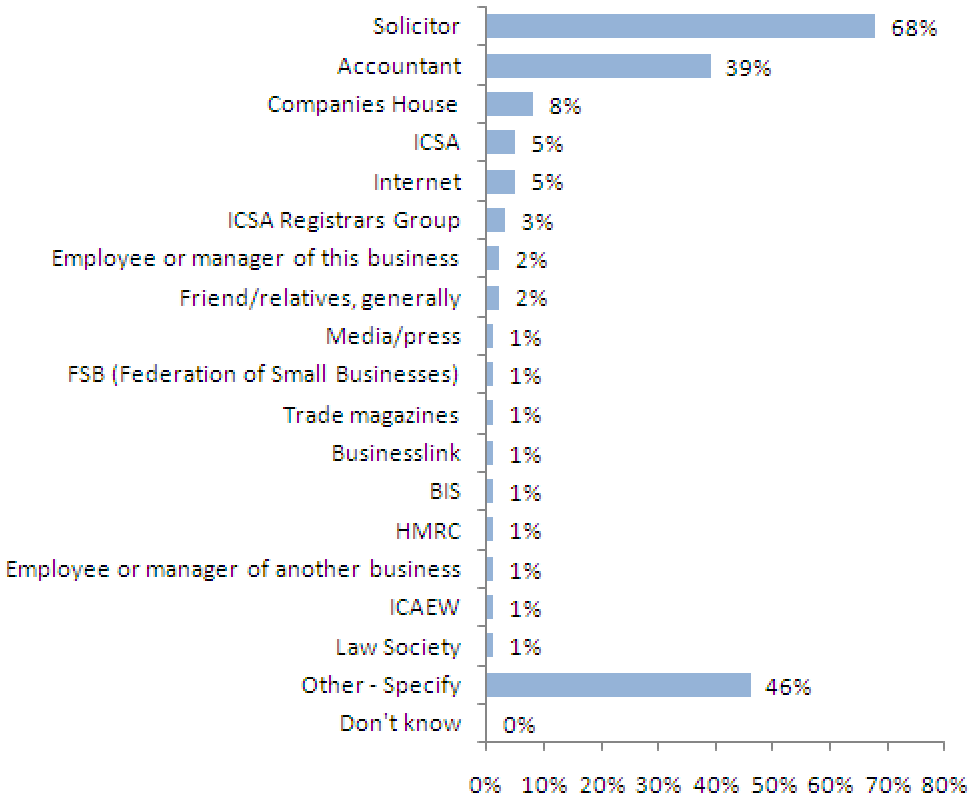
Source: Q134. Have you used advisors or information from other sources, during company formation, when running your company or when considering specific company law issues? Base: 1001; all company sizes, weighted by economic impact.

To ascertain which particular sources of advice companies predominantly used, all companies who did use advisors or information from other sources were asked to list out all sources they used, the results of which can be seen in Figure 7.8. Solicitors were the over-riding source of advice for companies overall, followed next by accountants. Of interest, significantly more quoted companies were found to use solicitors than all other company types (82% vs. 64% NET[84]), whilst significantly more small and medium private companies used accountants than large private, public and quoted companies (74% and 53% vs. 38%, 38% and 32% respectively). Significantly more public companies (15%) were also found to utilise Companies House as a source of guidance than small, medium and large private companies (7% NET). All differences in company size can be seen in Section 2.8 of Volume Two.

Auditors were cited as a key alternative within the 'other' category; although a plethora of 'other' sources were also given, ranging from 'online databases', 'banks', 'PR companies', 'professional company secretary', 'tax specialists', 'stock brokers', 'corporate financiers', 'parent group' and 'Google engine search'; this wide array of channels reveals that positively, knowledge transfer of Company Law is greater than was possibly anticipated.

[84] Aggregate percentage for small, medium and large private and public companies.

Figure 7.8 Source of advice/ guidance



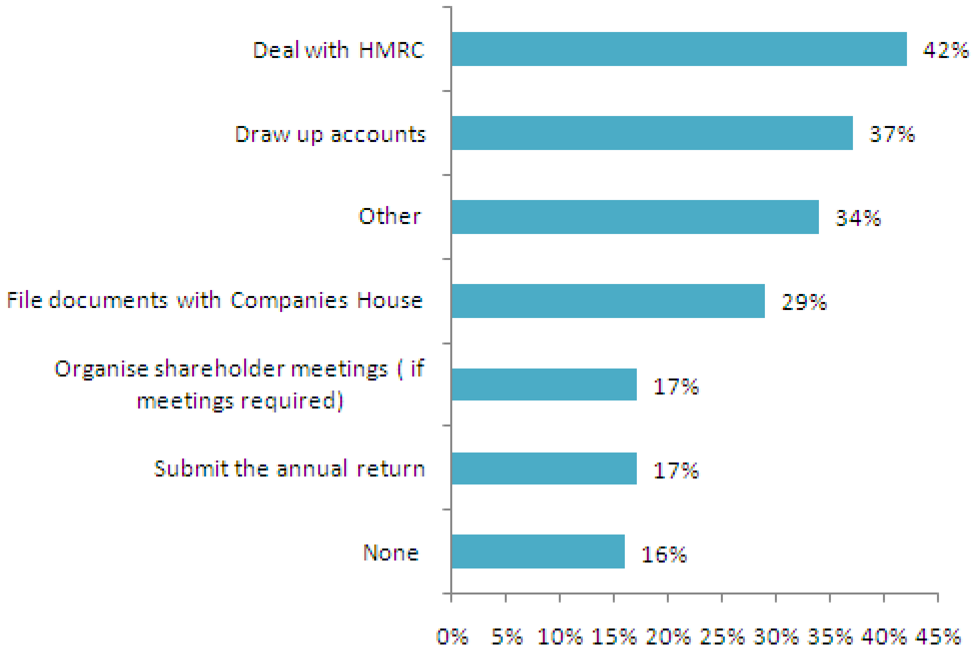
Source: Q135. Which sources do you use? Please include both professional (e.g. legal, government departments) and non-professional (e.g. friends and colleagues) sources. Base: 795, all company sizes, weighted by economic impact.

All companies who used an accountant or solicitor were then asked to specify what tasks they helped them with. As can be seen if Figure 7.9, the principal undertaking of accountants and solicitors was to deal with HMRC, and draw up accounts; less than a fifth of companies used accountants and solicitors to organise shareholder meetings or to submit the annual return.

Small private companies were significantly more likely than medium private, large private, public and quoted companies to use an accountant or solicitor to carry out all listed tasks (full breakdown included in Section 2.9 of Volume Two):

- Draw up accounts (88% vs. 49%, 34%, 42%, 31% respectively)
- Submit the annual return (75% vs. 32%, 16%, 20%, 6% respectively)
- File documents with companies house (77% vs. 48%, 30%, 32%, 14% respectively)
- Organise shareholder meetings (45% vs. 16%, 11%, 17%, 22% respectively)
- Deal with HMRC (66% vs. 52%, 42%, 43%, 36% respectively)

Figure 7.9 Assistance from accountants and solicitors

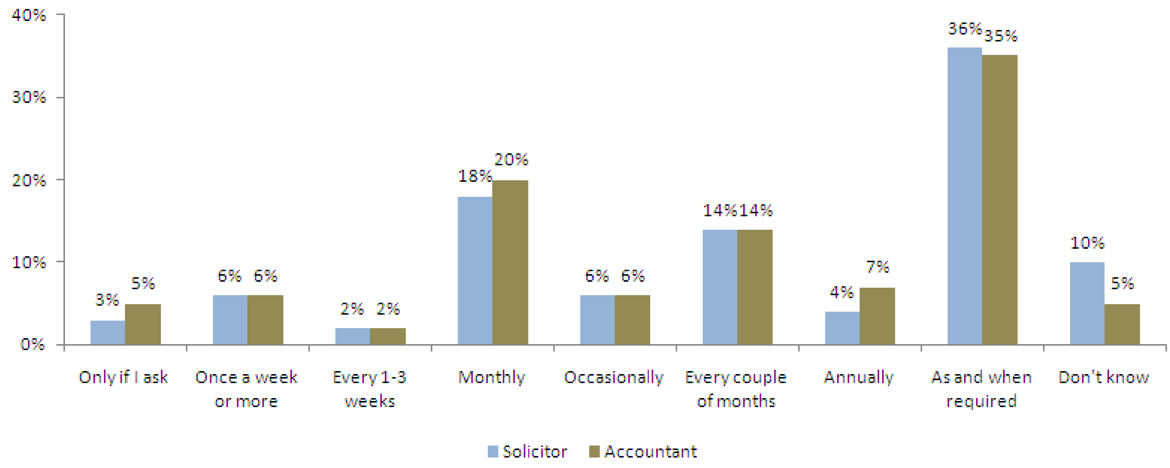


Source: Q137. What tasks does your accountant/ solicitor help you with? Base: 626; all company sizes, weighted by economic impact.

In terms of the frequency by which accountants and / or solicitors keep companies updated on legal changes and compliance requirements in the field of company law, it was found that for over a third of companies, this tended to be as and when required (Figure 7.10). The next most cited frequency was that of monthly, by twenty per cent of those who used an accountant and eighteen per cent of those who used a solicitor.

Quoted companies were, however, more likely to be updated weekly (8% including accountants and solicitors opposed to 1% of small and medium private companies); small private companies conversely were most likely to be updated annually (11% vs. 2% of public companies), another possible explanation for lower awareness amongst small private companies.

Figure 7.10 Frequency of contact by accountant/ solicitor



Source: Q139. Does your accountant and / or solicitor keep you updated on legal changes and compliance requirements in the field of company law? Base: Base: 626; small (157); medium (153); large (143); public (137); quoted (36); weighted by economic impact.

The question of what BIS could do to make companies feel less need to use accountants and solicitors was posed to companies, and a recurring theme of enhanced guidance became apparent. A selection of responses is shown below:

'they could supply us with a brief plain English guide just summarising the main changes of the Act' (also noted through case study 7)

'Make filling out VAT returns and any tax matters simpler'

'Have consultants to give us advice on the effects of implementing the structures of the company, penalties or obligations and other effects of the Companies Act on small or medium businesses. Directors' duties- would like more of an explanation of what directors are required to do, such as disclosures, processes and what kind of documents to keep on record and how long they need to be held.'

'I think they should stress how easy it is to form a new company without using a solicitor'

'It would be helpful if they could submit practical guidance and a precedent'

'Issue a notice for all directors explaining the changes'

'For the likes of any changes they are likely to make, post or email or any kind of update on changes would keep us informed. Quarterly emails or post updates would keep us informed'.

'They would have to simplify things an awful lot more first before we would stop considering the use of third parties'.

Case studies revealed that targeted communications by company size would be a useful means of added support that could reduce the use of third parties. Small private companies in particular did not make reference to any communications received throughout the implementation period, and it was noted by one small private company:

'I can see how businesses find it hard to find out about this stuff, unless something happens and they get caught illegally doing something' (case study 13)

Companies were also asked overall through which channel they would prefer to receive news of changes to Company Law (Figure 7.11); email was the preferred option. However, a notable difference in company types was apparent: a greater proportion of small private companies would prefer to receive news of changes to Company Law via post/ direct mail than all other company types (36% vs. 15% NET[85]; see Section 2.11 and 3.34 of Volume Two for a full breakdown of differences amongst company sizes and further detail on the 'disconnected' cluster).

It was also suggested (through case study 13), that for the case of small private to medium private companies, disseminating updates through local chambers of commerce, town partnerships, and business link would be useful avenues to explore and could generate higher awareness of changes to Company Law. It was via this means that the respondent had found out about Company Law in the first instance:

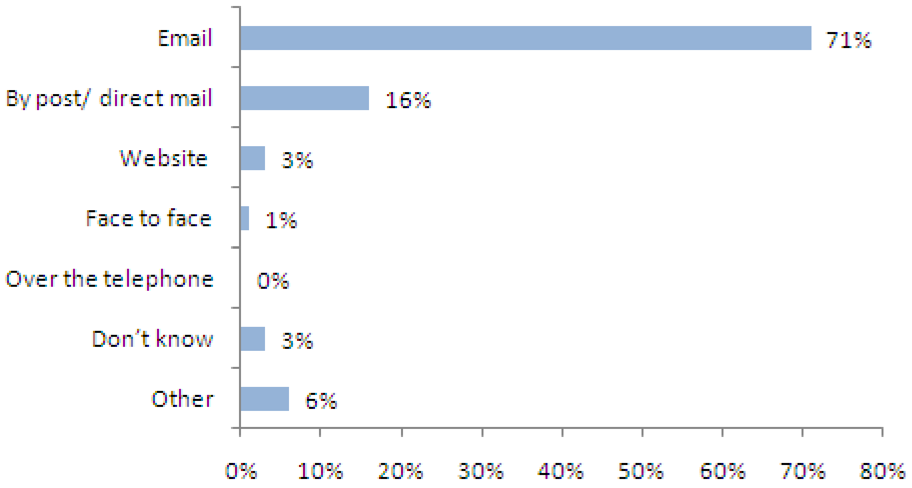
'I did get a bit of information from the Council. I sit on the Balham Partnership, that's the thing where we get funding from Wandsworth Council, it's sort of aimed at businesses, and I also get a bit of information from the Chamber of Commerce…'

However, this particular case study of a relatively new start up company was illustrative of the fact that companies such as these still require significant levels of external support. When asked whether the Companies Act 2006 had simplified and modernised Company Law his response was as follows:

'A fair answer I would say I wouldn't know, because I didn't know what it was before, they need an easy guide, a lot of people can't afford to use accountants.. especially if it's in an engaging manner, this is what you have to do, this is the basics, you can do this or you can ask your accountant to do this, a simplified guide of the very basic things, like the model articles … if you said to me 'model articles' I would think it was something to do with corporate lawyers and not to do with company law'.

[85] Aggregate percentage for medium private, large private, quoted and public companies.

Figure 7.11 Channel preference to receive news of changes to Company Law



Source: Q141. Through which channel of communication would you prefer to receive news of Company Law changes that may affect you? Base: 1001; all company sizes, weighted by economic impact.

7.4 Use of advisor by individual measures

Whilst overall use of third parties has been explored against overall awareness of recent changes to Company Law, particularly the Companies Act 2006, the extent of advisory help was also assessed through those who made changes to each of the particular measures, in attempts to ascertain the influence they may be having on bringing about change.

One respondent (in case study 1) revealed that he attended three seminars by lawyers before the Act was initially implemented, and it seems that packages of changes were promoted: the two that were recalled included directors duties, and statutory records, but the respondent remarked that all three were just '*a marketing thing*'.

As can be seen below, highest usage of advisors appears to be associated with capital maintenance, enfranchising indirect investors and access to company information including filing times (the latter particularly so when looking at the percentage of those who used advisors and had made a change to each measure). The measure where usage of advisors appeared lowest was that of company secretaries, but this is logical given the nature of change being straighter forward than others[86].

[86] Please note base sizes for each measure are based on the company sizes that were asked each measure, the breakdown of which can be seen in Volume Two.

Directors' duties (all company types; 50% taken steps to make a change):

- 54% of those who used advisors had made a change to directors' duties, compared with 32% who did not use advisors.
- 90% of those who had made changes to directors' duties used an advisor during company formation or when running their company.

Business review (large private, public, quoted; 64% compliance)

- 68% of those who used advisors had made a change to the business review, compared with 45% who did not use advisors (significant).
- 90% of those who had made changes to the business review used an advisor during company formation or when running their company.

Access to Company Information including reduction in filing times (public and quoted; 73% taken steps to make changes)

- 77% of those who used advisors had made a change to access to information, compared with 44% of those who did not use advisors (significant).
- 93% of those who made changes to access to company information used an advisor during company formation or when running their company.

Facilitating eCommunications (large private, public, quoted; 38% taken steps to make changes)

- 42% of those who used advisors had made a change to the eCommunications, compared with 23% who did not use advisors (significant).
- 91% of those who had made changes to eCommunications used an advisor during company formation or when running their company.

Enfranchising indirect investors (public and quoted; 45% taken steps to make changes)

- 48% of those who used advisors had made a change to enfranchising indirect investors, compared with 25% of those who did not use advisors (significant).
- 93% of those who made changes to enfranchising indirect investors used an advisor during company formation or when running their company.

Simpler law/ accessibility (small, medium, and large private and public; 26% taken steps to make changes):

- 29% of those who used advisors had made a change to simpler law, compared with 13% of those who did not use advisors (significant).

- 90% of those who made changes to simpler law used an advisor during company formation or when running their company.

Resolutions and meetings (small, medium, and large private companies; 43% taken steps to make changes):

- 46% of those who used advisors had made a change to resolutions and meetings, compared with 30% of those who did not use advisors (significant)

- 86% of those who had made changes to resolutions and meetings used an advisor during company formation or when running their company (significantly higher than that of company secretaries)

Company secretaries (small, medium, and large private companies; 12% taken steps to make changes):

- 11% of those who used advisors had made a change to company secretaries, compared with 14% who did not use advisors (not significant)

- 76% of those who had made changes to company secretaries used an advisor during company formation or when running their company (significantly lower than that of resolutions and meeting).

Capital maintenance (large private only; 11% taken steps to make changes)

- 14% of those who used advisors had made a change to one or more measures within the capital maintenance arena, compared with 3% of those who did not use advisors (not significant).

- 96% of those who made changes to capital maintenance used an advisor during company formation or when running their company.

Directors' addresses (all company types; 52% taken steps to make changes):

- 54% of those who used advisors had made a change to directors' addresses, compared with 44% who did not use advisors.

- 86% of those who had made changes to directors' addresses used an advisor during company formation or when running their company.

Trading disclosures (all company types; 50% taken steps to make changes):

- 54% of those who used advisors had made a change to trading disclosures, compared with 30% who did not use advisors.
- 90% of those who had made changes to trading disclosures used an advisor during company formation or when running their company.

Register of shareholder (all company types; 52% taken steps to make changes):

- 55% of those who used advisors had made a change to the register of shareholders, compared with 40% who did not use advisors.
- 88% of those who had made changes to the register of shareholders used an advisor during company formation or when running their company.

Auditor limited liability agreements (medium and large private, public and quoted; 17% taken steps to make changes)

- 18% of those who used advisors had made a change to auditor limited liability agreements compared with 16% of those who did not use advisors (not statistically significant).
- 87% of those who made changes to auditor limited liability agreements used an advisor during company formation or when running their company.

8 Evaluating policy objectives

Enhancing shareholder engagement and a long term investment culture

Measures introduced to enhance stakeholder engagement have been partially successful: the additional information required in the business review has not been arduous to provide and could be beneficial to shareholders, and Section 172 of directors' duties has the potential to still bring about a cultural shift in how decisions are made for the benefit of shareholders.

Enfranchising indirect investors appears to have had a greater uptake (of those amending their articles to allow for this) than expected and shareholder democracy could still become a reality.

Auditor limited liability agreements are too being utilised, but the benefits of companies entering into such agreements questioned (although some companies referenced using agreements to ensure auditor fees did not increase in future).

The Act has therefore paved the way for shareholder engagement to be enhanced, but this has not yet been fully realised, and as agreed by stakeholders, is possibly not something that legislation alone can accomplish.

Ensuring better regulation and a 'think small first' approach

Again this has been partially successful. Stakeholders were more enthused than companies by simplified changes which allow for greater flexibility.

Companies are still thinking of adopting the model articles- but they are not top priority, thus in spite of a disappointing take up currently, this could well undergo an increase over time.

The removal of the requirement to hold an AGM and procedures allowing written resolutions have been positively received (although the extent to which formal AGMs were being carried out prior to this is questionable); informal shareholder assent however was found to be the predominate means of making decisions for companies with ten or fewer shareholders.

Few companies had abolished their company secretary role; likelihood of small and medium private companies considering doing so in future was fairly high.

The reduction of capital by way of a solvency statement (aimed at large private companies) also appears to have been better received than stakeholders anticipated; cost savings were referenced as the key driver.

Guidance (particularly targeted by company size) is the key area for improvement which may ensure higher numbers of small private companies understand the changes and how they affect them.

Changes have therefore simplified the law for small private companies, but given their reliance on advisers for all legal matters, they do not appear to have been that directly affected.

Making it easier to set up and run a company

It is early days to assess performance with this objective (as with all objectives). On the whole, the areas covered within this objective received more neutral responses, with changes being acknowledged to be of less significance than other changes introduced.

Advantages for new companies were noted in that directors do not need to submit a personal address (and their previous residential address will not remain on the register as with existing companies), and awareness levels of trading disclosure requirements were high which can be seen in a positive light. Companies were however fairly neutral on the provision allowing shareholder addresses to be removed from the annual return.

Deregulation was found to be an area of dispute: the changes brought in are being utilised, but regulation remains and so too do references to red tape and administration obligations.

In principle the changes do appear to have facilitated the process of setting up and running company, and positives were noted, but on the whole companies and stakeholders were more neutral about the implemented changes.

Overall evaluation (including cost savings/ flexibility benefits of measures assessed)

Despite high awareness, and in some instances high compliance or adoption levels, neutral perceptions of added value in terms of flexibility and cost savings were captured.

In terms of flexibility, changes for private companies on resolutions and meetings were most beneficial for companies with just under a third stating this change had been most beneficial in terms of flexibility (31%); least beneficial were the register of shareholders and business review (15%).

Regarding cost savings, changes to eCommunications (30%), and resolutions and meetings (20%) were most beneficial to companies; least beneficial was again the business review (23%).

The Companies Act 2006 is primarily an enabling Act, so it is for a company to decide whether it wishes to take advantage of the measures provided and when it wishes to do so. Overall, over a third of companies disagreed that Company Law had been simplified (34% NET[87]), whilst one fifth of companies agreed, indicating that time is needed for the changes to further embed themselves and for benefits to be realised.

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[87] Includes those scoring 1 and 2 on a 5 point scale where 1 is do not agree and 5 is completely agree (Q133).

The overarching aim of this evaluation was to assess the impact of the Companies Act 2006, and to determine whether it is meeting its policy objectives, which include:

- To enhance stakeholder engagement and a long term investment culture.
- To ensure better regulation and a 'Think Small First' approach.
- To make it easier to set up and run a company.
- To provide flexibility for the future

These objectives will be assessed in this section against criteria outlined in the 2005 White Paper 'Company Law Reform'[88], interspersed with views from stakeholders and insight from key questions asked within the quantitative study. A final section entitled 'overall evaluation' highlights where any cost savings, or areas of added flexibility have been identified and realised for businesses.

8.1 Enhancing shareholder engagement and a long term investment culture

'Shareholders are the lifeblood of a company, whatever its size'[89]. Through this objective BIS aimed to promote wider participation of shareholders. Furthermore BIS wanted decisions to be made based on the longer-term view and not just an immediate return. Each of the relevant measures is addressed below based on the insight derived from this evaluation study:

- Embedding in statute the concept of Enlightened Shareholder Value by making clear that directors must promote the success of the company for the benefit of its shareholders, and this can only be achieved by taking due account of both the long term and short-term, and wider factors such as employees, effects on the environment, suppliers and customers;
- Introducing a statutory statement of directors' duties to clarify their responsibilities and improve the law regulating directors' conflicts of interest

Both aims here relate to the duty of directors, a measure which overall has been found to have high awareness (79%), yet unsurprisingly, given the law has not changed, fewer companies indicated that they had made or taken steps towards making any subsequent changes to how they acted previously (50%; indicating that given this is a mandatory provision that all other directors must already be complying with their duties as laid out in the statutory statement). Positive findings in that the statutory statement of duties has focused

[88] *Company Law Reform White Paper*, 17th March 2005

[89] *Company Law Reform White Paper* , 17th March 2005

directors' minds and sharpened up directors' attitudes and procedures were noted by stakeholders and some businesses interviewed in the case studies.

The key finding in this regard, however, was that despite the fact that awareness levels for both the statutory statement and for promoting the success of the company for the benefit of its shareholders (Section 172) was found to be high, subsequent behavioural changes as a result were far lower; the feeling that companies felt they had 'the right culture' already and they were confident in their processes and procedures was noted. This neutrality in terms of behavioural change points to the fact that there has been no marked cultural shift in businesses' decision-making processes. From the case study interviews it was apparent that added clarity of Section 172 and guidance on how directors can demonstrate that they are complying with the new duties would be welcomed. It is still early days, however, and encouraging impacts were noted amongst those companies who had changed their behaviour as a result of the Act.

An interesting finding that came from case study interviews was that of derivative claims issue – companies, as detailed in Section 6.1 on directors duties, were anxious about this change, yet it has transpired that few cases have actually proceeded to court. This aforementioned nervousness by stakeholders does seem to have subsided, but if more cases do go to court we may see more marked behavioural change as this could prompt action. However, at present companies appear to have relaxed about the impending threat of derivative claims.

Interlinked with findings regarding directors' duties were those relating to the business review. Encouragingly, the requirements for quoted companies of completing additional sections of the business review with regard to factors such as employees, effects on the environment, and suppliers do not appear to have been overly difficult to comply with, although again it was sensed that it is too early to evaluate the deriving benefits of this additional information for shareholders (equal proportions noted however that their shareholders found the information unhelpful (25% NET[90]) as they did helpful (23% NET[91])).

One particular case study with a FTSE 100 retailer revealed that changes have indeed been made over the last two years in terms of what information they publish in the business review for the benefit of their shareholders. When asked if they had made changes the respondent replied:

'Yes, we have actually, again it's always a three year journey, but the front half is much more written to people who perhaps don't even know who [company x] is, you know, we used to

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[90] Includes large private and public companies scoring 1 and 2 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q32b).

[91] Includes large private and public companies scoring 4 and 5 on a 5 point scale where 1 is very unhelpful and 5 is very helpful (Q32b).

just launch straight into how wonderful we are without actually explaining to people where our main businesses are, how many stores we have, what our line of business is, what are the objectives of the board, so I think working with our new designers about two years ago, we actually started on that being a lot more coherent in telling the story up front, and I think it has been a useful development' (Case study 7)

The introduction of, the risks and uncertainties is also a new area which the same case study respondent said they have done some more work on that this year as they wanted their shareholders to have confidence in their risk management and mitigation activities. Therefore changes have been made, and companies understand the reasoning behind enhancing shareholder engagement, but it does appear to be too early to assess how impactful these changes have in fact been.

The quality of information was however criticised by a few stakeholders and some thought that businesses were 'still confused' about what exactly they must include; added clarity on the process would therefore be advised to ensure the review is not seen as 'boiler plate'. Another commented that reporting should be tightened to include medium private companies and clearer standards introduced. A best practice example of Tradecraft was given whose objective is to be the best/ most ethical company and could be viewed as exemplary in terms of narrative reporting.

In sum, changes thus far appear to represent more of an evolution rather than revolution, but changes have placed renewed emphasis on directors' responsibilities and on planning for the longer term. Another case study respondent, in regard to changes to Section 172 of directors' duties explained:

'definitely directors are much more wary now about that much wider range of aspects they need to take into account in decision making, which is why our governance is structured in the way it is, to get more information into the boardroom' (case study)

Added clarity on duties of directors was suggested, as confusion was still noted as to what the term 'have regards' to entails; this was exemplified through directors not being able to state an advantage of entering an auditor limited liability agreement.

- Relaxing the prohibition on provisions which prevent auditors from limiting their liability, while delivering further improvements in the quality of the audit

Results concerning auditor limited liability agreements were somewhat surprising given stakeholder perception being that companies would not have entered agreements due advantages being for auditors along, yet our study revealed that seventeen per cent of companies had entered or taken steps to entering an agreement. Companies, it appears, are therefore entering such agreements but the benefits cited revolved around cost savings (coined 'hypothetical cost savings' by case study 1 respondent due to potential increased fees from increases in indemnity insurance) than on improving quality procedures. Issues concerning US dual listed companies were also noted. Thus, whilst advantages for auditors have been observed, the key advantage for companies has been that of cost alone and stabilising auditor fees; auditors have accordingly been approaching companies to enter such agreements. Some directors are furthermore contravening their duties by entering such agreements and not identifying any benefits for their shareholders; added clarity to Section 172 (directors' duties) could help avert this moving forwards. Suggested improvement areas from stakeholders included that shareholders should be told why they are entering an agreement, and that the limit of liability should be proportionate to the sum for which the auditor is responsible for.

- Enhancing the rights of proxies and make it easier for companies to enfranchise indirect owners of shares

This change has paved the way for companies, should brokers and intermediaries make the necessary changes, to embrace true shareholder democracy. Cost implications were reportedly the key barrier preventing companies from making this change, although insight derived from the quantitative study suggested otherwise, with almost half of all public and quoted companies able to make a change in this regard having made a change or taken steps towards doing so. All eight companies interviewed had altered their articles to accommodate indirect investors, but this area should be closely monitored to assess future consequences of this change, which are dependent upon brokers/ intermediaries, in allowing this to work effectively and for companies to embrace shareholder democracy. One minor criticism received from one stakeholder was that the owner of shares is not then on the share register and thus no one else can write to them apart from the stockbroker.

- Stakeholder views

Stakeholders, generally conceded that this objective on the whole had not yet been met, although it was noted by one institution that there may have been a *'subtle effect and that there is merit in having the law as it establishes an overall business culture'*.

Constructive criticisms revolved around the fact that markets represent short-term trends; hence encouraging a long-term perspective uses a different time investment model that according to one stakeholder was the wrong model:

'The Companies Act was predicated on the view that shareholders are long-term investors but was this an oversight?'

Therefore, despite succeeding in opening up some businesses, it was not agreed that the Act has acted as a trigger for investors- *'they would use other information to make investment decisions which is already available (CH annual returns) rather than this information which is largely peripheral'*

However, this is not a criticism directed at BIS; indeed it was commented by one stakeholder:

'It's not something legislation can accomplish. It provides for stakeholder information, but there's no responsibility to actually act on that information…change will be cultural not legislated'.

A final observation from the case study interviews with businesses and the stakeholder depth interviews was that the economic crisis had in fact played the part of a catalyst in encouraging greater involvement of investors and so it was difficult to disentangle the impact of this from the impact of the Act.

- Overall assessment of enhancing shareholder engagement

The Act has achieved partial success in certain measures introduced to enhance stakeholder engagement; the additional information required in the business review has not been arduous to provide and could be beneficial to shareholders, and directors duties has the potential to still bring about a cultural shift in how decisions are made for the benefit of shareholders. More companies have taken steps towards enhancing indirect investors than expected, thus shareholder democracy, which '*fantastic in theory'* (stakeholder), could still become a widespread reality. Auditor limited liability agreements are too being utilised, but the benefits of which for companies are questionable. In sum, the Act has paved the way for shareholder engagement to be enhanced, but this has not yet been fully realised and, as agreed by stakeholders, it is possibly not something that legislation alone can accomplish.

8.2 Ensuring better regulation and a 'Think Small First' approach.

According to BIS, although the vast majority of UK companies are small private, Company Law has been written traditionally with the large company in mind. Their intention was thus to redress the balance and make the law easier for all to understand and use. In order to do this they aimed to:

- Provide separate and better-adapted default articles (previously "Table A") for private companies

Model article take up was found not to be overwhelmingly high (with just 10% of those who had taken steps towards making changes or having made changes within the simpler law measure either having adopted or amended the new articles). However, this could again be the result of directors making changes in 'tranches' as previously cited, and model articles appears to be one tranche that for some companies can wait until they have a business reason to make changes to their articles.

Generally good feedback was received however from stakeholders, although it was widely agreed that the articles will be of more use to new companies than existing companies.

Two case studies, both of whom are FTSE 100 companies, however revealed that they were both in the process of changing their model articles for all their private subsidiaries, to make it easier in future so that all their companies would have the same system. They agreed that investing now would save legal bills in the future, suggesting that the changes are also a positive for very large companies as well as smaller start-ups. Furthermore, the speed of bringing in changes to articles was commended by one case study respondent:

‘At group level, we’ve had to change the articles – because this came in over 3 or 4 tranches – by bringing it in, in 3 or 4 slots, one has seen that as a very good thing, to bring it in slowly’ (case study)

It seems overall that the benefits of new, up to date model articles written in plain English has yet to be seen, and a pattern of inertia is terms of making changes was evident. Greater promotion of the benefits that could be derived from adopting and/or amending the new template would appear to increase take up, as companies may just see this as a piece of good housekeeping, and not realise that they will help the company run well and protect them if any disputes should arise.

- Simplify decision-making for private companies, for example by making it easier for decisions to be taken by written resolution, and making Annual General Meetings (AGMs) opt-in rather than opt-out

The removal of the requirement to hold an AGM has been more positively received, with just over half (51%) of those who had taken steps or made changes within the simpler law measure having ceased holding them. Case study feedback, however, indicated that the change has had limited impact in some cases as companies were holding AGMs previously but only ‘tacking’ them onto other meetings that they were already holding in order to tick the box so they had little associated time or cost expenses. However, this does mean that companies such as these will now be compliant will the law.

The written resolution procedure received positive feedback, from case studies and stakeholders alike, and a further uptake of companies using this procedure is therefore anticipated. The insight derived from the quantitative study brought to light that almost three fifths (57%) of those who had made changes to simpler law used the written resolution procedure.

- Abolish the requirement for private companies to have a company secretary

A change where the largest disparity is seen amongst the percentage aware and the percentage making a change is that of company secretaries (81% vs.12%). Stakeholders were unanimous in their views that the role will still be needed within large, listed companies. However, it was noted that it makes good business sense to remove the requirement for small private companies. Out of companies interviewed who had not made a change in this area, a fifth of companies indicated that they would now consider abolishing the role (21%), of which one in ten would expect this to lead to cost savings; a definite step in the right direction, but again not an overwhelming change.

- Simplify the rules about company share capital in particular for private companies

Despite a degree of scepticism on the reduction of capital by way of a solvency statement (within the capital maintenance measure) from stakeholders (largely due to the potential effect it was perceived to have on public trust that was formerly associated by reducing capital via the courts), interesting findings were unearthed as over one in ten large companies who could make a change had (or taken steps towards) done so within the broad measure of capital maintenance. One stakeholder described companies 'chomping at the bit' for the solvency statement to come out, and it does indeed appear that companies are making use of this new procedure (despite small base sizes in the survey, case studies reinforced the positive impacts of the solvency statement), the key driver being that of cost and time savings (so too for the prohibition on financial assistance). It seems the rules about share capital have been simplified and welcomed by the majority, although again one to monitor over the coming months/ years to see if the solvency statement is further utilised and if any issues do arise over public trust.

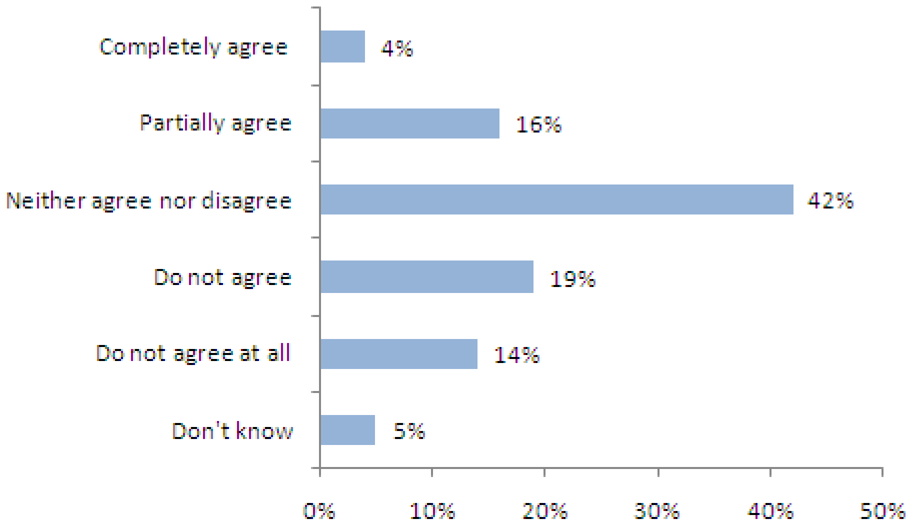
- In addition to the changes in the law itself, the Government will be ensuring that there is appropriate advice and guidance available to users of company law, particularly smaller firms and their advisors, so that all can understand the options available to them and the requirements placed upon them.

It is within this remit where insight, as detailed in Section 7, suggests that further work is needed (particularly responses given as to what BIS could do to preclude the need for companies to use third parties) - simpler guides detailing all key changes are still sought after (particularly with the small private company in mind, thus targeted by company size). Email (and direct mail for small companies) was cited as the preferred communications channel of updates in Company Law, but for small private companies, other avenues such as local business forums and town partnerships were also suggested. Of particular interest was the suggestion from one company of promoting how easy it is to set up a company without an advisor.

A case study with a newly incorporated company however indicated that despite the simplifications, that respondents still required an adviser to actually help set the companies up rather than being able to do it themselves (case study 13, Section 8). Nonetheless, new channels of raising awareness were suggested, such as local business forums and town partnerships, and promoting guidance through localised channels could help lead to added clarity and in turn increased action.

All small private companies were also asked in the quantitative survey whether they believed the Companies Act 2006 assists small companies, the results of which are depicted in Figure 8.1. As can be observed, the majority of companies were neutral with regards the extent to which the Companies Act had assisted them, with over two fifths neither agreeing nor disagreeing. However, a third of companies disagreed that the Act had assisted them; this question was only asked to those small private companies who had made at least one change, but it should be put in context whereby their awareness of all measures had been found to be lower than larger companies and thus even if they had made one change, they may not have been aware of all of the changes relevant to small private companies. Positive feedback can also be viewed in case study 12 (Section 8.2) indicating that the Act has 'worked' for those who have been exposed to it.

Figure 8.1 Agreement as to whether the Companies Act 2006 assists small companies (small private companies only)



Source: Q102.To what extent do you agree that the Companies Act 2006 assists small companies? Please rate on a scale of 1 to 5 where 1 is do not agree at all and 5 is completely agree. Base: 118; small private companies only.

- Stakeholder views

Stakeholder opinions on this objectives were by and large more positive than those received from small private companies themselves, again suggesting that should awareness and understanding of what the changes fully entail be raised, so too would agreement in companies thinking Company Law had been simplified. In the words of one stakeholder:

'The Act encapsulates this and has provided useful simplifications'

It was widely agreed that the Act is now 'better structured' and it is now clear that it is one Act. Another observation however was that:

'This does work to some extent i.e. there were longer periods for smaller organisations to start complying with the Act. But much does not apply to smaller organisations without shareholders'.

Although one stakeholder felt that for Private companies '*Small had worked*'. The fact that accounts have been simplified and the Act is now split out through company sizes was also referenced as a positive progression; AGMs and company secretary amendments were furthermore applauded, together with the ability to complete articles online. Another positive comment follows below:

'It's closer to the top of the pile, particularly with constitution of companies… impacts into how private companies set up'.

- Overall assessment of ensuring better regulation and a think small first approach

Whilst small private companies themselves, at this stage, did not appear overly enthused by the simplified changes which allow them greater flexibility, stakeholders were more so. Case study discussions revealed that companies are still thinking of adopting the model articles- but they are not top priority, thus although a possible disappointing current take up, this could well undergo an increase over time. The removal of the requirement to hold an AGM and procedures allowing written resolutions have been positively received (although the extent to which formal AGMs were being carried out prior to this is questionable); informal shareholder assent however was found to be the predominate means of making decisions for companies with ten or fewer shareholders. A similarly low percentage of companies had abolished their company secretary, but as endorsed by stakeholders, this role will still be important to larger private companies; likelihood of companies considering doing so however was fairly high. Capital maintenance initiatives aimed at large private companies appear to have been better received than anticipated (particularly the solvency statement), with companies referencing cost savings as a key benefit of the solvency statement.

Making provisions allowing for the law to be restated reflects the changing times of our globalised economy and was referenced as a positive. Guidance is the key area for improvement which may allow for more small private companies to better understand and appreciate what stakeholders coined these '*useful simplifications'* that the Act has implemented. However, through case study 13, it was evident that if a small private company outsources the responsibility of setting up and registering a new company to their accountant, they will likely be unaware of the key changes aforementioned in this section, in particular the model articles. Thus in sum, the changes in theory have simplified the law for small private companies, but given their lack of involvement in legal affairs, without greater awareness and guidance, these changes will by and large only be appreciated by third parties working on their behalf.

Case study 12: Small company agreeing Act has simplified

The company was a start up 10 years ago which sells software to collect and manage clinical survey data over the internet. There are 38 staff in the UK plus eight in the US. There are no directors based in the US at the moment but this may change in future. It has a 'fairly standard' company structure with one majority shareholder who is not involved in the business and six other shareholders.

The Managing Director was aware of all of the changes applicable to a small private company and that they have made changes to all measures apart from company secretary and trading disclosures.

The annual general meetings have been '*effectively dropped as they weren't particularly useful'*. However, this had little impact as they used to hold their AGM tacked on at the end of another meeting during the year just to '*tick the box'*. They have made a number of changes using written resolutions including changes to the articles of association and revoking a shareholder agreement. The company does not behave markedly differently in terms of Directors' Duties:

> '*We have always had these processes in place because of the type of organisation we are and where the directors came from. We are not an old-fashioned type of company and we are all aware of the need to be seen doing the right thing and to record it…It was the right sort of culture before'.*

He is aware of the changes in law relating to the provision of Directors' addresses and they have been considering this given the nature of their work. Overall he believes that the impact of the Act has been positive but fairly limited:

> *'Fairly minimal but I think that they did the right thing. I think more companies should be run like ours and I think that the Companies Act changes support that. The most obvious thing that has changed is codifying the behaviour of directors when they are taking decisions about the companies for which they are responsible which is useful to some directors who aren't very clear on'*.

In terms of the 'Think Small First' and making it easier to run a company objectives:

> '*I like what they have done and it does work quite well for a company of 40 people. We are in a recognised phase of company - we have been through the start up and survived and this Act is not difficult for a small number of directors of a small company to understand and comply with'.*

> *'Bringing it up-to-date is effectively what they have done and that is fine and it's worked for us'*

8.3 Making it easier to set up and run a company

BIS wanted to remove the unnecessary burdens to directors and preserve Britain's reputation as a favoured country in which to incorporate[92]. In order to do so they aimed to:

- Remove the requirement on most directors to disclose publicly their home address

The Act was generally perceived to have 'done the right thing' in this regard, although the aforementioned criticisms surrounding the fact that previous addresses were still disclosed was widely noted by stakeholders. It was also referenced that credit agencies can still access home addresses and there were security implications of this, both in terms of privacy and identity. Another minor criticism mentioned by stakeholders and one is no longer able to differentiate directors with the same name on the register. However, with just over half (54%) of all companies able to make this change doing so (or taking steps towards doing so), this can be seen in a positive light.

The majority of companies nonetheless had opted to do so because the option was available, rather than for fear of personal intimidation or privacy reasons, prompting questions as to whether the reasoning behind the change was as intended. However, for companies who had not made the change, just under a third noted their likelihood to now do so, thus indicating that the change has been worthwhile.

- Streamline the rules on company names and trading disclosures

A fairly neutral measure, with just over half of all companies eligible to do so making a change. Generally no disadvantages or criticisms were cited. All companies who had made a change (or taken steps towards doing so) were aware of the requirement that a company's name and the address of its registered office must be included in business letters and websites; a resounding success in terms of awareness levels. Awareness of the obligation to display the company's name in all company documentation and in signs at the registered office and at all other business premises was also near complete (98%).

- Make deregulatory changes to the register of past and present members which companies are obliged to maintain.

It was noted that this change did not include the removal of all shareholder addresses, prompting one stakeholder to state that '*the same rules should apply to both directors and shareholders'.* However, just over half of all companies had made changes within this field-an area deemed to be of less significance than other changes implemented through the Act. Although the majority of companies were unaware that the period for keeping details of former shareholders on the register had decreased, no incidences where companies had applied to the court to prevent someone having access to the company's register of shareholders were noted. Despite stakeholders predicting this eventuality to be unlikely (due

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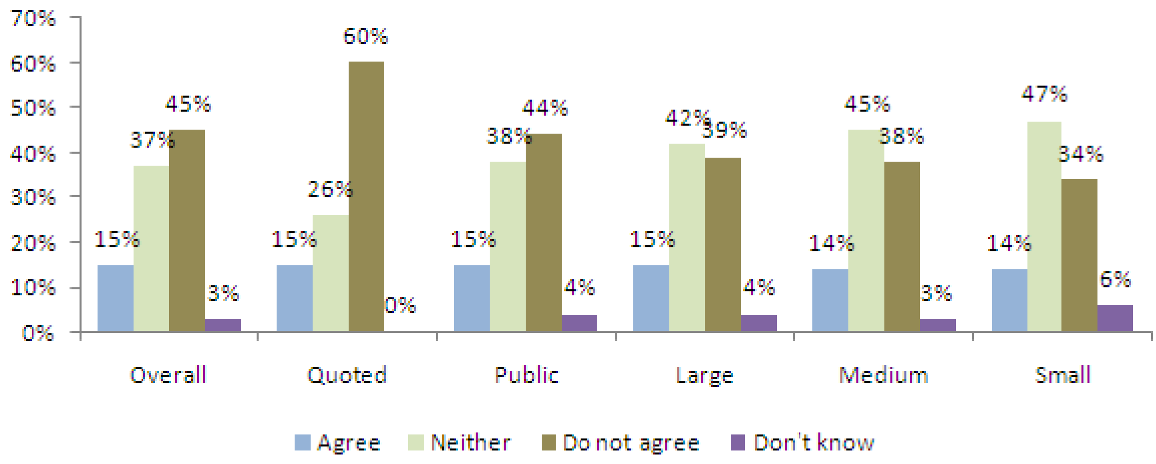
[92] *Company Law Reform White Paper* , 17th March 2005

to cost), thirteen per cent of companies indicated that they thought this to be likely (particularly resonating from directors). A third of companies were still not aware of their right to apply to the courts to prevent access to the register suggesting that awareness levels do need to be raised here.

In terms of changes to the annual return, less than a fifth of companies agreed there had been benefits to companies or shareholders from the provision to remove shareholders' addresses from the annual return- again, not a resounding proportion, but one that may increase over time.

All companies who had made at least one change were asked if they thought the Companies Act 2006 had reduced the regulatory burden of Company Law; Figure 8.2 depicts the results. Results are somewhat disappointing in response to this question with fifteen per cent (NET[93]) agreeing, and forty five per cent (NET[94]) disagreeing that the regulatory burden had been decreased.

Figure 8.2 Agreement as to whether the Companies Act 2006 reduces the regulatory burden of Company Law (by size of company)



Source: Q103. The Companies Act 2006 also aims to reduce the regulatory burden of company law. To what extent do you agree the aim is being met? Please rate on a scale of 1 to 5 where 1 is do not agree at all and 5 is completely agree. Base: 709; all company sizes, overall weighted by economic impact.

- Stakeholder views

[93] Includes those who scored 4 and 5 on a 5 point scale where 1 is do not agree at all and 5 is completely agree (Q103).

[94] Includes those who scored 1 and 2 on a 5 point scale where 1 is do not agree at all and 5 is completely agree (Q103).

Stakeholders generally concurred that the Act had brought about simplification in setting up a company, but the extent of their agreement varied to some extent. Whilst some were more positive overall:

'Yes achieved- setting up is easier and more practical'.

'It's made it easier to set up companies…limited companies by guarantee- all they do is log onto Companies House website and they can do it all online very quickly. Use model articles which drop the memorandum. This reduces the need to use solicitors…'

...others noted it was too soon to tell and were more neutral:

'There has been some simplification e.g. removed 'defined objects of a company' which was an anachronism'

'Overall fairly neutral - there are some positives but these are very marginal and trivial compared to the Act's originally ambitious objectives'

- Overall assessment of making it easier to set up and run a company

In terms of performance in meeting this objective, results indicate, as with other objectives that it is early days in the grand scheme of the Act's implementation phase. This objective also appears to have received more neutral results, with changes being acknowledged to be of less significance than other changes introduced. Whilst companies are making use of facilities to no longer disclose their personal addresses, previous addresses still remain- again, supporting the fact that there appear to be fewer advantages in certain measures for existing companies. However, given the focus on new companies within this objective, this can be seen as a positive change, so too were awareness levels of trading disclosure requirements. Companies were also fairly neutral on the provision allowing shareholder addresses to be removed from the annual return. An interesting perception to sum up from one stakeholder is shown below:

'It always was easy to set up a company in the UK. If anything it's getting too easy. Obsession with deregulation means that the balance may be wrong. Limited Liability Companies enjoy protection and for that there should be a quid pro quo in terms of them reporting and complying with legislation that allows investors and clients to have confidence. If they want this protection then some regulation is a fair deal'

Deregulation is thus an area of dispute: the changes brought in are being utilised, but regulation remains and there were numerous references to red tape and too many forms during case studies with small private recently started up businesses. However, in principle the changes introduced do seem to have facilitated this progress, and positives have been noted.

Case study 13 – Running a recently established company

The company is a small private estate agent, incorporated to Companies House in 2006, having previously been a sole trader. There are 8 employees in total, and the company has an annual financial turnover of circa £420,000.

The respondent, the company director, and sole shareholder revealed that he relies on support for issues of company law his accountants. When asked whether their advisor approaches them regarding changes in the law, he replied:

‘The manager will come in when he wants to see us and then we decide if there is anything we are after, but that’s about it’.

The respondent had limited awareness of the Companies Act 2006, but noted that he became aware of some of changes in Company Law from his local council, and Chamber of Commerce. However he thought that other small companies would similarly have limited awareness:

‘I can see how businesses find it hard to find out about this stuff, unless something happens and they get caught illegally doing something!’

In terms of registering his company, the respondent had no contact with Companies House: *‘the accountants did it all’.* In describing this process he mentioned *‘they did all the paperwork, I just had to sign it’.* Whilst his accountant completed forms online, the respondent rarely accesses guidance provided by Companies House.

The respondent was undecided about the removal of the requirement to have a company secretary, and when asked if he thought there to be a need for the role replied:

‘I don’t know, I mean is it better to have one or not? Does it look better if you have one? So it’s no big hassle. It’s only a case if we were changing bank accounts or … we’re licensed agents, we’re allowed to hold deposits, with new client accounts you have to get the company secretary to sign, that’s a bit of a pain’.

The respondent had not had to provide his home address under the Act and has benefitted by this change exclaiming that he would *‘rather not have to’.* In terms of awareness channels for changes in Company Law he thought:

‘..the main thing to me about that is most small businesses engage, from my point of view would be the Chamber of Commerce, and if there are Town Centre Partnerships, and then obviously things like Business Link’.

In his opinion cost was the main issue for small private companies complying with Company Law requirements, because of the use of third parties.

8.4 Overall evaluation of policy objectives

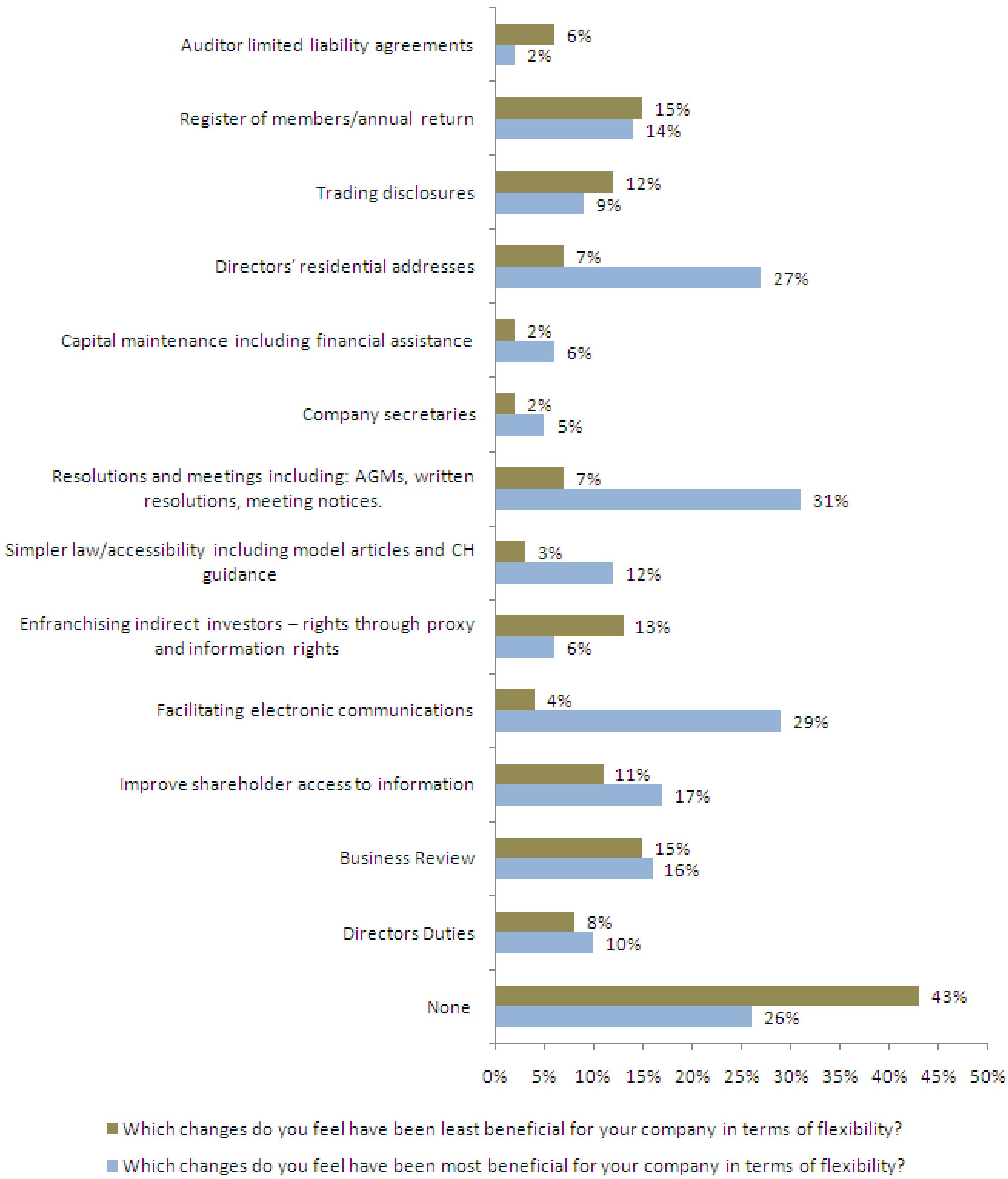
Companies who had made a change were asked which changes they believed, if any, to be most and least beneficial in terms of i) flexibility and ii) cost savings. Base sizes were again altered to allow for percentages to be representative only of companies eligible to make a change to each set measure. Results are displayed in Figures 8.3 and 8.4 respectively.

Findings are consistent with those collated thus far- despite high awareness, and in some instances high levels of adoption, neutral perceptions of added value in terms of flexibility and cost savings were captured. This may in part be symptomatic of the fact that changes are more representative of a step by step reform process (as noted, companies appear to be making changes in ‘tranches’ rather than all in one go; as per the phased implementation of the Act itself).

In terms of flexibility firstly, changes for private companies on resolutions and meetings were most beneficial for companies with just under a third stating this change had been most beneficial in terms of flexibility, followed closely by facilitating eCommunications and directors’ residential addresses. A quarter of companies did however think that none of the changes had increased flexibility.

Those changes perceived to be least beneficial in terms of flexibility included the register of shareholders and the business review; however the over-riding response to this question was in fact none of the changes, which could be taken as more of a positive.

Figure 8.3 Most and least beneficial changes in terms of flexibility



Q97. And, considering all changes you have made, which changes s do you feel have been most beneficial for your company in terms of flexibility? Q98. And, considering all changes you have made, which changes do you feel have been least beneficial for your company in terms of flexibility? Base: 709; all company sizes, weighted by economic impact.

Despite the Government believing that the measures introduced should improve performance across the economy as whole, as well as reducing direct compliance costs for businesses and producing cost savings which could amount to some £250m a year[95], companies appeared less enthusiastic about these potential cost savings; in part this could be down to the fact that costs are incurred early on (through familiarisation activity), whereas cost savings will be reaped further down the line. It is within this context that findings shown in Figure 8.4 should be analysed. Of no surprise is that the most widely acclaimed cost saving measure was that, as intended, of eCommunications (see case study 14, Section 8), and resolutions and meetings; almost half of all companies however believed none of the changes to be beneficial in terms of cost savings.

Areas perceived to be least beneficial in terms of cost savings, as with flexibility included the business review, and improving shareholder access to information (the cost of which has previously been noted). In terms of cost savings, one stakeholder commented:

'Cost savings- not obvious from the investor where the cost savings are coming from (more regulation equals more cost). The process was handled well. Everything I heard that was done was necessary'.

Companies were also asked whether they believed Company Law to have been simplified, the results of which can be seen in Figure 8.5. Despite best efforts and widespread acclaim from stakeholders that they were satisfied with both the consultation period, and BIS's proactive stance to encouraging wider involvement from them, the desired effect on the Act bringing about a simplification in Company Law has also yet to be proven. As can be seen, over a third of companies disagreed that Company Law had been simplified (34% NET[96]), whilst one fifth of companies agreed (20% NET[97]); no significant differences in opinions across company size were noted. This question was asked to all companies, regardless of whether they were initially aware of changes relating to the Companies Act.

Unsurprisingly, a significantly higher proportion of those who were aware of Company Law (in particular the Companies Act 2006) agreed that Company Law had been simplified (22%) than those who were not aware (12%). Positively, a greater proportion of companies whose source of changes to Company Law was originally noted to be through Companies House also agreed that Company Law had been simplified, opposed to those whose original awareness stemmed from networking groups (20%) and other means (18%).

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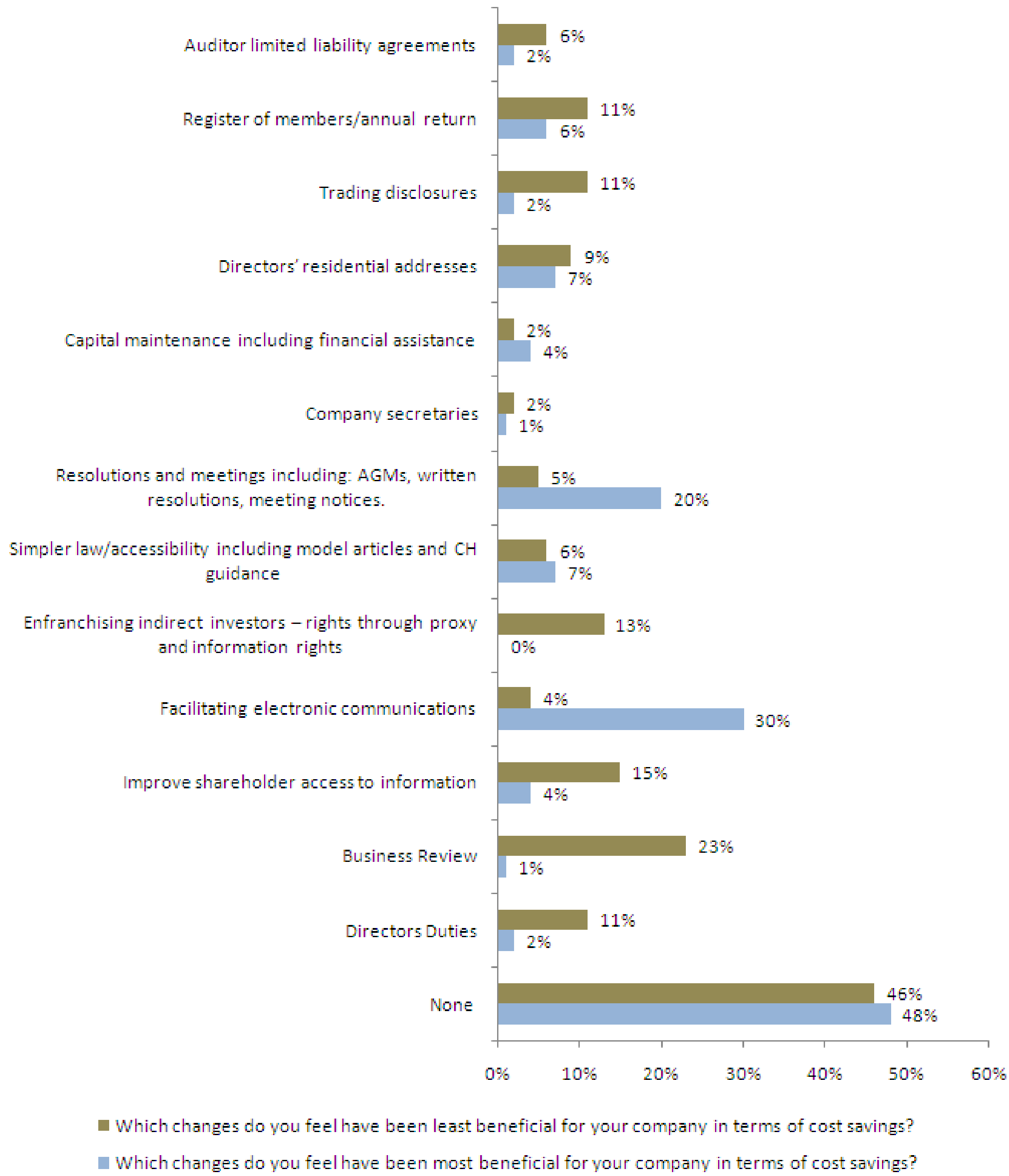
[95] *Company Law Reform White Paper*, 17th March 2005.

[96] Includes those who scored 1 and 2 on a 5 point scale where 1 is do not agree at all and 5 is completely agree (Q133).

[97] Includes those who scored 4 and 5 on a 5 point scale where 1 is do not agree at all and 5 is completely agree (Q133).

Differences in opinion were not evident across changes made to various measures. However, companies who described their understanding of Company Law on the whole as 'quite well but not completely' were significantly more likely to agree that Company Law had been simplified (24%) than those who described their knowledge as 'not very well' (13%), 'not at all well' (14%) or 'not well' (14%).

Figure 8.4 Most and least beneficial changes in terms of cost savings



Q99. And, considering all changes you have made, which changes do you feel have been most beneficial for your company in terms of cost savings? Q100. And, considering all changes you have made, which changes do you feel have been least beneficial for your company in terms of cost savings? Base: 709; all company sizes, weighted by economic impact.

Case study 14 – Cost savings from eCommunications

The company, which is a FTSE 100 company, has grown substantially over the past five years through organic growth and acquisition. They have 340 companies in their structure which are a range of limited and unlimited ventures in addition to the Plc and listed company. The listed company has around 28,000 shareholders currently.

In 2008 the organisation stopped sending out hard copies of the interim accounts and, instead now issue a press release. They sent out a communication about this change with a copy of last hard copy of the interim report that was issued to shareholders. Information about the change was added onto the end of the chairman's letter so as to avoid an expensive additional mailing.

The organisation still prints out some hard copies but the numbers are substantially lower than the 28,000 that it used to send out in the UK. They have not quantified the cost of sending out the interim reports alone but the overall saving, including the costs saved by not printing out the annual report, is around £50,000 per annum. It was noted that this saving is on-going rather than a one-off saving.

An interesting trend identified is that the number of hard copies printed appears to be 'creeping up'. Initially 4,000 individual shareholders replied to the communication in the Chairman's letter and requested a hard copy. They are now sending out around 6,000 copies. The organisation is monitoring this change and the respondent commented that he felt that shareholders are not finding accessing the information on-line as easy as they anticipated and that institutional investors are requesting hard copies in spite of receiving an email communication as soon as the results are published:

> *'If you look at the institutions then 100% ask for hard copies and the only people having it electronically are the private shareholders…any serious user of the annual report is asking for a hard copy'.*

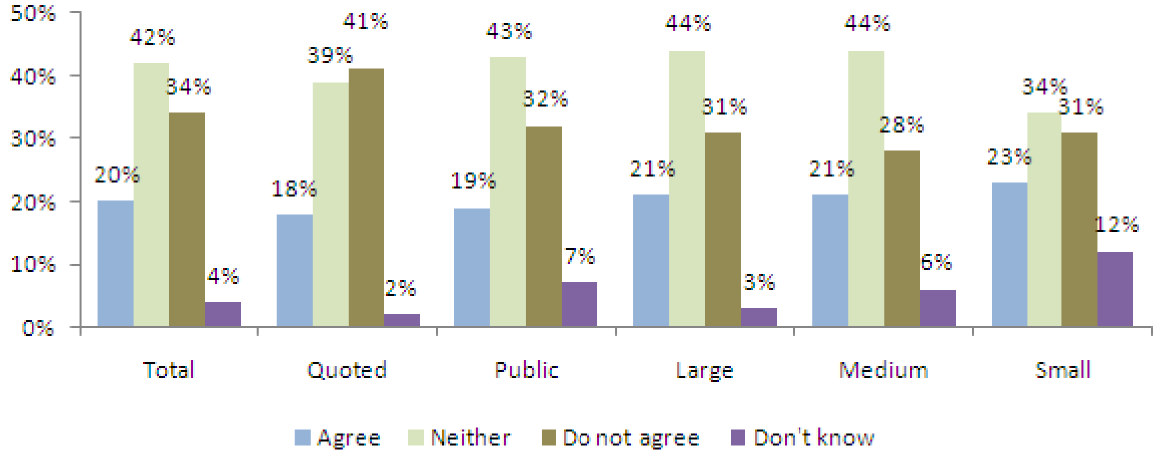
It was also commented that the organisation has changed its approach to the design of its reports and that previously designed hard copies of reports which were sent to the web. Now the process has changed so that it is more focused on the web design.

In addition to the cost-savings, some positive response from shareholders has been recorded particularly in terms of the environmental impact:

> *'There has been a huge saving in trees [from reductions in printing] which seems to have gone down quite well with shareholders'.*

This was particularly the case where whole families have a shareholding and were previously receiving multiple copies of reports. The organisation used in the past to receive complaints about the waste.

Figure 8.5 Agreement that Company Law has been simplified (by size of company)



Source: Q133. In so far as you are aware of the CA 2006, would you agree that Company law has been simplified (on a scale of 1-5 where 1 is do not agree at all and 5 is completely agree)? Base: Base: 1001; small (258); medium (232); large (235); public (227); quoted (49); weighted by economic impact.

Further stakeholder views supported this finding however, as although agreement was noted that it had 'modernised' Company Law and brought it more up to date, it had possibly not 'simplified' it given the enlargement of the Act and added complexities (and confusion over which requirements are for which companies):

'Yes it has modernised the Act and regulations. NO it has not simplified. Odd that the largest Act in history was designed to reduce red tape. Also many Statutory Instruments put in place to correct failures in the Act.'

'For small companies changes have made some things simpler. Less things they have to pay to do. Others not, for example difference in scale/ more legislation and more complex companies (more prescriptive, more likely to trip over).'

Although others disagreed and maintained that it had indeed simplified matters:

'Yes it has been simplified. Overall, has made some things simpler. eCommunications are more modern.'

Other views pointed to the fact that the Act could have possibly missed an opportunity for a more radical overhaul, but recognition was noted that unnecessary changes were not made:

'Some measures are positive but very minor changes. The original ambitions of the Act have waned and it's a bit of a wasted opportunity.'

'Good that the Act has not changed things that did not need to change'

One stakeholder concluded by saying the Act was '*more technical than practical'*, and another commented that we are at the moment still '*bolted in the 1985 Act'*. The fact that it has been just eight months since the final implementation stage took effect in October 2009 should be kept in mind when digesting these results. What must also be kept top of mind is that the Companies Act 2006 is primarily an enabling Act, so it is for a company to decide whether it wishes to take advantage of the measures provided and when it wishes to do so.

9 Conclusions

9.1 Some positive messages

This evaluation study has provided the first primary research findings of the impact of the Companies Act 2006 on UK businesses from the perspective of both businesses and stakeholders involved in the field of Company Law. Positive findings in awareness both of changes to Company Law overall, and of individual measures introduced have been found (particularly so with regards to directors' addresses, access to company information and filing times and the business review; the latter two being compulsory rather than optional measures). Adoption levels too were found to be higher than anticipated (by stakeholders) with some measures such as auditor limited liability agreements and reduction of capital (within the capital maintenance measure), thus indicating that companies are utilising these measures.

Equally positive were awareness and compliance levels recorded from small private companies, which while lower than other company sizes, were still higher than anticipated by several stakeholders. Furthermore, changes did not appear to have been overly burdensome, particularly with regards to additional requirements relating to the business review for quoted companies. Several deregulatory measures, particularly the removal of the requirement to hold AGMs for private companies and introduction of the written resolution procedure, were welcomed by companies and identified as increasing flexibility, and resulting cost savings were noted by a small proportion of companies. Additionally, it was widely agreed by stakeholders that positive measures have been introduced for new companies, for example amendments to directors' addresses, and the new model articles.

9.2 Limited success in some other areas

However, certain other findings showed a more limited impact. Firstly, the measures relating to directors' duties (Section 172), whilst being broadly welcomed for codifying legislation, do not appear to have brought about the cultural shift and change in behaviour that some feel was intended by the Act. This was highlighted when assessing the impact of auditor limited liability agreements and reasons as to why companies had entered them; the majority of companies were unable to cite any positive reasons for their company, which at face value might suggest that directors were in breach of their duties (Section 172) without, it appears, realising it. However, it must be borne in mind that the legislation is codifying existing law, thus a cultural shift or a change in behaviour may not be expected immediately, rather that it is likely to take time to develop as experience with the statutory statement develops.

As mentioned by one stakeholder, any behavioural change expected from Section 172 possibly cannot be brought about from legislation alone, but clarity regarding what the legislation requires can.

The Act was also intended to bring about cost savings in the region of £250m per year, and the change allowing the default means of communication with shareholders to eCommunications was thought to be the principal area of cost saving. However, as discovered both when analysing responses to those who had made a change to eCommunications, and when analysing the overall question asked to all respondents as to what change had been most beneficial in terms of cost savings, a lacklustre response as to obtaining cost savings was received. Over half of companies who had made a change noted no impacts, although just under a third of companies cited eCommunications as the most beneficial measure in terms of cost savings. However, encouraging feedback was received from all parties on the change; one large FTSE 100 retailer was particularly enthused and although unable to quantify cost savings at this stage, it seems these savings are and will be made, but at present companies are concentrating on changing procedures:

'The introduction of electronic communications was I think a fantastic change for all companies, because it gave us the opportunity to ask these people and with the default option of saying 'If you don't come back to us, we will default you to electronic communication and you won't receive this information.' (case study)

The removal of the requirement to have a company secretary for private companies was not met with an overwhelming adoption level despite high awareness, supporting stakeholder views that the role is still fundamental within larger companies. This might also reflect that this role is not a significant cost to small companies. Nonetheless a fifth of companies who had not removed their company secretary would consider doing so thus indicating that the measure is a positive for those companies where it makes good business sense for the role to be removed. For instance, one small private company case study employed his friend as his company secretary, and still thought he had to send forms off to him to be approved and to pay him for this role; he planned on reassessing this need once informed of the change during the survey.

9.3 Enhancing advice and guidance

The role of advisors was found to be fundamental to not only informing businesses of changes in Company Law, but also in instigating change. To avoid this high reliance on third party assistance, enhanced guidance was suggested by companies themselves, particularly targeted by company size. This reinforces the message received from companies of the need for greater clarity on the understanding of the changes that affect them. Companies House, however, received positive views from stakeholders and companies as an awareness channel and source of guidance and one to perhaps continue to utilise in the future.

9.4 Evaluating policy objectives

In terms of evaluating the policy objectives overall, it was generally regarded by all parties to be too soon to categorically say whether BIS had met its objectives. Positive developments were, however, recognised in the three key objectives evaluated. Firstly, in terms of *enhancing shareholder engagement and a long term investment culture,* measures to enhance measures to enfranchise the indirect investor were found to have had a higher uptake than anticipated (by stakeholders), this too was the case with auditor limited liability agreements.

Regarding *ensuring better regulation and a think small first approach,* the removal of requirements to hold AGMs and introduction of written resolutions have been welcomed, and so too have capital maintenance initiatives of the reduction of capital by way of a solvency statement and removal of the prohibition on financial assistance (both cost savers). However, changes regarding company secretaries and model articles were felt to be of marginal importance, and the heavy reliance by companies on advisors seems to indicate that this may be why companies, if they are not informed, are not entirely realising the benefits derived from certain changes to the Companies Act 2006.

Finally, in terms of *making it easier to set up and run a company,* changes do appear to have facilitated the process (directors' addresses for example, albeit a minor change), but companies were by and large fairly neutral about the measures contained under this objective. Given a third of companies disagreed that the Companies Act 2006 had simplified and modernised Company Law, it cannot at this stage be said that BIS has met and surpassed its policy objectives. What is clear is that time is needed to allow the changes to further embed and for the benefits to be realised.

9.5 Overall synopsis

The changes introduced through the Act appear to be perceived as a piece of good house-keeping, enabling somewhat archaic provisions to be removed, bringing Company Law into the twenty-first century rather than radical change. What is of interest is how future trends in awareness and compliance will pan out: the Companies Act 2006 is primarily an enabling Act, so it is for a company to decide whether it wishes to take advantage of the measures provided and when it wishes to do so. It appears that some companies have made changes in tranches rather than all in one go, and also that advisors have been hugely influential in which changes have been made. Therefore we may witness further tranches of changes (particularly so with model articles which companies stated they may change when they make other changes) over the coming year. Of less doubt is the influential role that advisors will continue to play in compliance with, and adoption of, the measures introduced.

In sum, the process of implementing changes resulting from the Companies Act 2006 has been (and will continue to be) evolutionary rather than revolutionary. This evolutionary nature is symptomatic however of the Act's enabling role, and thus further time must elapse to allow companies to decide how they wish to proceed.

Whilst some stakeholders said the Act's ambitions had been watered down, others acknowledged a number of positive changes resulting from the Act:

- **bureaucracy has been reduced** for private companies: the removal of the requirement to hold AGMs, the facilitation of the use of written resolutions; the removal of the requirement to have a company secretary; the removal of the elaborate procedure for the giving of financial assistance; the implementation an easier procedure to reduce capital, and the introduction of more modern articles of association for those companies which choose to use them;

- **greater privacy for directors and shareholders**: shareholders' addresses have been removed from annual returns; directors' personal addresses no longer need to be provided, and the ability to restrict access to register of members;
- **greater clarity on directors' duties** now expressly stated in the Act and statutory statement, with greater flexibility on conflicts of interests;
- **greater freedom** to negotiate liability agreements with auditors;
- **greater engagement with shareholders**: easier eCommunications as the default communication means; greater rights for proxies; greater rights for members at meetings (calling, agendas, raising issues); greater possibilities for enfranchising the indirect investor and a greater focus on enhancing shareholder value (Section 172 and business review).

These positives were noted throughout and the general consensus from stakeholders was that BIS had done a good job in the ten-year consultation and subsequent three-year implementation phases; no mean feat given the complexity of changes introduced during a time of economic disruption in the world economy.

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