

Corporate Transparency and Register Reform

This response is provided by the Centre for Commercial Law and the Centre for Scots Law at the University of Aberdeen. The response was prepared by Dr Alisdair MacPherson and Mrs Donna McKenzie Skene, who are members of both Centres, and incorporates comments by Professor Roy Partain and Professor Abbe Brown, both members of the Centre for Commercial Law, and Malcolm Combe, a member of both centres.

General Comments

We welcome the opportunity to respond to this consultation. We are generally in favour of the proposals contained in the consultation but note that they are quite specific, and we consider that there are some wider issues regarding transparency which might be worth considering. In particular, there are some arguments for widening transparency requirements to include non-shareholder but financially interested stakeholders, shareholder networks, and delegation of authority guidelines. We are happy to provide more information about this if required.

Responses to Questions

We would respond to the specific consultation questions as follows.

The case for verifying identities

Q1. Do you agree with the general premise that Companies House should have the ability to check the identity of individuals on the register? Please explain your reasons.

Yes. We consider that this reflects the modern emphasis on increased transparency and certainty of identity. Furthermore, it appears to reflect how people wish to use the register, would increase trustworthiness of the register and helps to meet the expectations of those who use the register. We consider this clarity, certainty and trustworthiness can help support business activity.

Q2. Are you aware of any other pros or cons government will need to consider in introducing identity verification?

We consider that the issue of resources will need to be considered properly given the amount of work required. We also consider that there are issues as to how this will work in practice, including issues with regard to compliance with data processing requirements, and also potential liability issues which will need to be considered, for example, potential claims for negligence against Companies House in its own right and by way of vicarious liability for third party agents where identity verification is carried out by the latter.

Q3. Are there other options the government should consider to provide greater certainty over who is setting up, managing and controlling corporate entities?

We do not consider that other options would be less burdensome/resource intensive and consider that the current proposals are proportionate. However, we would suggest that if these reforms are introduced, they should be kept under review, with further steps towards transparency to build on these reforms being considered in future.

How identity verification might work in practice

Q4. Do you agree that the preferred option should be to verify identities digitally, using a leading technological solution? Please give reasons.

Yes, for reasons of speed and efficiency, always provided that the system is sufficiently robust, secure and accurate.

Q5. Are there any other issues the government should take into account to ensure the verification process can be easily accessed by all potential users?

We would support the proposal to use, for example, a legal professional to verify identity where someone does not have relevant documentation or access to the appropriate technology. With regard to the issues raised in this section generally, we would stress the importance of the protection of personal information, including the robustness of systems, and the avoidance of the potential for data leaks. We suggest that, in particular, regard is had to legal obligations in respect of data protection, breach of confidence, misuse of private information and the right to a private life.

Q6. Do you agree that the focus should be on direct incorporations and filings if we can be confident that third party agents are undertaking customer due diligence checks? Please give reasons.

Yes, provided that there is indeed confidence that third party agents are carrying out due diligence properly, given that this task is being delegated to them. In order to ensure that confidence, we would support the introduction of a regulatory regime for third party agents. We also believe that consideration needs to be given to liability issues in terms of the potential liability of both Companies House and third party agents to each other and to third parties.

Q7. Do you agree that third party agents should provide evidence to Companies House that they have undertaken customer due diligence checks on individuals? Please give reasons.

Yes, on the basis that there should be a complete record at Companies House which can be accessed if needed and all parties are then treated equally irrespective of who is carrying out the checks.

Q8. Do you agree that more information on third party agents filing on behalf of companies should be collected? What should be collected?

On balance, yes, we agree the information collected should be expanded to cover the types of information specified in the consultation document. We wonder whether there is in fact merit in requiring third party agents to be identity checked as well.

Q9. What information about third party agents should be available on the register?

We consider that the information should be the same as for others whose details appear on the register, including contact information.

Who identity verification would apply to and when

Q10. Do you agree that government should (i) mandate ID verification for directors and (ii) require that verification takes place before a person can validly be appointed as a director? Please set out your reasons

We agree that ID verification should be mandated for directors, but we consider that the proposals raise a timing issue in terms of when a director's appointment takes effect and the consequent validity of the director's acts. We consider that the legislation would need to be very clear on this issue as there are potential unintended consequences e.g. what would happen if a party is appointed as a director and engages with others and then fails identity verification? We also consider there might be issues concerning how the proposals would affect e.g. shadow directors and de facto directors.

Q11. How can verification of People with Significant Control be best achieved, and what would be the appropriate sanction for non-compliance?

We agree with the consultation paper's stated approach that the burden of verification should not fall on directors but on PSC themselves, if only for the reason that the directors may not be in a position to carry out such verification. We consider that the appropriate approach is for the register to flag any PSC who have not verified their ID so that those using the register will be aware of the lack of verification and can factor this into their decision-making and for failure to comply with verification to be subject to a penalty but not made a criminal offence.

Q12. Do you agree that government should require presenters to undergo identity verification and not accept proposed incorporations or filing updates from non-verified persons? Please explain your reasons.

Yes, we agree that it is reasonable for a person presenting information to be verified so as to be able to show that they have the right to present information. This fits in with the aim of reducing fraud and preventing inaccurate information being presented to the register. We do consider there are practical issues, however, in terms of when/how often verification will be required e.g. on every occasion, one-off, valid for a period of time? We also believe consideration needs to be given to the implications if the requirements for verification are not met including liability, effectiveness of acts etc.

Q13. Do you agree with the principle that identity checks should be extended to existing directors and People with Significant Control? Please give reasons.

Yes, on the basis that the aim is to have a completely transparent register. We appreciate that this will be an enormous undertaking and will require generous timescales to be completed, but for the sake of parity, it should be done.

Requiring better information about shareholders

Q14. Should companies be required to collect and file more detailed information about shareholders?

We appreciate that there is a desire for complete transparency regarding companies, and that it is sensible for the register to show up-to-date details of who owns shares in a company, but there were some differences of view as to how far this should go..

Q15. Do you agree with the proposed information requirements and what, if any, of this information should appear on the register?

Yes, provided that additional personal information is protected as proposed.

Q16. Do you agree that identity checks should be optional for shareholders, but that the register makes clear whether they have or have not verified their identity? Please give reasons.

Yes. We consider that it is a step too far to have mandatory identity checks for every shareholder in every company: many will be picked up by the checks on directors and PSC. We consider that the register should, however, make clear whether or not they have verified their identity so that those using the register will be aware of the lack of verification and can factor this into their decision-making if relevant.

Linking identities on the register

Q17. Do you agree that verification of a person's identity is a better way to link appointments than unique identifiers?

Based on information given, it would appear so, and would avoid duplication of effort.

Q18. Do you agree that government should extend Companies House's ability to disclose residential address information to outside partners to support core services?

Yes, but only if this is core to Companies House services, and there are adequate protections in place to ensure data security. The development of solutions in these respects should also have regard to comparable initiatives elsewhere, for example by the Scottish Government in respect of Online Identity Assurance, regarding the intersections between privacy, technology and efficiency.

Reform of the powers over information filed on the register

Q19. Do you agree that Companies House should have more discretion to query information before it is placed on the register, and to ask for evidence where appropriate?

Yes, given the proposed changing functions of Companies House. We consider, however, that it would be useful to have a statutory framework for the exercise of the discretion, specifying the circumstances in which information can be requested, the kind of information which may be requested, timescales etc.

Q20. Do you agree that companies must evidence any objection to an application from a third party to remove information from its filings?

Yes. We also consider that a third party must provide evidence to support their application, and that there should be a statutory framework for adjudication of contested applications, including with respect to appeals.

Reform of company accounts

Q21. Do you agree that Companies House should explore the introduction of minimum tagging standards?

On balance, yes, provided this does not impose undue additional burdens on those submitting.

Q22. Do you agree that there should be a limit to the number of times a company can shorten its accounting reference period? If so, what should the limit be?

As there appears to be clear evidence of abuse, we would agree. We would suggest that a company should be able to shorten its accounting period once as of right, and thereafter only on cause shown.

Q23. How can the financial information available on the register be improved? What would be the benefit?

We are not in a position to comment on how to improve the financial information on the register, but we can see that the benefits of having improved information would include helping to prevent tax evasion and fraud, especially if information submitted to different agencies could be cross-checked electronically, as information-sharing across agencies could help to avoid duplicity with regard to financial information. The points made in response to questions 5 and 18 regarding privacy are reiterated.

Clarifying People with Significant Control exemptions

Q24. Should some additional basic information be required about companies that are exempt from People with Significant Control requirements, and companies owned and controlled by a relevant legal entity that is exempt?

This does not seem unreasonable provided it is proportionate and not too burdensome.

Dissolved company records

Q25. Do you agree that company records should be kept on the register for 20 years from the company's dissolution? If not, what period would be appropriate and why?

We agree that the current period of 6 years is too short. We have no strong views as to whether 10 or 20 years is more appropriate, but we tend to favour a period of 20 years due to potential director disqualification issues (particularly if proposals to allow disqualification without restoration of the company to the register go ahead) and for the fact that it is useful not to have to go to the National Archives for information that may have ongoing relevance.

Public and non-public information

Q26. Are the controls on access to further information collected by Companies House under these proposals appropriate? If not, please give reasons and suggest alternative controls?

The proposals seem appropriate.

Information on directors

Q27. Is there a value in having information on the register about a director's occupation? If so, what is this information used for?

We do not see any real value in this. It could be made optional, although there could still be the potential for misleading information to be included if the option was exercised. If an optional system was introduced, no verification of information should be required, but some form of financial sanction for false information could be worthwhile.

Q28. Should directors be able to apply to Companies House to have the "day" element of their date of birth suppressed on the register where this information was filed before October 2015?

Yes, on the basis of parity of treatment for those entered on the register before and after October 2015 and given that the justification for no longer having this information is to protect against fraud. In fact, it might be preferable for Companies House to automatically remove the day element from pre-October 2015 directors, perhaps subject to a right for directors to ask Companies House not to do so if they wish for some reason to keep the information.

Q29. Should a person who has changed their name following a change in gender be able to apply to have their previous name hidden on the public register and replaced with their new name?

Provisionally, yes. However, while we are aware that there are sensitivities around this issue, we consider that there should be some mechanism to link the old name with the new name and thereby to connect past information with present and future information, subject to appropriate safeguards if necessary/appropriate.

Q30. Should people be able to apply to have information about a historic registered office address suppressed where this is their residential address? If not, what use is this information to third parties?

We consider that an approach which would allow suppression but also allow the information to be disclosed where just cause can be shown, e.g. for litigation, would be reasonable.

Q31. Should people be able to apply to have their signatures suppressed on the register? If not, what use is this information to third parties?

Yes. In fact, as is mentioned above in relation to the day element of dates of birth, it might be considered whether Companies House could automatically remove this from all existing records to help prevent fraud etc. The information could be made subject to release on cause shown e.g. as evidence where there is an alleged forgery.

Compliance, intelligence and data sharing

Q32. Do you agree that there is value in Companies House comparing its data against other data sets held by public and private sector bodies? If so, which data sets are appropriate?

Yes. The Register of Births and Deaths and HMRC are obvious and acceptable. The Land Register (in both England and Wales and Scotland), the Register of Inhibitions and Adjudications, DVLA and the electoral register are all possibilities too. We suggest that it is also borne in mind that there are some governance frameworks regarding access and reuse of some data sets, for example in respect of health in Scotland there is the Public Benefit and Privacy Panel.

Q33. Do you agree that AML regulated entities should be required to report anomalies to Companies House? How should this work and what information should it cover?

Yes, in principle. The requirement could be to report any significant anomaly or there could be an exhaustive or non-exhaustive list specified in legislation or guidance. We are concerned, however, that there

might be issues of confidentiality and there would need to be appropriate protections for those reporting under the system.

Q34 Do you agree that information collected by Companies House should be proactively made available to law enforcement agencies, when certain conditions are met?

Yes, subject to appropriate conditions.

Q35. Should companies be required to file details of their bank account(s) with Companies House? If so, is there any information about the account which should be publicly available?

If information otherwise requires to be disclosed, then details of the bank account could be filed with Companies House, but we do not consider there is an obvious reason for any such information to be publicly available.

Other measures to deter abuse of corporate entities

Q36. Are there examples which may be evidence of suspicious or fraudulent activity, not set out in this consultation, and where action is warranted?

We are not aware of any such examples, but would draw the government's attention to Part 3 of the Land Reform (Scotland) Act 2016 in this context.

Q37. Do you agree that the courts should be able to order a limited partnership to no longer carry on its business activities if it is in the public interest to do so?

Yes, this would create parity with other entities.

Q38. If so, what should be the grounds for an application to the court and who should be able to apply to court?

In our view, the grounds should be the same as the grounds for winding up a company in the public interest and the application should be made by the Secretary of State: if other bodies have information which would justify such an application, this could be drawn to the attention of the Secretary of State for the purposes of making an application.

Q39. Do you agree that companies should provide evidence that they are entitled to use an address as their registered office?

Yes, this seems sensible, although some thought would need to be given to how to evidence this in practice.

Q40. Is it sufficient to identify and report the number of directorships held by an individual, or should a cap be introduced? If you support the introduction of a cap, what should the maximum be?

We do not consider it appropriate to impose a cap: any cap would be somewhat arbitrary and inflexible, and in general, people are not prohibited from taking on multiple jobs or appointments. We consider it is sufficient that details of the number of directorships a person holds are disclosed, and users of the register can take this into account where relevant.

Q41. Should exemptions be available, based on company activity or other criteria?

N/A on the basis of our answer to question 40.

Q42. Should Companies House have more discretion to query and possibly reject applications to use a company name, rather than relying on its post-registration powers?

We believe there is a case for this, but that it would be useful to have a statutory framework for the exercise of the discretion, specifying the circumstances in which it might be exercised, timescales, appeals process etc.

Q43. What would be the impact if Companies House changed the way it certifies information available on the register?

We are not in a position to comment on the possible impact, but we consider that in principle, if parties are using the certificate of good standing to evidence something which it is not designed to do, then a change of approach to make the position clear is desirable.

Q44. Do you have any evidence of inappropriate use of Good Standing statements?

No.