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|  Regulatory Policy Committee | Opinion | |
| Impact Assessment (IA) | Opacity of the control of corporate structures through company directors – those on the record and those they conceal | |
| Lead Department/Agency | Department for Business, Innovation and Skills | |
| Stage | Consultation | |
| IA Number | Not provided | |
| Origin | International | |
| Expected date of implementation (and SNR number) | - | |
| Date submitted to RPC | 20/12/2013 | |
| RPC Opinion date and reference | 04/02/2014 | RPC13-BIS-1989 |
| Overall Assessment | AMBER | |
| <p>RPC comments</p> <p>The IA is fit for purpose. However, there is insufficient evidence presented in the IA to confirm the Department’s view that this proposal is out of scope of One-in, Two-out (OITO). The Department should provide further information relevant to this issue, covering the areas identified below. This additional information will be necessary at final stage for a definitive assessment to be made.</p> <p>The IA generally provides a clear assessment of the costs and benefits of the proposal. However, there are some areas that should be strengthened. These are also presented below.</p> <p>Finally, we note that the IA was submitted to us after the main consultation. We would expect to scrutinise any IA at this stage of the process before the main consultation is undertaken.</p> | | |
| <p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>Opacity of the control of corporate structures can firstly facilitate illicit activity, and secondly lead to a deficiency in corporate governance which erodes trust and damages the business environment. Both can ultimately hold back economic growth. Government intervention is necessary to correct the regulatory failure underpinning the first, and the information asymmetry reflected in the second. The current legal framework gives scope for the director registered at Companies House <u>not</u> in fact being the person controlling a company, which creates considerable opacity around the control of the company. The central problem under consideration is therefore the reduction of opacity and therefore the scope for abuse in the current legal framework.</i></p> | | |

What are the policy objectives and the intended effects?

The policy objective is to reduce corporate opacity in the UK, particularly where corporate opacity arises as a result of a lack of transparency between registered directors and those in fact controlling a company. In restricting opaque practices in relation to company directors, the government is seeking to (i) reduce the potential for abuse of the company structure for purposes such as laundering money; (ii) realise the benefits of trusted capitalism to support the business environment. The intended effect is a proportionate and effective system which deters illicit activity and promotes good corporate behaviour.

The Impact Assessment considers two substantive options.

Option 1 reflects a package of four measures, one of which is not regulatory (better communication to directors of their duties) and two of which relate to enforcement following an offence and so do not place a direct cost on business; one key part of the package will require confirmation directors have understood their own duties in discharging their role, and this will require some administration from business.

Option 2 is an alternative to regulation alone, which focuses on communication to directors as set out in Option 1.

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

The IA is part of a set of four proposals that aim to reduce the opacity around the control of corporate structures, in order to reduce the damage from illicit activity and improve the trust in corporate governance. This IA specifically focuses upon a package of measures to change the behaviour of those who act as 'front directors' and those who control companies behind the scenes.

The IA explains how the proposals will have an impact on business from familiarisation costs and compliance costs from providing details to Companies House on who controls a registered company.

We note that there are some areas that should be strengthened.

Cost assumptions. The cost assumptions are informed by costs from an IFF Survey of 574 companies, carried out specifically for the purposes of informing these policy measures. The IA acknowledges openly that these data have been processed to exclude unrepresentative extreme values. This approach appears to be reasonable and is presented transparently (with the full distribution of costs given and zero, as well as very high, values discarded). However, this should be strengthened further in the two areas below:

- greater explanation where alternative (to the IFF survey) sources have been used and why;
- further use of sensitivity analysis, presenting what the costs would be if the IFF survey data were processed differently and/or if the IFF survey data were used for some costs, instead of the alternative sources.

This will be necessary to enable validation of an EANCB at final stage.

Sensitivity Analysis. It is not clear how the ‘high’ and ‘low’ figures in paragraph 133 (page 33) have been reached. The sensitivity analysis in the IA at final stage should also take account of the comments above.

Finally, we note that the IA was submitted to us after the main consultation. We would expect to scrutinise any IA at this stage of the process before the main consultation is undertaken. The IA should have been clearer as to what consultation has taken place and, particularly, the further consultation to come. The final stage IA should provide more information on the consultation stages.

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposals regulate business and are intended to come into force after 31 March 2014. The IA includes a SaMBA. This explains satisfactorily why small and micro businesses cannot be exempt (as “shell” companies are “*often the vehicle of choice for money-laundering and other crimes*” and “*we believe that the majority of shell companies would be classified as small and micro businesses*”, (paragraph 178, pages 41-42). The IA presents a preliminary analysis of the costs to small businesses using the data from the IFF survey. Paragraph 184 (page 42) states: “...*we have no reason to believe that compliance (i.e. signing a form) will take small companies any longer than large companies.*” The analysis should be extended to consider whether it might take smaller firms *proportionately* longer to comply. Nevertheless, the SaMBA is fit for purpose.

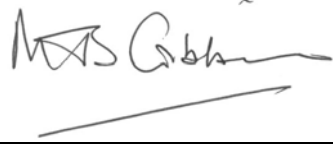
Comments on the robustness of the OITO assessment.

The IA has a section on OITO (paragraphs 165-70, pages 39-40). This states that the proposals are out of scope “*on the grounds of implementation being required to meet international obligations*”. However, there is insufficient evidence presented in the IA for this assessment to be confirmed at this stage. The IA should provide additional information relevant to this issue. This information should include:

- further details on the binding nature of the commitments, including information on the legal position of G8 agreements, any enforcement mechanisms and the consequences should the UK not keep them. (We note that the IA states at paragraph 166 that the [G8] commitments are “*public and binding*”);
- a detailed explanation of the commitments and comparison against each individual element of the policy proposal, to enable confirmation or otherwise that the proposal represents the minimum to which the UK has committed. Even if the minimum commitment is deemed out of scope, any action beyond this would be considered to be in scope;
- As part of addressing the above two bullets the Department should consider providing details of what other G8 countries are doing to meet their G8 commitments.

This additional information will need to be provided at final stage to enable the Committee to assess whether this proposal should be considered to be in or out of scope of OITO.

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons". The signature is written in a cursive style with a long horizontal stroke at the end. There is a small mark above the letter 'i' in "Gibbons".

Michael Gibbons, Chairman