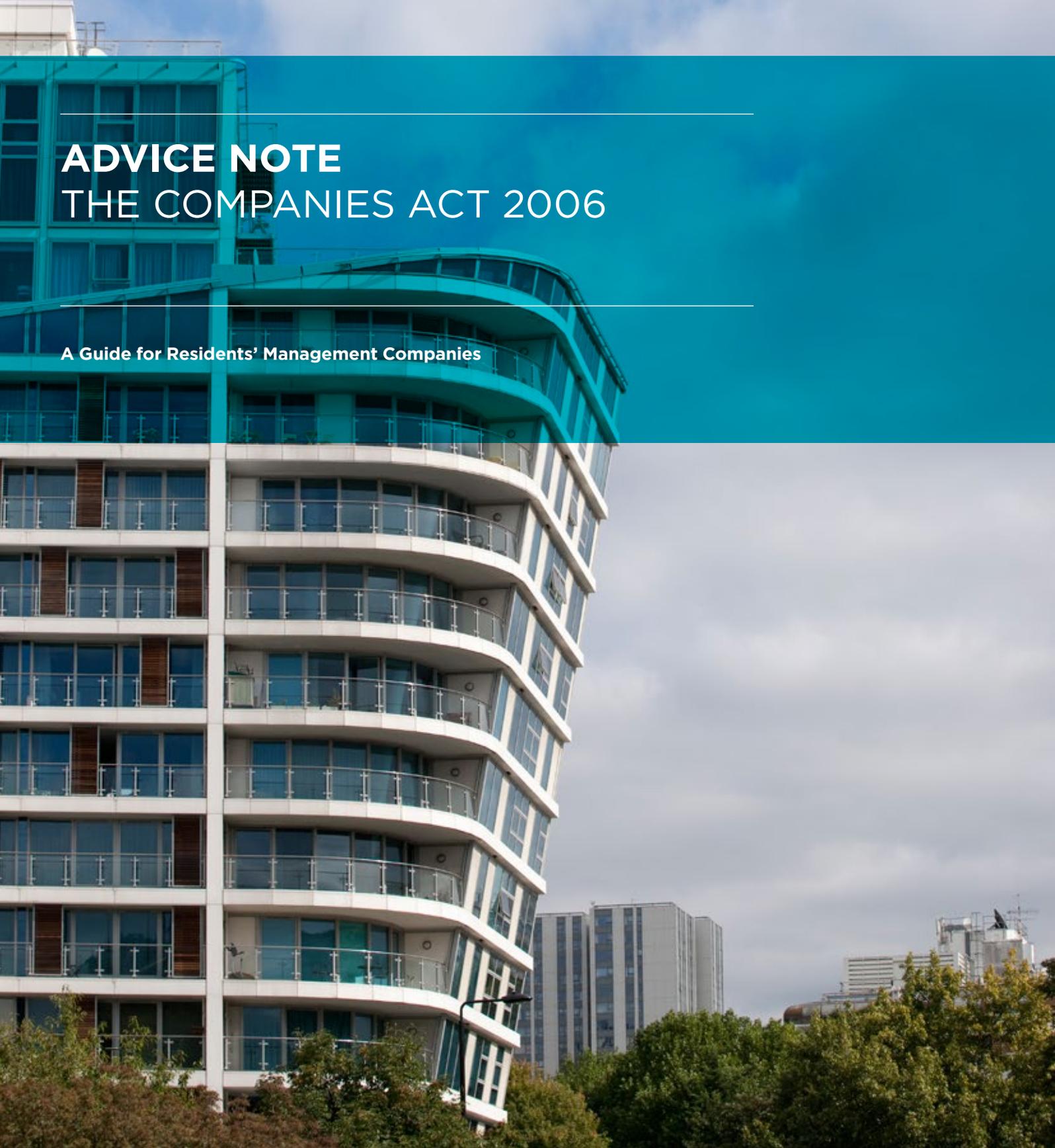




ADVICE NOTE

THE COMPANIES ACT 2006

A Guide for Residents' Management Companies



Note:

As the leading trade body for residential leasehold management, ARMA is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

CONTENTS

3	Summary
4	Parts of the 2006 Act that are optional
4	Streamlining meetings and AGMs
4	Written resolutions
5	Company secretaries
5	Communicating with shareholders and members by email
5	Communicating with shareholders and members through websites
5	Advice to RMCs formed before 2006
6	Parts of the 2006 Act that are compulsory
6	Deadline for filing company accounts
6	Rules relating to directors' and secretaries' addresses
6	Register of members and shareholders
6	Company websites and e-mail communications
7	Person of significant control
8	Late filing penalties
9	Final word

SUMMARY

The Companies Act 2006 changed the way that small private companies can run. This includes Residents' Management Companies (RMCs) and Right to Manage Companies (RTMs).

RMCs and RTMs that were formed before the 2006 Act can choose to adopt parts of it if they wish. If your RMC or RTM wants to change the way they operate as a result, then we advise you to check your company's articles and seek specialist advice.

In this Advice Note, we take a look at the significant parts of the Companies Act 2006 that are relevant to RMCs/RTMs. We'll also look at other changes that followed. Where reference is made to RMCs, this also includes RTMs.



IF YOUR COMPANY ARTICLES ARE BASED ON THE 1985 COMPANY ACT 'TABLE A', THE GOVERNMENT HAS MADE IT CLEAR THAT YOU STILL DON'T HAVE TO HOLD AGMS. BUT YOU SHOULD ALWAYS CHECK THE ARTICLES WRITTEN FOR YOUR COMPANY.

PARTS OF THE 2006 ACT THAT ARE OPTIONAL

Streamlining meetings and AGMs

The Act abolished the obligation for some private companies to hold annual general meetings (AGMs).

Companies can still hold shareholder meetings if they wish, or if members representing 10% of voting shares request one. If it's more than 12 months since the last shareholder meeting, this lowers to 5%.

Companies may still need to hold meetings in other circumstances. For example if they need to dismiss a director or an auditor before the end of their term of office.

If your company articles are based on the 1985 Company Act 'Table A', the Government has made it clear that you still don't have to hold AGMs. But you should always check the articles written for your company.

If you're not planning on holding an AGM, there's no longer a requirement to send out annual accounts. But they must still be sent to shareholders or members by the time they are due to be filed at Companies House.

There's also no longer a requirement for annual company accounts to be approved by the shareholders/members; that is the responsibility of the directors. So if you're not planning on holding an AGM, any auditor appointed by your company will be deemed 're-appointed' for the following year unless you take steps to do otherwise.

Written resolutions

Even if you decide not to hold AGMs, it's still important for shareholders or members have their say.

The 2006 Act assumes that all small private companies, like RMCs, will use written resolutions to get approval from shareholders and members. The Act sets out how these written resolutions need be carried out by company directors, so it's worth reading up on this if this is the approach you wish to take.

Company secretaries

Private companies don't have to appoint a company secretary unless they choose to do so. But make sure you check the articles of your company before making any decisions.

If you decide not to appoint a company secretary for your RMC/RTM then any director, or person authorised by the directors, can carry out the duties normally expected of the secretary. If a secretary is already in place, all they need to do is resign.

Communicating with shareholders and members by email

All companies can use emails as the default way of communicating with their members and shareholders. But there are certain conditions: there needs to be a shareholders' or members' resolution to approve the use of emails if the current articles don't allow it; and any individual has the right to opt out at any time and be sent a hard copy.

Communicating with shareholders and members through websites

Companies can also choose websites as the default way of communicating. (Part 4 of Schedule 5 of the Act). Again, there are certain conditions: the company needs to seek individual agreement from each intended recipient; and a resolution needs to be passed for the company to use website communications as the default.

If you've written to ask for someone's agreement to use a website as the default method of communication for your company and they haven't responded within 28 days, the company can take this as their agreement. But you can't ask again for their agreement within less than 12 months, and your company must notify them each time information is published on the website.

Advice to RMCs formed before 2006

If your RMC was formed before the Companies Act 2006, you don't have to make any changes to your constitutional documents. But you may wish to change your existing articles to take advantage of the greater flexibility in the newer models.

To do so, your company needs to make the change by passing a special resolution. 75% of those eligible to vote must vote in favour of the change whether this is by a show of hands, a poll at a meeting, or by written resolution.

If you're thinking of changing your company's articles, we strongly advise you to take legal advice first.

PARTS OF THE 2006 ACT THAT ARE COMPULSORY

Deadline for filing company accounts

The deadline for private companies to file annual accounts and reports is 9 months for financial periods.

Rules relating to directors' and secretaries' addresses

Company secretaries only need to file a service address with Companies House; there's no need to give a home address.

Other directors have to file two addresses; a service address, which goes on the public record, and a home address, which is kept confidential and only disclosed to certain public authorities.

Companies have to keep a register of their directors' home and service addresses — simply the company's registered office will do for the latter. Home addresses should be kept confidential and may be kept in whatever form the directors think best.

Register of members and shareholders

Any shareholder or member of a company has the right of access to the company register without charge (others can be charged a fee).

The 2006 Act amends this right: those who ask to inspect the register must explain who they are, what the purpose of the request is and whether the information will be disclosed to others.

If the directors aren't happy with the reason, they can apply to a court for an order to allow them to refuse the request. The Act also allows a shareholder, member or other person to ask for a copy of the whole or part of the register for a fee.

Company websites and e-mail communications

The 2006 Act allows companies to use electronic communication if they wish. But it's a legal requirement for them to include the same information that's required on letterheaded paper: the registered name and office of the company; the trading name if it's different; the company registration number; and whether it's registered in England, Scotland or Wales.

Person of significant control

From 6th April 2016 Companies need to start logging details of all persons with significant control (PSC) over that company. A PSC is anyone in a company who meets one or more of the conditions listed in the legislation:

- Owns more than 25% of the company's shares
- Holds more than 25% of the company's voting rights
- Holds the right to appoint or remove the majority of directors
- Has the right to, or actually exercises significant influence or control
- Holds the right to exercise or actually exercises significant control over a trust or company that meets one of the first 4 conditions

Companies will need to hold the following data on any recognised PSC's:

- Name
- Date of Birth
- Nationality
- Residential Address
- Service Address
- Date they became a PSC
- Which of the 5 legislative requirements apply

From June 2016 the requirement for filing an annual return will be replaced with the requirement to file a confirmation statement. This will need to be submitted at least once a year and you will need to check and confirm that the information held by Companies House is correct in relation to the identified PSC's and/or advise of any changes required. There will be a fee to pay with the confirmation statement but the record can be updated as many times as is needed throughout the year based on that one annual charge.

It should be noted that a company's PSC register should not be blank. If you have no PSC's, or are waiting to confirm the details, you must state this on both the internal register and the one held at Companies House. The Companies House online service will help provide the right wording to use and the PSC data should then be updated as soon as it becomes available.

Your Company Secretary should be aware of these changes and be able to assist with implementing them but further information on these changes can be found on Companies House website should you require it. The full address is:

<https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

Late filing penalties

All private and public limited companies must send their accounts and reports to Companies House. The directors are personally responsible for ensuring that they're delivered on time. 'Delivery' means the documents have actually been received at Companies House, and in the correct format. If they're late, a penalty will be imposed (See below).

Length of delay (measured from the date the accounts are due)	Private Company
Not more than 1 month	£150
More than 1 month but not more than 3 months	£375
More than 3 months but not more than 6 months	£750
More than 6 months	£1,500

The amounts set out in the table above will be doubled if accounts are filed late, and the previous year's accounts were also filed late.



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FINAL WORD

If you're an RMC/RTM director, it's worth brushing up on the relevant aspects of the Companies Act 2006. A good understanding will help things run smoothly and prevent headaches later on.

Note:

Whilst every effort has been made to ensure the accuracy of the information contained in this ARMA Advisory Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise.

The ARMA Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.