



CORPORATE TRANSPARENCY AND REGISTER REFORM

Issued 5 August 2019

ICAEW welcomes the opportunity to comment on the consultation on Corporate Transparency and Register Reform published by the Department for Business, Energy & Industrial Strategy on 5 May, 2019, a copy of which is available from this [link](#).

We agree that Companies House should have additional responsibilities to verify information on the register and extended powers and increased resources to enable it to do so. It is important that relevant information on the register can be relied upon as being accurate.

Some of the initiatives should be considered in a broader context to ensure that regulation for business is as effective and consistent as possible. For instance, the proposals for Companies House to verify information should be considered alongside other government initiatives for digital identification services.

This response of 5 August 2019 is made on behalf of ICAEW by our Business Law Department and reflects consultation with various of our expert groups including:

- Business Law Committee and its Money Laundering Sub-Committee (which includes money laundering reporting officers from leading firms) and Company Law Panel (made up of practitioners with expertise in company law);
- Financial Reporting and Audit Faculties and National Technical Advisory Committee;
- Business Committee (representing finance directors and other ICAEW members in business); and
- Practice Committee (representing views of members in practice).

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KEY POINTS

SUPPORT FOR VERIFICATION REFORM

1. We agree that Companies House should have responsibility for verifying the identity of relevant people. This will fill a clear gap in the current anti-money laundering regime where companies that are incorporated without the involvement of regulated service providers are subject to only minimal checks.
2. It is important that the reforms take account of the additional costs to business that will inevitably arise. A digital verification process is likely to be most efficient, but it would be necessary to cater for those who do not have access to digital tools or for whom any standard processes may be problematic.
3. The objectives of verification should be clearly defined so that increased costs can be assessed against perceived benefits. We agree that the main objectives should be to improve the integrity and reliability of the register and to close the gap in the regulatory regime.
4. A potential benefit is that those dealing with companies (including those in the AML regulated sector) may be able to rely to a greater extent on the register than is currently the case. If the regulated sector were able to access the identity verification information obtained by Companies House more significant efficiencies might result, but this is not proposed.
5. We believe that it is appropriate for Companies House to undertake identity verification checks itself. The alternative of requiring all company incorporations to be done through third party agents (who are required to do checks) might be more costly. We do not believe that companies should be required to have UK bank accounts merely to ensure that relevant checks are done.
6. We believe that Companies House should be able to rely upon identity checks done by third party agents (for non-direct incorporations), at least in the short term. Whether this will be the best option in the long term may require further consideration as the proposals develop. Third party agents may be best placed to verify the identity of non-UK persons which is not always straightforward.

FINANCIAL REPORTING

7. It is important that users can rely upon information included in the register regarding a company's financial position. We agree, therefore, that Companies House should take a more proactive role in checking that companies comply with their obligations on filing financial statements and that errors should be rectified (see our responses to Q19 and, in relation to possible further improvements on financial reporting, Q23).
8. We question the benefits of requiring minimum tagging standards for company accounts. If they are introduced, they should not be more onerous than those required by HMRC and the option to file in PDF should be retained (see Q21).

NEED TO PROTECT RIGHTS OF INDIVIDUALS

9. It is important that the rights of individuals, including rights to own property and to lead a private life are respected.
10. The risks of requiring disclosure of personal information, including identity theft, should be evaluated fully.
11. The pursuit of "transparency" for its own sake does not justify ever increasing disclosure obligations on individuals; there needs to be a clear purpose to justify relevant measures. In this case, we believe that the main purpose is to improve the integrity of the register for users (including law enforcement agencies) and, by so doing, deter the use of UK companies for criminal purposes. The measures also need to be proportionate to meet the objectives. The

fact that information might be useful to the authorities may not be sufficient justification in itself.

12. Careful consideration is required as to who should have access to the required information and for what reasons including:

- Law enforcement agencies (and which of them) whether with or without a court order
- AML supervised entities
- Credit rating agencies
- The public.

Various principles should be applied to the information collected as noted later in this response.

THE BROADER PICTURE AND BETTER REGULATION

13. Many of the proposals appear sensible looked at in the context of reform of Companies House specifically. However, we believe that government should also consider how the proposed reforms might relate to other initiatives or regulations, with an overall objective of producing a good regulatory environment for business (and individuals) as a whole. There are broader issues that government might usefully take into account in that respect.
14. On 19th July, the Cabinet Office and Department for Digital, Culture, Media & Sport issued a call for evidence on **Digital identity**. This considers the diverse identity checks already required by different government bodies and whether they can be simplified and centralised. We suggest that the Companies House project at least needs to be informed by this broader project (and vice versa).
15. The proposed reforms (and the PSC reforms made a few years ago) are designed in part to combat money laundering. We think that further consideration may be required in that context to ensure that measures adopted by Companies House are proportionate. For instance, under the anti-money laundering regime, an AML regulated entity may need to identify “beneficial owners” of an entity but may not need to obtain copies of identity documents to verify their identity (depending upon risk assessment). By contrast the company law PSC regime requires all “persons having significant control” to be identified and the proposal considers whether they should all be subject to identity verification, which would include providing copies of identity documents (irrespective of risk).
16. We agree that Companies House should take a more proactive role in ensuring that relevant information on the register is accurate, including to prevent abuse of accounting and audit requirements (see our response to Q19). Any consideration of Companies House’s role would provide an opportunity to consider the role of other bodies involved in the enforcement of company law as a whole. Such bodies include the Insolvency Service and the proposed Audit, Reporting and Governance Authority. It should be clear (eg, to the public) which body is responsible for which aspects of enforcement.
17. This review may also provide an opportunity to consider whether the company law framework is producing the desired outcomes, for instance as regards compliance by directors with their duties. The regime provides for more than 100 different offences and we question whether reliance on criminal law to this extent is the best approach. If the relevant authorities (including Companies House) are to be given a more proactive role, this might enable a more nuanced and holistic approach to be adopted (akin to disciplines exerted by professional bodies on their members).
18. Some of the proposals envisage that Companies House might have an enhanced role beyond merely ensuring reliability of the register. Such proposals will require careful consideration in the wider context of the affected legal framework, rather than simply in the context of reform of the register.
19. For instance, if a director might not be lawfully appointed until registered (and their identity verified) as proposed, this could have an adverse impact on legitimate business transactions. Similarly, the existing regime on company names provides for a tribunal to determine certain

disputes regarding company names and we believe that caution is required in extending the quasi-judicial role of Companies House to what may primarily be intellectual property disputes.

20. There will be practical implications if the register is given increased legal significance, including the risks arising from any downtime (for maintenance or otherwise).

RESOURCE FOR COMPANIES HOUSE

21. Companies House will need to be properly resourced to undertake any new responsibilities. To the extent that those responsibilities relate to the integrity of the register and its place in crime prevention (principally, verification of directors' identities) we support proposals to fund through increased fees for registration (and annual fees) levied on companies. However, given the importance of the limited company form to enterprise (noted in the consultation), it is important that the process is as efficient as possible to keep costs to a minimum.

RESPONSES TO THE CONSULTATION QUESTIONS

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.

22. We agree; Companies House should not only be able to check the identity of relevant individuals but should also be responsible for doing so. The fact that such checks have not been required by Companies House to date has been a significant gap in our anti-money laundering regime. Regardless of statistics on accuracy given in the consultation paper, we understand there are a significant number of discrepancies in the Companies House data that might be addressed through the proposal. We welcome efforts by government to address this now.
23. We do not believe that requiring use of third party agents in every case is an attractive alternative; it would seem at odds with the UK's desire to be a place that welcomes enterprise. This does, however, assume (as we do) that any Companies House verification process will be efficient and the costs will not exceed those of third party agents.

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

The pros

24. We believe that verification of the information will serve a useful purpose in deterring use of UK companies for criminal purpose (or at least addressing the perception that gaps in the UK's regime allow abuse).
25. It may also help law enforcement agencies if they can rely more upon the information on the register or have quicker access to identity verification information than would be the case had it not been obtained by Companies House.
26. Identity verification may also help Companies House produce consistent results in a way that might be useful for all users (for instance, where one individual uses different versions of their name).

The cons

27. Key risks of requiring increased disclosure include risks of identity theft and fraud against those providing the information; risk of increased cost of business; and the possibility that verification may cause delay to entries on the register.

Objectives of verification to be clarified

28. The consultation document (para 42) notes what checks are typically undertaken by the regulated sector, but not the underlying legal obligations they are intended to meet. Under the Money Laundering Regulations 2017, section 28(2)), these are to:
- identify the customer unless the identity of that customer is known to, and has been verified by, the relevant person;
 - verify the customer's identity unless the customer's identity has already been verified by the relevant person; and
 - assess, and where appropriate obtain information on, the purpose and intended nature of the business relationship or occasional transaction.
29. Government should consider whether the obligations of Companies House should be expressed in this sort of way rather than merely identifying the checks to be performed.
30. It appears that the main objective is to improve the integrity of the register, so that users can be confident that checks have been done to establish that the data fields (eg, name, date of birth) have been verified against further information (eg, passport). This would not of itself provide assurance regarding anything else (for instance that the relevant individual does not have a criminal record).
31. If Companies House is to have broader objectives, these will need to be clearly defined to avoid risks of escalating costs and possible duplication of effort with other bodies. We suggest objectives should be closely tied to compliance with company law (as opposed to, say, fraud generally). For instance, in verifying information about directors, it would be reasonable for Companies House to check (from public or verification records) that the individual is not disqualified from being a director, in particular is not:
- a person under 16 years of age;
 - an undischarged bankrupt or person subject to a bankruptcy restrictions order;
 - a person subject to a disqualification order or who has given a disqualification undertaking.
- Subject to this, Companies House would still be required to register a person as a director (unless company law is to be changed). This contrasts with the position for AML regulated service providers, who may carry out more extensive checks and might decide to decline to provide their services, for instance to an individual convicted of fraud or suspected of being involved in money laundering.

Principles governing collection of information

32. We believe that some overarching principles should be applied to the information collected, including:
- It should be collected fairly and transparently;
 - It should be used only for the purposes specified in the legislation;
 - The extent of the information collected should be limited to that necessary for the specified purpose;
 - It should be accurate and kept up to date (or it should be clear where it may not be up to date, for instance if it is obtained only at the time of incorporation or appointment).
33. As noted above, it should be recognised that some people will not be suitable for electronic verification eg, those with personal impairments or without access to the internet. Some may simply prefer not to use digital verification whether out of fear of identity theft or otherwise.

A sense of perspective

34. As the consultation paper notes, a registration system of this kind will not be a fool-proof safeguard against filing of false information.
35. Similarly, it will not in itself prevent abuse by criminals of UK companies even where filings are correct. Those running the company may allow it to be used for illegitimate purposes, just

as living individuals may allow their identity to be used by criminals. It is also possible that criminals might steal a company's identity, as they can steal identities of individuals.

36. The potential limitations of this initiative should be recognised in the context of implementation to ensure that measures are proportionate and recognising that most companies, and people operating them, are not pursuing criminal activity. If the limited company regime is being abused, government should consider whether enforcement of existing law could be made more effective, as well as considering additional regulatory measures.
37. On the assumption that a practical approach will be adopted, we have not sought here to consider some of the broader questions that might arise such as what constitutes a person's "identity" (beyond traditional data fields such as name, sex, age and address) and whether increased disclosure requirements have, in fact, materially reduced underlying crime. The consultation on digital identity referred to earlier may, however, consider some of these issues.

Ability of others to rely upon verification done

38. As the consultation notes, those using the register could place more reliance on it than is currently the case but would still need to do their own due diligence checks appropriate to their needs. Third parties would still need to check that a person who purports to be a person named in the register is indeed that person.
39. AML regulated service providers are required to adopt a risk-based approach to identifying their clients through client due diligence (CDD) and Companies House data could become a more useful source for that CDD when that the data has been verified. For some low risk clients, the Companies House register may be the main source of CDD information. The proposed regime may, therefore, reduce costs of doing business in some circumstances.
40. There could be further opportunities to reduce duplication of effort and reduce costs for business in the context of identity verification. For instance, AML regulated service providers might be permitted to have access to identity verification information obtained by Companies House, or government might develop a central identification process (as considered in the digital identity consultation). However, these possibilities give rise to other potential concerns that would require consideration (beyond the scope of this response).

Alternative of relying on bank account verification processes

41. We agree that it would not be appropriate to require all companies to set up bank accounts as an alternative to Companies House verifying identity (para 50). Many companies do not need a bank account (eg, companies for joint holding of title to property or as special purpose vehicles) and it would pose unnecessary burdens on both the company and the bank to require them to open one simply to verify identities, indeed, one might question why a bank would agree to do so. Also, it is not clear how a company would establish a bank account until it has been incorporated.
42. However, some categories of companies without bank accounts may be perceived to be high risk in the context of money laundering (eg, shell companies), so they should not be excluded from the proposed verification checks. We therefore agree that Companies House should carry out identity checks (unless a third party agent has done so).

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

43. The consultation is wide ranging in the options it considers. We believe that the focus should be on options that are designed to meet one or more clear and explicit objectives (eg, integrity of the register) and should be capable of implementation in a practical and cost-efficient way.

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.

Support for digital solution (with qualifications)

44. We agree that digital verification is to be preferred (assuming that the data is protected and systems access controlled appropriately). This should be quicker, cheaper and more reliable than manual methods.
45. Government has itself provided excellent examples of how electronic technologies can be utilised, for instance with the vehicle tax process (which checks electronically that insurance is in place and MOT certificates apply). The ongoing digital identity consultation should enable government to apply its knowledge and experience across various departments in an effective way. Experience in other digitally advanced economies should also be considered (eg, Estonia's e-residency regime).
46. Individual identifiers (such as National Insurance numbers) already exist for UK citizens and one might well question why they are all needed and whether better use could be made of some of them. Again, the consultation on digital identity may explore some of these issues.
47. However, as noted above, it is important that any digital solution is accompanied by other processes to cater for those who do not, for instance, have documents (such as passports or driving licences) with the required digital data or access to computers or other relevant equipment. This should be factored into assessment of resourcing requirements for Companies House.
48. Digital verification of non-UK citizens may present challenges. Given that the UK wishes to be a good place for international business, this is a significant matter. There may be some jurisdictions where relevant ID information can be obtained relatively easily in a digital format, but that will not always be the case. Government would also need to assess the reliability of digital information provided, possibly on a jurisdiction by jurisdiction basis.
49. The costs of enabling Companies House to handle all unusual and difficult cases itself may be high and it might be useful for it to rely upon third party agents to verify identity in those cases in particular. There may be merit in restricting the types of third party agent able to perform some kinds of work, for instance to ones based in the UK (and therefore subject to AML supervision for their work).
50. Given the influence of government in the context of identity verification, it is important that any impact on competition is considered carefully. Government needs to be able to adopt new technology as it evolves and should promote the sort of diverse and competitive environment that can best be expected to drive advances in technology. There is a risk that any solution adopted by Companies House (or government more generally) might be seen as a standard that others should adopt, which may entrench a particular solution. We suggest that this risk should be considered both as regards this Companies House proposal and in the context of the broader digital identity consultation.

Verifying a person's connection with the company

51. We understand it is proposed that Companies House would verify identity information provided about an individual but would not verify that the individual has the connection to the company claimed. For example, the register might be relied upon to show that a person of a certain age living at a certain address exists as a person (or, at least, that some further evidence has been obtained to suggest this). An entry on the register showing that person as a director could not, however, be relied upon to establish that the person was duly appointed as a director.
52. While we understand that Companies House would not wish to verify the appointment, eg, by checking the company's constitution, board minutes etc. (and, presumably, verifying the board minutes), we assume that the person providing ID verification would confirm the purpose for which it is being provided.

53. See also our response to Q10 below regarding verification of directors.

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?

54. See introductory comments.

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.

55. We agree that the focus should be on direct incorporation and filings for reasons noted above.
56. AML regulated service providers would still need to do client due diligence checks in many cases, so there is a risk of duplication of effort if Companies House verifies identity in every case. We believe, therefore that Companies House should be able to rely upon third party agent verification and that government should aim to cater for this, at least in the short term.
57. As noted above, the proposal envisages that Companies House will carry out specific types of identity checks, but the regulated sector identity checks may vary according to perceived risks of each client.
58. While it should be possible to rely upon relevant AML supervisory bodies to maintain reasonable standards in general, there will inevitably be cases where third party agents fail to meet their obligations and government will need to consider what steps or remedies might be required (regardless of any sanctions supervisory bodies might be able impose). For instance, Companies House might wish to investigate other cases involving the third-party agent and have power to redo inadequate identity verification work itself.

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.

59. While we agree that third party agents should confirm that they have performed CDD checks, requiring them to provide evidence of this would involve additional work and cost for third party agents for questionable benefit. Also, any transfer of data creates a risk of loss or corruption of the data.
60. As noted above, disciplinary sanctions should apply where regulated entities fail to meet their obligations. Where third party agents are complicit with criminals, they may provide false evidence too. Third party agents may also be subject to both confidentiality requirements and data protection laws, so the proportionality of any law overriding those would require consideration.
61. An alternative would be for there to be a central electronic database of identity to which regulated entities could have access, but that is not proposed in this consultation (and gives rise to a number of potential concerns) and we do not therefore comment further on that here. It is, however, relevant to the separate digital identity consultation.
62. Consideration may need to be given to the length of time that third-party agents are required or allowed to retain their evidence of CDD, if this is to be used as the basis of the register. In particular, government proposes that records on the register will be kept for 20 years after dissolution (see Q25). If this is applied to personal information obtained for verification purposes, it would be at odds with the more nuanced approach applying to the regulated sector. For instance, CCAB Anti-Money Laundering Guidance for the Accountancy Sector requires all records created as part of the customer due diligence process to be retained for five years after the relationship ends.
63. While we understand the concerns about third party agents, it is possible that individuals in Companies House might be corrupted or make mistakes and the risk of machine error (or sabotage) also needs to be considered where digital/automated solutions are proposed.
64. We understand that third party agents may establish a company for their clients in some circumstances when some identify verification information is still pending and that this

flexibility can be helpful in a fast-moving business environment. We suggest that government consider whether arrangements with third party agents could be put in place to maintain this flexibility.

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

65. Yes. If Companies House is to rely upon third party verification rather than doing its own verification, it should have the information outlined in the consultation (but probably not more) so that it can verify that the agent is indeed subject to AML supervision. This would allow Companies House to contact the third party agent when necessary, and to liaise with the AML supervisor where relevant disciplinary procedures may need to be applied. Companies House might be enabled to check that the information provided is correct by cross-checking it with the AML supervisors where appropriate.

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

66. We believe that the name of the AML supervisory body and, possibly, the name of the relevant regulated entity, should be public, so that the public can raise concerns. It may not be necessary for other information about third party agents to be on the register because their AML supervisor will already hold these details. Those with a legitimate interest in the information should be able to access the full information if necessary.

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

67. On the basis that the identity verification is done before recording and disclosing the director's details on the Companies House register, we would support mandatory ID verification of all directors. We doubt that occasional prosecutions of people found to have provided false information after the event is a good substitute for doing checks at the time of registration, indeed the 2013 Kevin Brewer case demonstrated the need for reform in this area.
68. However, there is a difference between preventing a director from being entered onto the Companies House register before their identity has been verified and preventing them from being validly appointed as director until after verification/registration. Even if the Companies House processes are extremely efficient, there is a risk that the latter approach would result in delays to appointments in a way that could adversely impact business transactions (which may be fast moving and involve changes in directorships at relatively short notice). A company (and its directors) may believe that they have obtained adequate identify information, but they will not know that this is the case until it has been verified by the relevant third parties (ie, third party agents or, as proposed, Companies House). They are not themselves AML regulated and may make mistakes.
69. This concern arises primarily in relation to appointments after the company has been incorporated. We agree that a company should not be incorporated until checks on the first directors have been done (subject to possible arrangements for flexibility with third party agents).
70. Should appointment of directors be conditional upon registration, the role of de facto and shadow directors (who will not be registered) in company law would need to be considered.

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

71. If verification of the identity of PSCs is required, it would be reasonable for similar processes to apply as for identity verification of directors. That is, Companies House would do the

relevant checks unless it can rely upon regulated service providers to do so. It would verify (digitally where possible), eg, against passport, name and address.

72. The current regime relies upon a company to identify whether or not any person is a PSC in relation to it (or for PSCs to identify themselves). However, we believe that identity checks would need to be done by an independent person with relevant skills or resource so that it would not be appropriate to rely upon self-certification of this kind in that context
73. We are not, however, convinced that that government should require PSCs to have their identity verified, particularly because we are unclear what the objective would be or whether identity verification would be likely to meet that objective (see our introductory comments).
74. One concern about the PSC register is that not all PSCs of a company have been included on the register in the first place, whether due to misunderstanding of the definition, or by deliberate omission. Verifying the identity of PSCs who are on the register may only be verifying partial information about the control of a company. The proposal does not suggest that Companies House will do due diligence on companies to see if there may be undeclared PSCs (as opposed to acting on errors evident in filings or information made to it).
75. We note that requirements on regulated service providers to verify the identity of beneficial owners when carrying out CDD checks are related to the risks involved in a given assignment. They will not, therefore, necessarily obtain identity documents for all beneficial owners in every case because regulated service providers only have to apply reasonable measures to verify the identity of those individuals.
76. There is, therefore, a risk, that requiring verification of the identity of PSCs will add burdens to those companies (and PSCs) who are complying with the PSC disclosure requirements, without necessarily improving the overall integrity of the register to a material extent.
77. Government should consider whether tackling abuse of companies by criminals might better be addressed through investigating suspicious activity and enhanced enforcement rather than imposing identity verification requirements on all PSCs of limited companies.
78. In addition to our general comments about enforcement of company law, we note that criminal sanctions may be toothless against PSCs who are not UK resident. We do not know whether the regime for disenfranchisement of relevant shares etc in relation to PSCs has been effective.

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.

79. Yes, we agree, for reasons noted in the consultation paper and to meet the objectives outlined above.
80. The proposals would require the identity of presenters of relevant information to be checked and this could include Company Secretaries. We note, however, that it is not proposed that the identity of Company Secretaries as such is to be verified.

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

81. We agree that the same procedures should, over time, be applied to existing directors possibly on a risk-based approach. Clearly one individual should not have multiple identifiers.
82. For the reasons set out above, we are not convinced that requiring the verification of identity of PSCs is proportionate, and this view would apply equally to existing PSCs.
83. It is important that the system is proven to be working effectively (for new directors etc.) first. The regime would then, presumably, need to be phased-in for Companies House to deal with the volume of applications that would be required. Companies should also be given time to adjust, given that some directors might not wish to undergo identity verification and it could take time for companies to adjust.

REQUIRING BETTER INFORMATION ABOUT SHAREHOLDERS

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

84. Please see our introductory comments, particularly as regards the need for disclosure requirements to be tied to a clear underlying objective and need to respect rights of individuals.
85. The rationale for this proposal does not appear to be directly linked to crime prevention and we doubt that increasing disclosure requirements for shareholders would materially reduce the use of companies by criminals. We would also question whether the increased disclosure of private information is proportionate.
86. We do not believe that government should devote resources to, or impose additional burdens on companies, simply to enable people who use the register to “build a complete picture of a person’s trading history” and to find out which entities a person is “involved with” unless this serves a clear public benefit purpose that cannot be served by the private sector.

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

87. Please see our introductory comments regarding the need for government to be clear on the objectives of initiatives such as this. We believe that a costs versus benefit analysis is required for this proposal and that, in deciding what information will be made publicly available, government should consider the law applying to disclosure of information on a company’s own register of shareholders, which says that the register is not open to inspection other than for a “proper purpose” (ie, generally, purposes that relate to the shareholder’s interest in that capacity and/or exercise of shareholder rights).

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.

88. We do not believe that the additional work and encroachment on private rights involved in verifying the identity of shareholders would be merited in this context. Where a shareholding is substantial, the requirements relating to PSCs will apply (see above). In other cases, it is unclear what objective would be served in requiring verification. The burdens placed upon companies and individuals in verifying small shareholdings could be immense.

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?

89. Yes, if the Companies House system is effective in linking the appointments. Most individuals have enough “unique” numbers assigned to them by various bodies to make the idea of creating yet another one unattractive. So far as integrity of the register is concerned, the proposal appears to address the concerns identified (eg, use of various names by one individual).

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

90. Any right to disclose should be subject to clearly defined and narrow parameters and appropriate security safeguards. If such disclosure has not been required to date, we are not clear why it should be required in future.

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?

Support for proactive approach

91. We agree that Companies House should take a more proactive role in exercising its powers. If its existing powers (eg, deriving from ss455-456 CA 2006) are insufficient, then we believe that it should be given increased powers and responsibilities to address the areas of main concern.

Accuracy of financial reports

92. From a financial reporting perspective, we are aware of issues with inaccurate information being filed at Companies House which might have been picked up through greater checks. For example, entities filing accounts under the incorrect reporting regime eg, incorrectly prepared under the micro-entities regime, and accounts with false audit reports containing the details of auditors who know nothing about the company. There are also cases where companies incorrectly claim relief from preparing group accounts or rely upon a parent company guarantee to exempt a subsidiary from audit. There may be synergies in co-ordinating the checks that HMRC do on accounts already, where the same information is involved and subject to appropriate controls.
93. Giving Companies House a more proactive role in enforcement should be helpful in this respect. However, it is also important to consider the type of information that might usefully be checked and to ensure that staff receive appropriate training. This is to avoid instances of accounts being rejected for seemingly minor matters (for example, when different wording is used for a statement but which does not change the underlying meaning) whereas accounts with more significant errors are accepted.
94. It may be that investment in technology could assist with some of these issues. However, as mentioned, it is also important that staff have an appropriate level of awareness of the underlying legal requirements and can exercise judgement where needed. It may also be helpful for BEIS to consider the examination processes used to categorise and check accounts filed at Companies House to ensure that the right type of information is being checked.
95. In the longer term, there may be an argument for Companies House to increase its filing fees (which have remained relatively flat for a while) and use the increased revenue to hire accountant consultants. Another longer-term consideration is whether Companies House should redevelop their systems to be more stringent up front, or alternatively allow accounts to be filed more easily, but with stricter penalties post registration.
96. We would note, however, that the sort of checks that Companies House might be able to do will in some cases be limited and would inevitably fall short of the checks done by auditors.

Role of other bodies under company law

97. If Companies House were to take on a wider and more proactive regulatory role, it is important that there is no duplication of effort between different governmental bodies and that respective responsibilities are clear to everyone concerned (particularly directors). For instance, the roles of the Insolvency Service in connection with company investigations and the potential role of the successor body to the Financial Reporting Council (in the Kingman review) should be considered.

Avoiding scope creep

98. Aspects of the consultation that go beyond the way in which Companies House carries out its work and integrity of the register may need further consideration. For instance, we query whether Companies House should assume responsibility for monitoring whether a company

is set up “to trade on the good name of others” (this being a matter for companies who believe their rights are being infringed and the courts).

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

99. We believe that Companies House should monitor information provided and challenge those providing information when appropriate. It should be equipped to reject information that does not meet statutory requirements so that such information does not appear on the register. It should also act swiftly in suspected cases of abuse.
100. However, we think caution is required in giving Companies House additional powers to remove or change information, given the role of the register as a historic record and that the position in a given case may be unclear or subject to a dispute. In general, the courts are the appropriate forum for assessing breaches of law or settling disputes and careful consideration will be required where Companies House is to assume a greater quasi-judicial role.
101. This is particularly the case because removal of information by Companies House (without authority of the court) might have serious implications for the company concerned. Most information is only disclosed because legally required, so any removal of data could result in a breach (of failing to file).
102. There needs to be a distinction between the removal of information that is obviously wrong and inconsequential e.g. management information accidentally included in the accounts, and more fundamental information. It should not be necessary to get a court order to rectify simple mistakes in accounts, particularly if the company agrees the filing was erroneous. It might be helpful if Companies House could flag disputed, challenged or reasonably questioned information on the register.
103. If Companies House is to be given additional powers of discretion, we suggest that there should be an appeal process to ensure that any disputes are heard in an appropriate way.

REFORM OF COMPANY ACCOUNTS

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

104. We would question the benefits of requiring minimum tagging standards for company accounts, which is likely to be an extra cost for UK business. If minimum tagging standards were introduced, then in any event these should not be more onerous than those that are currently required by HMRC for the filing of accounts to accompany corporation tax returns.
105. Thought should also be given to the mechanism for checking that the tagging has been performed correctly. Inaccurate data may be worse than no data.
106. We would also caution against removing the option to file in PDF format. For many users this is still the preferred electronic format to receive accounts as they can save them easily, print from them, and depending on which version of Adobe is used can add notes. There are still some issues with printing XBRL which might be problematic for people trying to access and print accounts filed at Companies House.

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?

107. We agree that the process is subject to abuse and should be reformed. However, we are not convinced that an absolute limit on the number of times the period can be shortened is the best solution. For instance, it would be undesirable if a company that changed the period three times in 10 years could not do so again in the following decades. Some companies need to shorten their accounting period more than once in quick succession for instance when preparing for a deal and then aligning period ends with the new group. If it is necessary to allow an extension in filing date, there are other possible solutions. For instance, the additional time allowed for filing could be correlated to the amount of time by which the

period is shortened. Alternatively, s442 could be amended so that the filing period does not alter for changes to the accounting reference dates that are less than a specified period eg, one month.

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

108. Please refer to our comments in response to question 19 above relating to staff training and the use of consultants.
109. We would recommend that Companies House investigates how technology could help improve the quality of financial information available on the register, for example, comparing accounts filed at HMRC to those filed at Companies House to pick up discrepancies (where the same data is involved and subject to appropriate controls).
110. We would also encourage Companies House to review the guidance available to companies when filing accounts, consider common reasons for accounts being rejected and whether these reasons are valid. This may identify areas where further guidance might be helpful and/or if there are any issues with the existing examination procedures which result in accounts being incorrectly rejected.
111. We note that some larger companies have an account manager within Companies House to contact with any issues. However, the vast majority would not have this service so there should be an easily accessible feature to guide people on the right route if they are having issues/not satisfied with service and/or reason given for rejected accounts.
112. Some regulatory reforms in recent years have reduced the amount and arguably in some cases, the reliability of financial information available on the public record. In particular, micro company accounts contain very limited information and there is a higher audit threshold which has reduced the number of company accounts subject to independent review. Government might consider reviewing the impact of those reforms to ensure that the reporting regimes for micro-entities and small companies remain effective and/or to consider whether other independent checks by professional accountants might be introduced for companies that are not subject to audit.

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?

113. It is not suggested that the information is required by law enforcement agencies or the regulated sector for AML or related purposes. The information concerned also appears to be of a kind that is publicly available already. Government should consider whether the private sector might obtain such information and provide it to those who seek it (if there is sufficient demand), rather than providing such a service itself.

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?

114. From the perspective of company law, we agree. However, it may be necessary to consider broader issues, particularly where personal data is concerned. We have mentioned differing requirements for retention of ID verification documents above. It may be that personal data should be retained eg, for use by relevant authorities, but not publicly disclosed.

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?

115. We agree that any additional information obtained by Companies House should not be made publicly available or made available to credit reference agencies for reasons outlined in the consultation document (principally risk of identity theft or fraud against the individuals concerned).
116. It is important that the security of the data is protected against risks of hacking. Comprehensive controls should apply to prevent the sharing of data between government departments when not authorised or appropriate. Fair processing principles should apply and those individuals whose data is collected should be made aware of (or asked expressly to agree to) any possible onward transmission outside of Companies House.

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?

117. The requirement to disclose occupation seems to be particularly archaic. If it was intended to help the public distinguish one individual from another (eg, with the same name), then it seems an uncertain way to do so and the proposed verification checks should be more useful in that regard.
118. The consultation document considers whether requirements to disclose other information (eg, name and nationality) should be changed. While we do not believe that there is a pressing need to make changes, the specific questions do lead to the broader ones of how a person can best be "identified" and whether a more consistent regulatory approach would be desirable.

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?

119. The consultation document explains that the day of birth has been kept off the public register since 2015 to reduce risk of identity theft. The same logic would dictate that historic disclosure of day of birth should be removed from the public register (following application, or even by automatic removal).
120. Similar principles apply where companies elect to use the Companies House register as the company register. One might also question whether current obligations on companies to make their own register of directors (including the day of birth) available for inspection are prudent. Again, it would be possible for the authorities to obtain and use the information received in verifying identity without making that information public.
121. If identity is verified as proposed, government might consider whether it is still necessary to include even the month of birth on the public register, particularly if suppressing it would further reduce the risks such as identity theft.

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?

122. The register is intended to show relevant historic information, not just a snapshot of current data. Where there is evidence that public access to certain information causes harm (such as day of birth), then suppression of that information should be considered in a proportionate way.
123. On that basis, and if one follows the logic of some other parts of the consultation, it would not be permissible for individuals to remove their previous name following a change in gender unless there is evidence that disclosure of this causes harm. For instance, part of the justification for keeping records for 20 years is so that the public can see historic information that might indicate corporate abuse, with repeated striking off. This objective could be undermined in relation to those who change their gender if the historic information is suppressed.

124. The approach would also be discriminatory in respect of non-transgender people who change their name for other reasons. The considerations extend beyond whether there is a threat of intimidation or violence (for which specific exemptions might apply equally to all).
125. A broader question arises as to whether a person's name (or gender) is an effective test of "identity". A person may be generally known under one or more nicknames or other names than the name shown on formal documents such as birth certificates or passports.

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?

126. If the information is still required to be disclosed under the current regime, then allowing this information to be suppressed would affect the historical integrity of the register (in a way that suppression of the day of birth would not, as it is no longer required). However, it is not clear to us that disclosing this information to the public necessarily serves a useful purpose.

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?

127. We doubt that signatures serve any useful purpose (and could cause harm) and agree that historic signatures should be suppressed where signatures are not required to be disclosed under current law.
128. The practical challenges involved (eg, in deleting information on pdf documents) will need to be considered.

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?

129. Companies House should do checks necessary to fulfil any objectives it is set. So, for example, if it is to prevent disqualified directors from being (unlawfully) appointed, it should check against names of disqualified directors.
130. It is important that public bodies (and private) share information only where they have explicit consent of the individuals concerned (freely given) or in exercise of express powers to do so.

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?

131. The Fifth Money Laundering Directive will require AML regulated entities to report discrepancies and we suggest that any requirements should be consistent with this and not impose further obligations. The primary responsibility for filing correct information lies with the company and its officers.
132. Government could consider permitting (rather than requiring) disclosure that might otherwise be prevented (eg, by duties of confidentiality) and providing safe harbour from resulting legal action (and anonymity). Where there is a "requirement" it is important that any sanctions for breach are proportionate. For instance, we suggest that it would be inappropriate to apply criminal sanctions. The criminals are those who launder money, not those who may fail to spot (or report) an anomaly on a public register without any criminal intent.
133. Further clarification should be given on the requirements of AML regulated entities/obliged entities. Will obliged entities be required to report any discrepancies that they notice, or rather, will obliged entities have to review and specifically check all data on the register to effectively give confirmation that it is correct? The latter would be particularly onerous if the obliged entity wouldn't otherwise be checking certain data due to for example, the PSC not being the beneficial owner for AML purposes.
134. Any requirement should only cover information that is on the public register. As noted above, it is questionable whether this information is particularly valuable in establishing a person's

“identity”. There is a risk that a large volume of reports would relate to inconsequential issues (eg, new address where registrant has neglected to update Companies House, different variant of name which is permitted anyhow).

135. The cost to business of having professionals in the AML regulated sector report such trivial matters may be disproportionate. However, if the AML regulated sector is, as a result of the new regime, able to rely upon the contents of the register as being correct and verified (absent reason to suppose otherwise), this may reduce duplication of effort in some cases.

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

136. We believe that the main role of Companies House should be to keep an accurate register and relevant information so that enforcement agencies can call upon the information in performance of their responsibilities. It should also have responsibility to report suspicions of proceeds of crime it discovers in performing its functions (perhaps in line with responsibilities of the AML regulated sector). However, it should respect the rights of individuals concerned and not otherwise disclose information for purposes other than the purpose for which it was provided (ie, to establish or operate a limited company).

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?

137. We do not believe so. The proposal will be administratively burdensome and increase security risks. It is unclear what purpose it would serve; those using bank accounts for criminal purposes would be unlikely to comply with this requirement.
138. We note that the Fifth Money Laundering Directive will require in some form a UK National Register of Bank Accounts, although it is not proposed that the data on the register is made public. We have concerns over the proportionality of establishing such a register in the first place, which risks the security of sensitive personal and financial data. This information should not be duplicated at Companies House. We would question why Companies House would need this information.
139. We do not believe that any of this information should be made public. Such data is provided for law enforcement purposes only and any information of this kind is potentially sensitive and useful to criminals.

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?

140. We have no comment on this question.

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?

141. No comment.

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

142. No comment.

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

143. It is unclear how Companies House would check that the evidence gives rise to the entitlement. A company that provides a false address is likely to produce false evidence,

which could easily be done if, for instance, the evidence required is simply a letter from a registered owner.

144. Given that most companies will provide genuine addresses, there is a risk that this proposal would be unnecessarily burdensome on business and it might be preferable for the authorities to seek out and enforce against cases of abuse.

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?

145. We do not believe that a cap should be imposed. The number of directorships an individual may have will depend upon the nature of the companies and their activities; in particular, multiple directorships are common in groups. Any number fixed by regulation would be unable to take account of these differing circumstances and so would necessarily be arbitrary in nature. It would require significant work to build a model that takes into account the risks associated with different companies and the demands of the roles involved: executive director versus non-executive, finance versus sales or production. We question whether the result would be of general value.
146. If the verification procedures are taken forward, Companies House (and the public) will be able to ascertain how many directorships any individual has (so there will be no need to require directors to report on the number of directorships they have). Any authority having responsibility for enforcement in relation to directors (or shareholders in the relevant companies) will be able to take action if they think the number of directorships is of concern.

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

147. See answer to Q40. Exemptions might well be required and the proposal risks introducing additional complexity into company law for little obvious benefit.

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?

148. Please see our earlier comments regarding the role of Companies House in a quasi-judicial capacity.

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

149. No comment.

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

150. No comment.