



Department for
Business, Energy
& Industrial Strategy

Corporate Transparency and Register Reform

Consultation on implementing the ban on
corporate directors

Closing date: 03rd February 2021



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Any enquiries regarding this publication should be sent to us at: transparencyandtrust@beis.gov.uk.

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General information

Why we are consulting

This consultation invites views on the Government's proposed approach to restricting the use of corporate (i.e. non-natural person) directors in pursuit of its objective of enhancing corporate transparency.

Consultation details

Issued: 9th December 2020

Respond by: 03rd February 2021

Enquiries to:

Analysis, Company law and Corporate Transparency Team
Department for Business, Energy and Industrial Strategy
1st Floor, Victoria 1
1 Victoria Street
London
SW1H 0ET

Email: transparencyandtrust@beis.gov.uk

Consultation reference: Corporate Transparency and Register Reform:
Consultation on implementing the ban on corporate directors.

Audiences:

The views of the following people and organisations would be particularly useful:

- Directors of companies (and officers of other corporate entities)
- Company shareholders and the investor community
- Business representative bodies
- Trust or Company Service Providers and other professional bodies
- Wider civil society groups
- Academics and think tanks
- Members of the public

Territorial extent:

The UK Government is responsible for the operation and regulation of business entities in England and Wales, and in Scotland. Previously, the Northern Ireland administration has agreed that, while the operation and regulation of business entities remains a transferred matter within the legislative competence of the Northern Ireland Assembly, amendments to the Companies Act 2006 and legislation regulating business entities should be made in the same terms for the whole of the United Kingdom.

How to respond

Your responses can be made in three ways:

Respond online at:

<https://beisgovuk.citizenspace.com/business-frameworks/corporate-directors>

or

Email to: transparencyandtrust@beis.gov.uk

or

Write to:

Analysis, Company law and Corporate Transparency Team
Department for Business, Energy and Industrial Strategy
1st Floor, Victoria 1
1 Victoria Street
London
SW1H 0ET

A response form is available on the GOV.UK consultation page:

www.gov.uk/government/consultations/corporate-transparency-and-register-reform

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Introduction

Context: corporate transparency and register reform

1. In 2019, the Government consulted on a range of options to enhance the role of Companies House, increase the transparency of corporate entities and help combat economic crime. On 18 September 2020, the Government published a response to the Corporate Transparency and Register Reform Consultation.¹ It set out a broad package of reforms to Companies House to ensure it is fit for the future and continues to make a valuable contribution to the UK's business environment. The proposed reforms are also designed to give Companies House a bigger role in assisting the Government's wider efforts to tackle economic crime affecting the UK by improving the integrity of the information available about companies and other business entities.
2. The Government response also noted that we would consult further on certain aspects of the reform package: on the detailed scope of the new querying power and how it will might work in practice; and on further improvements to the financial information available on the register, primarily through the submission of accounts to Companies House. We are also taking this opportunity to consult further on a new set of principles for Corporate Director appointments given the transparency read-across to our wider package of reforms.
3. The Government is publishing these consultations separately, and in parallel, given differing stakeholder interests, and recognising that stakeholders may not wish to respond to all questions were the consultations to be combined. We look forward to receiving your response.

Background: the proposed prohibition of corporate directors

4. Following its "Transparency and Trust"² discussion paper of July 2013, the then Government asked for views on reform measures aimed at ensuring we know better who really owns and controls our companies. One of the

¹ <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212079/bis-13-959-transparency-and-trust-enhancing-the-transparency-of-uk-company-ownership-and-increaing-trust-in-uk-business.pdf

proposals was that all company directors should be individuals, i.e. real people. At present the law only requires that one director on a company's board be a real or "natural" person and any number may be what are termed corporate directors, i.e. other companies or legal entities. The Government wanted to consider whether UK companies should be prohibited from appointing these corporate directors to their boards as is the case, for example, in Germany and the United States.

5. Evidence suggests that the use of corporate directors can muddy the waters around ownership and provide a screen behind which to conduct illicit activity³. More generally the opacity they create can weaken corporate governance by preventing individual accountability.
6. At the same time, there are legitimate uses for corporate directors within corporate governance arrangements. A company may, for example, appoint a corporate director of a subsidiary in order to be able to have a number of individuals of varying professions represent that directorship in the boardroom, according to the agenda under discussion. Elsewhere they can be used as a means to facilitate joint ventures or to reduce administrative costs.
7. As set out in its response⁴ to the "Transparency and Trust" paper the Government concluded that it would change the UK's approach to one where directors should normally be individuals (natural persons). It acknowledged, however, that corporate directors are considered useful in some parts of the UK economy, and indicated that it would take a pragmatic approach to introducing prohibition.
8. Against that background, provision to prohibit the use of corporate directors was taken in the Small Business, Enterprise and Employment Act 2015 (SBEEA 2015).⁵ Those provisions build in a transitional phase of 12 months, on commencement of the provisions, within which companies must adapt to achieve compliance. Importantly, they also provide scope for the Government to define exceptions so that companies might, in prescribed circumstances, continue to make use of corporate directors.
9. Although previous administrations have consulted on a new framework for corporate directors, the relevant SBEEA 2015 provisions have yet to be

³For example see the Impact Assessment underpinning the original primary legislation: BIS (2014), 'Impact Assessment – Opaque Arrangements Involving Company Directors', Final Stage Impact Assessment of Part A of the Transparency and Trust Proposals (Company Transparency), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324712/bis-14-908a-final-impact-assessments-part-a-companies-transparency-and-trust.pdf

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf

⁵ <http://www.legislation.gov.uk/ukpga/2015/26/section/87/enacted>

commenced. In the context of the Government now looking at a wide-ranging package of measures aimed at improving corporate transparency and reforming the companies register, now is an opportune time to move to commence the powers taken in 2015. But first, we must revisit the question of how to define exceptions such that corporate directors can still be used in certain situations.

10. A fundamental element of the reforms announced in September 2020 is the concept of a new mandatory identity verification process for company directors. ID verification will be key in informing and implementing a robust and pragmatic new framework for corporate directorships, as set out in more detail in this consultation. We are conscious that the coronavirus pandemic has meant new and unforeseen challenges for many companies. We will ensure that the timetable for introducing new requirements around corporate director appointments is sensitive to those additional pressures.

This consultation

11. The remainder of this consultation is structured as follows:
- Chapter 2 summarises the results of previous consultations on defining the exceptions to the ban on corporate directors
 - Chapter 3 describes how the Government intends to regulate for the exceptions within the context of broader register reform, and poses a number of questions
 - Chapter 4 discusses briefly the possibility of extending the consultation principles to other corporate forms.

Next steps

12. Following this consultation we will analyse responses and issue a response. These proposals will be implemented alongside proposals set out in the Corporate Transparency and Register Reform government response. Their proper functioning is likely to rely on further primary legislation, as well as being dependent on funding for the associated operational changes at Companies House.

Chapter 1 – Results of previous consultations

13. Under the Coalition Government, two separate consultation exercises were conducted to garner views on what might represent an effective, workable and proportionate framework of prohibition exceptions.

Initial consultation

14. First, in 2014 the Department for Business, Innovation and Skills (BIS) consulted on possible exceptions in the discussion paper: Corporate Directors: Scope of the exception to the prohibition of corporate directors. Informed by research and earlier discussions with stakeholders, that paper focussed on the following types of company as potentially warranting an exception:

- Companies with shares admitted to trade on regulated and prescribed markets,
- Large public companies in group structures and large private companies in group structures,
- Charitable companies,
- Trustee Companies of Pension funds.

15. The consultation generated 41 responses and demonstrated broad support for the Government's objectives of increasing transparency and making it more difficult to conceal the true ownership of companies behind the veil of a corporate director appointment.

16. In relation to the proposed exception categories the responses can be summarised as follows:

- **Companies with shares admitted to trade on regulated and prescribed markets.** The majority of respondents supported an exception for such companies. Respondents highlighted that these companies are subject to high standards of transparency in order to trade on these markets. Respondents argued that the exception should include subsidiaries, including where the listed company only holds a minority interest.

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- **Large public companies in group structures and large private companies in group structures.** There was mixed support for an exception on the basis of either being a public group company or a large private group. Many respondents stated that neither of those characteristics, in or of themselves, inevitably implied greater transparency. However, respondents did highlight the administrative benefits of using corporate directors in these structures, for example reducing registering of new directors' details at Companies House each time the relevant post in the parent company changed.
 - **Charitable companies. Many respondents highlighted additional benefits of corporate directors to charities.** They included the way that corporate directors can facilitate joint ventures between charities, and enabling multiple experts to sit on the board within a single corporate director role. However, some respondents questioned the robustness of the existing transparency requirements on charities. Respondents proposed that an exception would only be justified following approval by the charities regulator.
 - **Trustee Companies of Pension funds. All respondents to this question supported an exception.** They cited the benefits of using corporate directors on pensions funds to reduce administration costs, reduce liability exposure for experts providing advice to pension funds and employer involvement in the funds.

17. In addition to expressing views on the categories proposed in the consultation, respondents identified seven additional categories where it was suggested exception status might be appropriate. These were as follows:

- Corporate Service providers;
- Lloyds of London members;
- Non-Executive Directors;
- Property Management Companies;
- Special Purpose Vehicles;
- Life Assurance companies; and
- Minority investments in start-up companies.

18. Reflecting on the initial consultation response, there was a concern that an exception regime based on a potentially ever-expanding list of qualifying categories risked proving unwieldy to operate in practice and being potentially complicated for business to understand and navigate.

Further consultation

19. With that in mind, the Government consulted again, in March 2015, on the basis of a revised and simplified exception model rooted in two straightforward principles, namely that:

- All of the ‘directors’ of the corporate director must themselves be ‘natural persons’ i.e. individuals; and
- the jurisdiction in which the entity acting as corporate director is established requires certain details of the ‘directors’ of that entity to be included in an accessible and publicly- maintained register.

20. Of the 58 respondents to this second consultation, 45 were of the view that the proposed model would achieve the right balance, in terms of delivering enhanced transparency whilst preserving the legitimate benefits of corporate director appointments, namely reduced administration costs and access to both expert advice and multiple documentation signatories. This reinforced the view that defining exceptions by reference to a “principle” was a more efficient means of achieving the aims of the policy.

Chapter 2: Regulating for the exception

21. The Government intends to bring forward regulations that create the 'principles' based exception alongside the commencement of the prohibition on corporate directors.

The Principles

22. In essence, the principles we envisage as a starting point are that:

- A company can be appointed as a director if:
 - a) all of its directors are, in turn, natural persons and
 - b) those natural person directors are, prior to the corporate director appointment, subject to the Companies House identity verification process.

1. **Q. In your view, will the proposed 'principles' based exception deliver a pragmatic balance between improving corporate transparency and providing companies adequate scope to realise the legitimate benefits of the use of corporate directors?**

The Scope

23. An important secondary question to consider is the range of corporate entities which might be permitted within the scope of the principle-based exception. On this point, the 2015 consultation yielded a range of views and resulted in some ambiguity. The consultation proposed that the ease of company registration in the UK was such that it rendered it unnecessary to extend the scope of exceptions beyond companies registered under the Companies Act 2006. A number of respondents appeared to support that proposition while simultaneously proposing other corporate entity forms which should be permitted as directors. Those who gave unequivocal responses were almost evenly divided between favouring the restricted approach and a more expansive model.

24. We believe it is important that the range of corporate entities eligible for the exception is not so great as to undermine the purposes of the general prohibition. Furthermore, there are particular challenges that would arise from

including certain entities other than limited companies. In other reforms, we plan to introduce ID verification for the general partners of Limited Partnerships (LPs) and for “designated members” of Limited Liability Partnerships (LLPs). This might form an appropriate basis for permitting appointments where the corporate director is one or other of those partnership forms.

25. Bearing in mind the cross-border structures in which many UK companies are involved, the Government has carefully considered the extent to which overseas entities ought to be capable of remaining or becoming compliant corporate directors. Here our starting point is to enable constructive cross-border relationships where appropriate and to avoid the establishment of differential barriers which might inhibit them. On the basis that ID verification will deliver a marked improvement in terms of transparency we believe that the integrity of the policy and its objectives will be preserved by applying the underlying principles to overseas corporate entities appointed as corporate directors of UK companies. We propose, therefore, that we should not differentiate between corporate directors by reference to their place of origin, ensuring UK and overseas entities are subject to the same treatment.

26. In other words, in a situation where a company is seeking to appoint an overseas entity to the role of director, evidence would need to be provided to Companies House that that entity has only natural persons as its own directors, and those directors would need to have their IDs verified.

2. **Q. Bearing in mind the transparency objective, is the scope of the exception proportionate and reasonable?**
3. **Q. Assuming that ID verification will form a fundamental element of the corporate director regime, what do you see as the arguments for and against allowing LPs and LLPs be appointed as corporate directors? If they are to be allowed, how should the principle of natural person directors apply within these partnership models?**

Compliance and Reporting

25. We envisage that regulations will be structured in such a way that they effectively safeguard the integrity of the natural person principle from the perspective of both the potential appointor company and the appointee at least in so far as both are UK registered companies. To illustrate; if UK company C appoints a UK company D as director, any attempt by D to appoint a corporate director would be unlawful and, therefore, ineffective. This works both “up” and “down” the chain of directorships: C cannot validly be appointed as another UK company’s director while it has D as its director.

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26. As a further safeguard, and to cater for relationships involving non-UK companies, we envisage overlaying a requirement for Company C to take all reasonable steps to assure itself that D has (and continues to have) no corporate directors. In its annual confirmation statement to Companies House, C must confirm that it believes this to be the position.
27. The existing offences would apply in relation to the company's obligation to notify the registrar of any changes to its directors in section 167 of the Companies Act 2006. That Act makes provision for companies to notify the registrar in respect of any director which ceases to be a director at the end of the transitional period because it does not meet the conditions for remaining as a director.
- 4. Q. Do these reporting requirements appear proportionate and reasonable?**

Impacts

25. A draft Impact Assessment is published alongside this consultation.⁶ It considers the preferred option outlined above against "no exception" and other scenarios. Analysis in the context of the Impact Assessment suggests that around 33,000 companies currently have a corporate director on their boards but that at least two-thirds of those companies would be compliant with the principles based approach set out above.
- 5. Q. Does the Impact Assessment provide a reasonable assessment of the costs and benefits of the prohibition and possible exceptions? In particular:**
- **Do you have any evidence as to why companies have reduced their use of corporate directors since the primary legislation was passed?**
 - **Do you have any evidence on what might be the costs to companies from the proposed restrictions on corporate directors?**

⁶ <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform-implementing-the-ban-on-corporate-directors>

Chapter 3 – Other Corporate Forms

Potential for Extending Corporate Director Principles

26. The powers in SBEEA 2015 apply in respect of companies incorporated under the Companies Act 2006. However Government is minded to apply the principles of this consultation to other forms. While there is the ability to regulate to extend similar principles to Limited Liability Partnerships (LLPs), further extending the principles to limited partnership (LP) forms would require primary legislation. We already propose that in future the general partner of an LLP and the designated members of an LLP be subject to Identity verification. To mirror the above principles as regards corporate directors, it follows that where either general partner or designated member is another corporate entity they ought also to comprise all natural person directors who will themselves be required to undertake ID verification.

- 6. Q. What are your views on applying the proposed Corporate Director principles more broadly to a) LLPs, and b) LPs, and how would you envisage ID verification operating in those contexts?**

Consultation questions

The Principles

1. **Q. In your view, will the proposed 'principles' based exception deliver a pragmatic balance between improving corporate transparency and providing companies adequate scope to realise the legitimate benefits of the use of corporate directors?**

The Scope

2. **Q. Bearing in mind the transparency objective, is the scope of the exception proportionate and reasonable?**
3. **Q. Assuming that ID verification will form a fundamental element of the corporate director regime, what do you see as the arguments for and against allowing LPs and LLPs be appointed as corporate directors? If they are to be allowed, how should the principle of natural person directors apply within these partnership models?**

Compliance and Reporting

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Impacts

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 - **Do you have any evidence as to why companies have reduced their use of corporate directors since the primary legislation was passed?**
 - **Do you have any evidence on what might be the costs to companies from the proposed restrictions on corporate directors?**

Potential for Extending Corporate Director Principles

- 6. Q. What are your views on applying the proposed Corporate Director principles more broadly to a) LLPs, and b) LPs, and how would you envisage ID verification operating in those contexts?**

This consultation is available from: www.gov.uk/government/consultations/corporate-transparency-and-register-reform-implementing-the-ban-on-corporate-directors

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