

<b>Title:</b> Exceptions to prohibition of corporate directors set out in the SBEE Act (2015)  <b>IA No:</b> BEIS048(F)-21-BF  <b>Lead department or agency:</b> Department for Business, Energy and Industrial Strategy  <b>Other departments or agencies:</b> HM Treasury, Home Office, Ministry of Justice; Insolvency Service, Companies House; Law enforcement agencies	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 25 February 2022		
	<b>Stage:</b> White Paper		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Neil Golborne, Business Frameworks Team, BEIS 1 Victoria Street, London, SW1 0ET Email: neil.golborne@beis.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion: N/A</b>
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2019 prices; 2020 PV)	In scope of One-In, Measure qualifies as Three-Out?
-7.5	-7.5	£0.9m	No
			N/A

**What is the problem under consideration? Why is government intervention necessary?**  
 The SBEE (2015) Act gave the government powers to prohibit the use of corporate directors. Corporate directors create opacity in company structures and increase the potential for companies to be used for illicit activity. However corporate directors also have legitimate business uses. The rationale for the secondary legislation is to avoid a regulatory failure where a prohibition on corporate directors criminalises legitimate business activities.

**What are the policy objectives and the intended effects?**  
 The policy objective is to address the scope for abuse in the current legal framework which allows opaque arrangements involving corporate directors, whilst permitting legitimate business activities to continue. In doing so we anticipate that the chosen option will contribute to reducing crime and improving the business environment and ultimately should help facilitate economic growth in the UK.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 This Impact Assessment considers four options:  
**Option 0:** Do Nothing  
**Option 1:** Prohibition with no exception,  
**Option 2:** Prohibition with an exception based on the size and type of business, and  
**Option 3:** Prohibition with a principles-based exception and ID verification for Directors of UK entities (**preferred option**)  
 These options were developed after extensive consultation with businesses. The preferred option targets the source of concern more directly, whilst excepting the most companies and is the least cost option. The impact assessment for the primary legislation considered non-regulatory options instead of prohibition, e.g. voluntary provision of information and information campaign, but these would not have achieved the objectives of the policy.

Will the policy be reviewed? When will it be reviewed? If applicable, set review date: 5 years after comes into effect						
Does implementation go beyond minimum EU requirements?				N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes	
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A			<b>Non-traded:</b> N/A		

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:  Date: 25/02/2022

# Summary: Analysis & Evidence

## Policy Option 0

Description: Do nothing, do not enact secondary legislation, all corporate directors are permitted

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2019	2020	10	Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Cost
Low	0		0		0	
High	0		0		0	
Best Estimate	0		0		0	

#### Description and scale of key monetised costs by 'main affected groups'

N/A

#### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Benefit
Low						
High						
Best Estimate						

#### Description and scale of key monetised benefits by 'main affected groups'

N/A

#### Other key non-monetised benefits by 'main affected groups'

This option would not reduce the use of opaque arrangements involving corporate directors and would not help prevent crime through deterrence, enhancing corporate transparency and in some instances directly remove a mechanism to facilitate crime. It would not therefore make apprehending criminals both cheaper and easier for law enforcement agencies. Under this option benefits from action would be foregone.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5
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### BUSINESS ASSESSMENT (Option 0) (2019 Prices, 2020 PV)

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
Costs: 0	No	N/A
Benefits:		
Net: 0		

# Summary: Analysis & Evidence

## Policy Option 1

Description: Pass secondary legislation without exceptions i.e. complete prohibition of all corporate directors

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2019	2020	10	Low: -36.3	High: -12.3	Best Estimate: -16.8

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Cost
Low	10.8		0.2		12.3	
High	34.8		0.2		36.3	
Best Estimate	15.3		0.2		16.8	

#### Description and scale of key monetised costs by 'main affected groups'

The main non-recurrent costs are:

- Staff time involved in removing and/or replacing a corporate director who sits on a company board,
- Costs of any reputational damage or loss of benefits from the prohibition of corporate directors, and
- Familiarisation costs.

There are recurrent costs related to reappointing natural person directors for entities that are unable to use corporate directors.

#### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Benefit
Low						
High						
Best Estimate						

#### Description and scale of key monetised benefits by 'main affected groups'

N/A

#### Other key non-monetised benefits by 'main affected groups'

This option would reduce the use of opaque arrangements involving corporate directors and will help prevent crime through deterrence, enhancing corporate transparency and in some instances directly remove a mechanism to facilitate crime. It should make apprehending criminals both cheaper and easier for law enforcement agencies.

#### Key assumptions/sensitivities/risks

Discount rate 3.5

Following standard IA methodology, we have assumed 100% compliance. If this is not achieved, then there would likely to be additional cost for Companies House and BEIS in the first instance and a possible impact on the justice system. There is a risk that the benefits from a reduction in criminal activity will not be as large as we anticipate e.g. if companies find a way to hide their involvement in a company. Given the uncertainties these benefits have not been included in the cost benefit analysis. Other inherently uncertain benefits, as cited in the primary legislation IA, have also not been included in the cost benefit analysis.

#### BUSINESS ASSESSMENT (Option 1) (2019 Prices, 2020 PV)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: 2	No	N/A
Benefits:		
Net: 2		

# Summary: Analysis & Evidence

## Policy Option 2

Description: Specify in legislation a list of specific exceptions to the prohibition of corporate directors

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2019	2020	10	Low: -35.4	High: - 12.1	Best Estimate: -16.4

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Cost
Low	10.6		0.2		12.1	
High	33.9		0.2		35.4	
Best Estimate	14.9		0.2		16.4	

#### Description and scale of key monetised costs by 'main affected groups'

The main costs are:

- Staff time involved in removing and/or replacing a corporate director who sits on a company board,
- Costs of any reputational damage or loss of benefits from the prohibition of corporate directors, and
- Familiarisation costs.

There are recurrent costs related to reappointing natural person directors for entities that are unable to use corporate directors. Also excepted companies with a corporate director on their board must confirm that their corporate director is still eligible via the confirmation statement.

#### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Benefit
Low						
High						
Best Estimate						

#### Description and scale of key monetised benefits by 'main affected groups'

N/A

#### Other key non-monetised benefits by 'main affected groups'

This option would reduce the use of opaque arrangements involving corporate directors and will help prevent crime through deterrence, enhancing corporate transparency and in some instances directly remove a mechanism to facilitate crime. It should make apprehending criminals both cheaper and easier for law enforcement agencies. Compared to the do-nothing the benefit of this option may diminish overtime if criminals make greater use of the corporate structures covered by the exception.

#### Key assumptions/sensitivities/risks

Discount rate

3.5

Following standard IA methodology, we have assumed 100% compliance. If this is not achieved, then there would likely to be additional cost for Companies House and BEIS in the first instance and a possible impact on the justice system. There is a risk that the benefits from a reduction in criminal activity will not be as large as we anticipate e.g. if companies find a way to hide their involvement in a company. Given the uncertainties these benefits have not been included in the cost benefit analysis. Other inherently uncertain benefits, as cited in the primary legislation IA, have also not been included in the cost benefit analysis.

### BUSINESS ASSESSMENT (Option 2) (2019 Prices, 2020 PV)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 1.9	Benefits:	Net: 1.9	No	N/A

# Summary: Analysis & Evidence

## Policy Option 3

Description: A principle-based exception to the prohibition of corporate directors and ID verification for Directors (Preferred)

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2019	2020	10	Low: -14.4	High: -5.7	Best Estimate: -7.5

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Cost
Low	4.0		0.2		5.7	
High	12.7		0.2		14.4	
Best Estimate	5.7		0.2		7.5	

#### Description and scale of key monetised costs by 'main affected groups'

The main costs are:

- Staff time involved in removing and/or replacing a corporate director who sits on a company board,
- Costs of any reputational damage or loss of benefits from the prohibition of corporate directors, and
- Familiarisation costs.

There are recurrent costs related to reappointing natural person directors for entities that are unable to use corporate directors. Also excepted companies with a corporate director on their board must confirm that their corporate director is still eligible. We do not include the costs of ID verification for Directors as these will apply to all Directors and to avoid double counting will be captured in the IA related to register reform.

#### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition Price)	Annual (Constant)	Total (Present Value)	Benefit
Low						
High						
Best Estimate						

#### Description and scale of key monetised benefits by 'main affected groups'

N/A

#### Other key non-monetised benefits by 'main affected groups'

This option would reduce the use of opaque arrangements involving corporate directors and will help prevent crime through deterrence, enhancing corporate transparency and in some instances directly remove a mechanism to facilitate crime. It should make apprehending criminals both cheaper and easier for law enforcement agencies.

**Assuming law enforcement and financial regulatory costs of around £6 billion a year then under the preferred option law enforcement and financial services would need a cost saving of 0.02% from their investigations to offset the EANDCB (£0.9m).**

Key assumptions/sensitivities/risks	Discount rate	3.5
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As option 2.

### BUSINESS ASSESSMENT (Option 3) (2019 Prices, 2020 PV)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: 0.9	No	N/A
Benefits:		
Net: 0.9		

## 1. Background

### *Policy background*

1. A “corporate director” or “corporate directorship” is a situation where a company or a “legal person”, rather than an individual or “natural person”, is appointed as and acts as, the director of a company. Under the Companies Act 2006, UK companies can have corporate directors so long as they appoint at least one director who is a natural person. For Limited Liability Partnerships (LLPs), corporate members can be appointed and there is no corresponding requirement to appoint at least one natural person. While corporate directors can perform legitimate business functions, they also make corporate structures opaquer possibly facilitating illicit activity or jeopardising effective corporate oversight.
2. Around 31,200 UK companies and 21,000 LLPs currently have corporate directors (or corporate members in the context of LLPs) on their boards.<sup>1</sup> This represents around 1% of all live UK companies and LLPs. There are around 82,900 corporate directorships or memberships.
3. The governments of several civil and common law jurisdictions have removed the use of corporate directors entirely. These include, but are not limited to: Germany, Canada and Australia. In other jurisdictions there are restrictions in their use (Table one).

*Table one: Restrictions on corporate directors in foreign jurisdictions*

Country	Restrictions on Directors	Can use corporate directors?	Source
Australia	Only an individual can be a director. A company or other entity cannot be a director of a company incorporated under the Corporations Act.	No	<a href="#">Link</a>
Netherlands	The management board is composed of natural persons or legal persons.	Yes, where corporate director is a legal entity e.g. company	<a href="#">Link</a>
Belgium	Directors of private or public limited companies can be natural or legal persons.	Yes, where corporate director is a legal entity e.g. company	<a href="#">Link</a>
Sweden	Only natural persons can be directors, not legal entities. Natural persons who are in bankruptcy or have a legal guardian cannot be registered as directors.	No	<a href="#">Link</a>
Spain	Directors may be individuals or legal entities. If the director is a legal entity, it needs to appoint a single individual to permanently represent it to perform the duties inherent to its office. That individual and the legal entity are jointly and severally liable if the entity breaches its directors' duties.	Yes, provided a natural person is accountable.	<a href="#">Link</a>
US	Only natural persons can be directors.	No	<a href="#">Link</a>
Germany	A managing director must be a natural person.	No	<a href="#">Link</a>
Singapore	There is no concept of a corporate director in Singapore. A director must be a natural person (although in practice, a director appointed by a corporate shareholder will often act in accordance with the instructions or interests of that shareholder, subject to Singapore law requirements).	No	<a href="#">Link</a>
France	The board of directors is composed of natural persons or legal persons that must be represented by a permanent representative.	Yes, but provided a natural person is accountable.	<a href="#">Link</a>
Ireland	Irish company law restricts certain persons from being appointed as directors, such as minors, bodies corporate and unincorporated bodies of persons, undischarged bankrupts and persons who are disqualified from acting as director.	No	<a href="#">Link</a>

<sup>1</sup> All figures in this IA refer to Companies House management information, dated 31<sup>st</sup> March 2020, unless otherwise stated.

Country	Restrictions on Directors	Can use corporate directors?	Source
Italy	For all companies, the board of directors can be composed of individuals or legal entities.	Yes, where corporate director is a legal entity.	<a href="#">Link</a>
Hong Kong SAR	A director should normally be a natural person. However, a private company may have a body corporate as its director if the company is not a member of a listed group and provided that the company has at least one other director who is a natural person. In any event, a private company must have at least one director who is a natural person.	Yes, but only for private companies and subject to restriction.	<a href="#">Link</a>
Canada	Only individuals (as opposed to legal entities) qualify to serve as directors of Canada Business Corporations Act (CBCA) corporations.	No	<a href="#">Link</a>
Japan	Corporations may not serve as a director.	No	<a href="#">Link</a>

4. At the G8 summit in June 2013 the Government committed to increase transparency of who owns and controls a company. In July 2013, the Government published the Transparency and Trust discussion paper which sought views on prohibiting the use of corporate directors in UK companies. Responses helped the Government reach the conclusion that directors should normally be individuals.
5. However, acknowledging the legitimate uses of corporate directors, the Government announced that it would allow exceptions to the prohibition on corporate directors:
  - a. The Government consulted in November 2014 on a list of specific exceptions largely related to size and type of legal entity<sup>2</sup>. This consultation ended in 2015 and subsequently the Government revised its approach and considered a principle-based approach to the exception. This would have advantages over basing the exception on a list of company types and sizes. It would provide clarity for companies and would not inadvertently restrict the use of company directors for legitimate business practices. The Government consulted on this later in 2015.
  - b. The Government's consultation in 2014 also announced that corporate members of LLPs would not be prohibited. Evidence gathered suggested that, unlike companies, corporate members in LLPs have some parallels both with company directors and with company shareholders. They are an important means for securing investment for LLPs. Therefore, restrictions on corporate members risk restricting investment in LLPs<sup>3</sup>. However, this consultation suggested that LLPs would be restricted from acting as corporate directors in companies.
6. In 2015 the Small Business Enterprise and Employment (SBEE) Act<sup>4</sup> gave the Government powers to prohibit corporate directors of UK companies. An Impact Assessment (IA) set out the costs and benefits of the measures. Key information on costs and options is summarised in Annex A.<sup>5</sup> The Government agreed that exceptions to the prohibition were to be set out in subsequent secondary legislation and that the

<sup>2</sup> BIS(2014), 'Scope of exceptions to prohibition of corporate directors, November 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/378197/bis-14-1017-scope-of-exceptions-to-prohibition-of-corporate-directors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378197/bis-14-1017-scope-of-exceptions-to-prohibition-of-corporate-directors.pdf)

<sup>3</sup> BIS (2014), Corporate Directors: Scope of exceptions to the prohibition of corporate directors, November 2014.

<sup>4</sup> See <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted/data.htm>

<sup>5</sup> 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](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)

prohibition will come into force 12 months after the secondary legislation – setting out the exception - is passed. Companies would have at least 12 months to therefore adapt to the regulation, helping them to avoid unnecessary compliance costs.

7. On 9<sup>th</sup> December 2020 the Government consulted on its proposed approach to regulating for exceptions to the corporate director prohibition. The Government set out its proposed approach that a company would be able to be appointed as a corporate director if: a) all its directors were natural persons, and b) these natural person directors are, prior to the corporate director appointment, subject to the Companies House ID verification process. Further, the consultation noted that extension of ID verification to designated members of LLPs might be an appropriate basis for permitting appointments where the Corporate Director is an LLP.
8. In its response to the 2020 consultation, the Government confirmed that it would adopt a principle-based approach to the exception. Additionally, it would prohibit the appointment of corporate directors which were not legal entities incorporated or registered in the UK.
9. The Government has also set out that it is not minded to extend the same principle-based restrictions that we have set out for corporate directors for corporate members of LLPs or corporate general partners of LPs. In these cases, the corporate person will have to provide the details of their director, or a managing officer, whose identity must be verified. Registrations of corporate persons that are not accompanied by a verified person in a management position will be rejected. The Government will consider whether any further restrictions on the use of corporate members of LLPs and corporate general partners of LPs will help mitigate the risk of misuse without affecting the legitimate use of these structures, particularly in the investment sector.

#### *Approach to costing options*

10. Given the delay between Parliament agreeing a prohibition through primary legislation and proposed secondary legislation bringing the exception and prohibition into force we have taken the following approach to defining options:
  - a. The current position is that the ban will not come into force until secondary legislation, defining the exception regime, is passed. Therefore, in the absence of the secondary legislation there would be no prohibition. **Do nothing** (option 0) in this case therefore is equivalent to no prohibition on the use of corporate directors.
  - b. However, in passing the secondary legislation the Government could set out that there would be no exceptions to the prohibition. We consider this as option 1.
  - c. Other options reflect different levels of exception with more companies and corporate directors benefitting from the exception regime compared to option 1.
11. However, it should be noted that since the primary legislation was passed the number and use of corporate directors has fallen (Table two).



*Table two: Change in number and use of corporate directors or corporate members between 2013 and 2020*

	Activity reported in primary legislation IA: 30 <sup>th</sup> June 2013	31 <sup>st</sup> March 2018	31 <sup>st</sup> March, 2020
Corporate Directorships or corporate memberships	100,200	89,300	82,900
Companies and LLPs with corporate directors or members on their board	67,000	56,000	52,100
Entities who act as a corporate director	76,000	43,200	42,100

Note: includes LLPs to be consistent with figures cited in the primary legislation impact assessment. As noted in the introduction LLPs would be permitted to retain corporate members and they would not be affected by the prohibition. Source: Companies House management information.

12. The consultation in December 2020 received 64 responses, including from individual companies (14), the legal sector (11), the corporate services sector (11), the pension sector (5), civil society groups (4), academia (2) as well as interested individuals (9). It asked for views on why the number of corporate directors had fallen. Only a few responses were received to this question, and they are set out below:

*“We cannot provide any direct evidence, but it seems to us that companies may have made decisions about appointing directors in anticipation of the coming into force of provisions to ban or reduce the use of corporate directors.” **Academic.***

*“In our experience, a number of companies have done this in view of the upcoming prohibition, to avoid having to make changes when it comes into effect.” **Law firm.***

*“We think that uncertainty as to the ongoing validity of appointments of corporate directors has driven their decline.” **Law firm.***

*“We do not maintain any formal evidence on why companies have reduced their use of corporate directors. However, we believe businesses may have begun to take steps to harmonise their approach with other jurisdictions that do not permit corporate directorships, such as the USA, Germany and Jersey. Additionally, it is only prudent for businesses to prepare themselves for upcoming legislative changes like these, especially given they have been proposed now for some time. In addition, there is also an increased focus on the director training, compliance with the directors’ duties and conscious selection of individuals with specific skillsets, each of which may also have driven a trend towards natural individuals as directors.” **Trade Association.***

13. Based on this feedback it seems likely that the reduction is a result of two things:

- a. A business response to a pre-announced prohibition, and
- b. Wider developments, such as the introduction of prohibitions in other jurisdictions and a greater emphasis on ensuring that Boards have specific skill sets.

14. We therefore later apply sensitivity analysis to our cost estimates given that some of the reduction in the use of corporate directors is likely to be due to the preannounced prohibition.

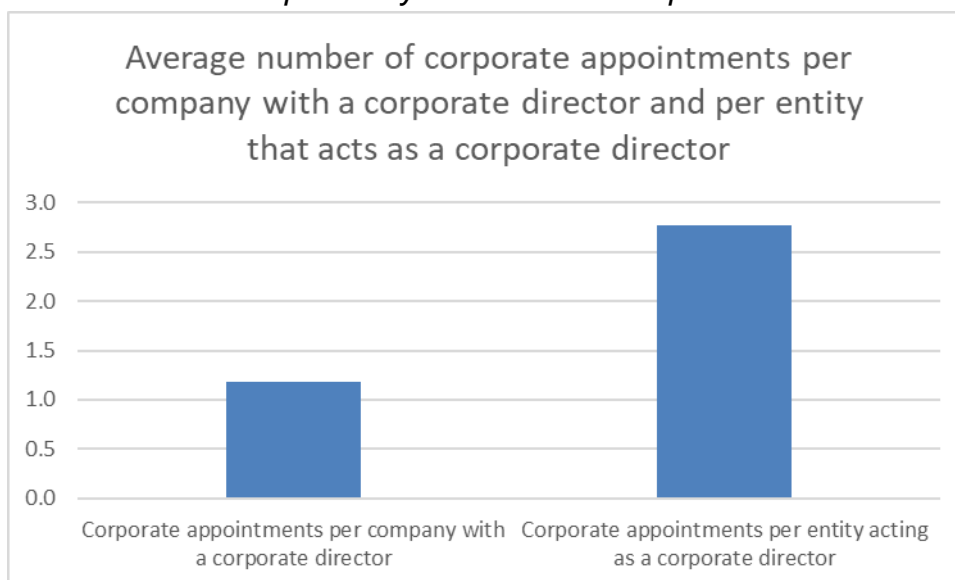
#### *Use of Corporate Directors in the UK*

15. For the purposes of this IA, we use the following terms when discussing the restriction on corporate directors of companies:

- a. Entities that act as a corporate director: these are the entities (i.e. company, LLP or other) that sit on a board belonging to a UK company. There are 13,200 entities that act as corporate directors to UK companies. Entities can be UK or foreign.
- b. Corporate appointments: this is the total number of corporate appointments made to a company board. Note that this figure exceeds the number of entities that act as a corporate director because entities that act as a corporate director can sit on multiple boards. There are 36,700 corporate appointments to UK company boards.
- c. Companies with a corporate director on their board: these are UK companies with at least one corporate appointment on their board. There are 31,200 UK companies that have at least one corporate appointment on their board.

16. For companies with a corporate director on their board there are 1.2 corporate appointments per company. Entities that sit as corporate directors on UK company boards make on average just under three corporate appointments (Figure one).

*Figure one: Average number of corporate appointments per company with a corporate director and per entity that acts as a corporate director*



Source: Companies House management information. Excludes corporate members of LLPs.

17. Table three shows the distribution of corporate appointments between entities that act as corporate directors and those companies with corporate directors on their board. This shows that:

- a. Companies are the largest group of entities that act as corporate directors accounting for over a half of all corporate appointments.
- b. Over 400 corporate appointments relate to LLPs who act as corporate directors on a company board.
- c. There are large numbers of corporate appointments where the type of entity acting as a corporate director is unknown. This is because Companies House only captures details of entity type if that entity is registered on the UK company register. Most unknowns relate to foreign entities who act as corporate directors.

*Table three: Breakdown of corporate appointments by type of entity acting as a corporate director and type of entity with a corporate director on its board, 31<sup>st</sup> March 2020*

		Entity type with corporate director on its board
		Companies
<b>Type of entity acting as corporate director</b>	Companies	25,040
	LLPs	411
	LPs	4
	(S)LPs	0
	CIO (Charitable Incorporated Organisation)	11
	Registered Society	63
	Oversea Company	14
	Unknown	11,051
	Total	36,594

Note: Total of companies with corporate/director on board does not sum precisely to total in earlier paragraphs. This is because of challenges experienced in the matching process. Given that the difference is small (less than 100) we did not cleanse the data further.

Source: Companies House management information.

18. Of the 13,200 entities that act as corporate directors most are companies, though a considerable number are unknown (Figure two). This is because Companies House only has information on UK registered entities. The type of entity is unknown for foreign registered entities.

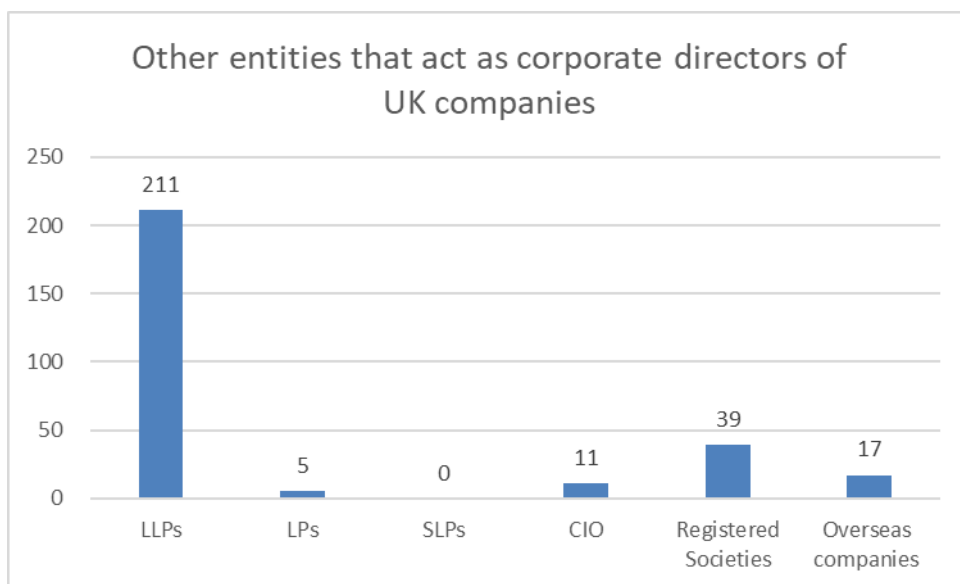
Figure two: Entities that act as corporate directors of UK companies



Source: Companies House management information

19. Of the other known entities that act as corporate directors of UK companies the most common legal form is LLP (Figure three).

Figure three: Other entities that act as corporate directors of UK companies

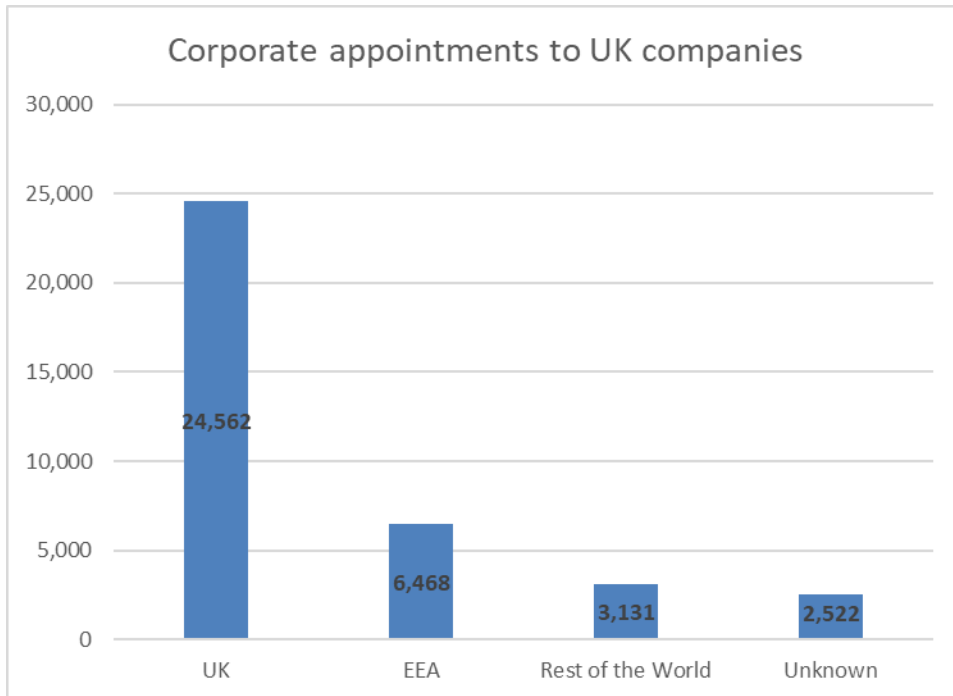


Note: overseas companies are only registered with Companies House if they have some degree of physical presence in the UK, such as a place of business or branch, where it carries on business. Overseas companies are not therefore an accurate measure of the extent to which foreign entities act as UK corporate directors. Source: Companies House management information

20. Around 74% of the 36,700 corporate appointments to UK companies are UK companies with most other corporate appointments being from entities registered in the EU (Figure four). We include corporate appointments with an unknown registration in the UK count as many of the entities with an unknown corporate appointment registration appear to have a UK corporate form<sup>6</sup>.

<sup>6</sup> There are 2522 corporate appointments made by 784 corporate entities which have either blank EEA/Non-EEA registrations fields or have indicator set as Non-EEA but this appear to be contradictory as most are a UK corporate entity.

Figure four: Corporate appointments to UK companies by country of registration of company director.

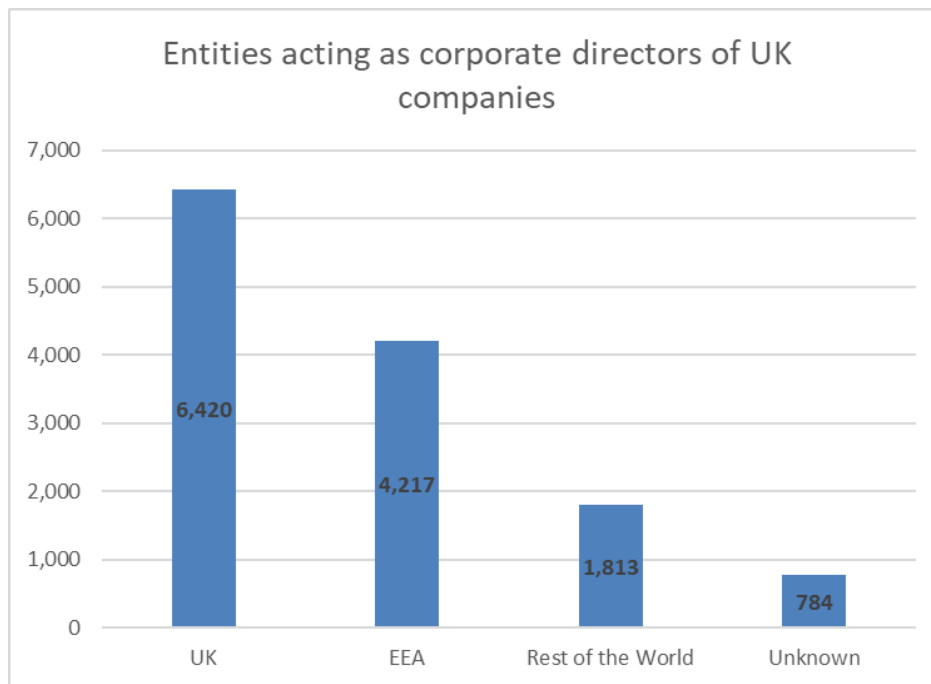


Source: Companies House management information.

21. Of the 13,200 entities that act as a UK corporate director under a half are overseas registered entities (Figure five). There are just over 780 entities where the nationality of registration of the entity is unknown<sup>7</sup>.

Figure five: Entities that act as a corporate director by country of registration.

<sup>7</sup> Of these 606 have either blank EEA/Non-EEA registrations fields or have an indicator set as Non-EEA and they are also classified as a UK corporate entity, mostly companies or LLPs.



Source: Companies House management information.

## 2. Problem under consideration

22. Opaque arrangements involving company directors can:

- a. Increase the potential for companies to be used for illicit activity. The potential costs and impacts of illicit activity were set out in detail in the IA underpinning the primary legislation and we cover these later in the benefits section.
- b. Lead to poorer standards of corporate governance, particularly if used excessively, and correspondingly lead to weaker business decision-making and a reduction in the level of trust in UK business.

23. The IA underpinning the primary legislation set out the options and solutions to high levels of opaqueness caused by using corporate directors. The problem under consideration in this IA is how to implement restrictions on the use of corporate directors without prohibiting legitimate uses of corporate directors which bring business benefit.

24. This measure complements the Persons of Significant Control regulations which bring greater transparency to those individuals who own or exert control over UK companies, e.g., either as shareholders or as individuals who can change Board members<sup>8</sup>.

## 3. Rationale for intervention

25. The IA underpinning the primary legislation set out the rationale for regulating corporate directorships. This set out the rationale in considerable detail but in brief:

- a. Firstly, opacity around corporate ownership and control can be used to conceal an individual's interest in a company from the authorities. This means that law

<sup>8</sup> <https://www.gov.uk/guidance/people-with-significant-control-pscs>

enforcement agencies cannot readily identify individuals behind/controlling a company and, as a result, in some cases criminal activity can be facilitated. This leads to a regulatory failure associated with the current corporate governance and company law frameworks, which enables some individuals who control companies to remain anonymous and hence allow or even facilitate financial crime.

- b. As evidence the IA cited that:
  - i. There is a clear link between illicit financial flows and company structures. The Organisation for Economic Co-operation and Development (OECD) has observed that “almost every economic crime involves the misuse of corporate vehicles”<sup>9</sup>. A World Bank review<sup>10</sup> reported that 150 of the 213 grand corruption cases investigated involved the use of at least one corporate vehicle to hide beneficial ownership and the true source of funds: the World Bank confirmed that 26 of these cases involved UK corporate vehicles.
  - ii. The Serious Fraud Office reported that corporate directors probably feature in around a quarter of their cases.
- c. Secondly, and linked to that, there is an information asymmetry with respect to company control, between those that control companies and those that trade with them or invest in them, which inhibits economic activity. The inefficiency and reputational damage that financial crime, where it occurs, introduces to the economy, as well as the lost business and reduced investment from information asymmetry, could all negatively impact on economic growth. Without Government intervention, there is unlikely to be sufficient collective action by those who benefit from opaque company director arrangement to address these issues.

26. The rationale for the secondary legislation is to avoid a potential regulatory failure where a prohibition on corporate directors criminalises legitimate business activities. For example, during previous consultations companies identified legitimate uses of corporate directors including:

- a. Where companies send different people to a subsidiary’s board meetings to fit the agenda of the meeting. If corporate members are not permitted, then either the company would need to appoint all possible experts as directors of the subsidiary or appoint a proxy if the natural director cannot attend a meeting or have relevant experts attend board meetings as advisers rather than directors. This could be a problem for large companies taking minority stakes in start-ups.
- b. It permits multiple signatories – ensuring that there is a readily available signatory for key documentation not affected by absence or travel commitments.

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<sup>9</sup> OECD (2011) Behind the Corporate Veil, Using Corporate Entities for Illicit Purposes.

<sup>10</sup> World Bank Publications (2011), The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to do About it.

- c. If a member of staff who attends subsidiary board meetings leaves or is rotated to a new role then their place can be easily taken by another representative of the company, without going through the process of creating new directors.
- d. Some companies restrict directorships to owners of property or other assets. Where a company is used to buy these only it can be on the board.

#### 4. Policy objective

27. The policy objective is to address the scope for abuse in the current legal framework which allows opaque arrangements involving corporate directors, whilst permitting legitimate business activities to continue. In doing so we anticipate that the chosen option will contribute to reducing crime and improving the business environment and ultimately should help facilitate economic growth in the UK.

#### 5. Description of options considered (including do nothing)

28. The options outlined in this IA relate to how exceptions to the prohibition of corporate directors should be implemented. The proposed options are:

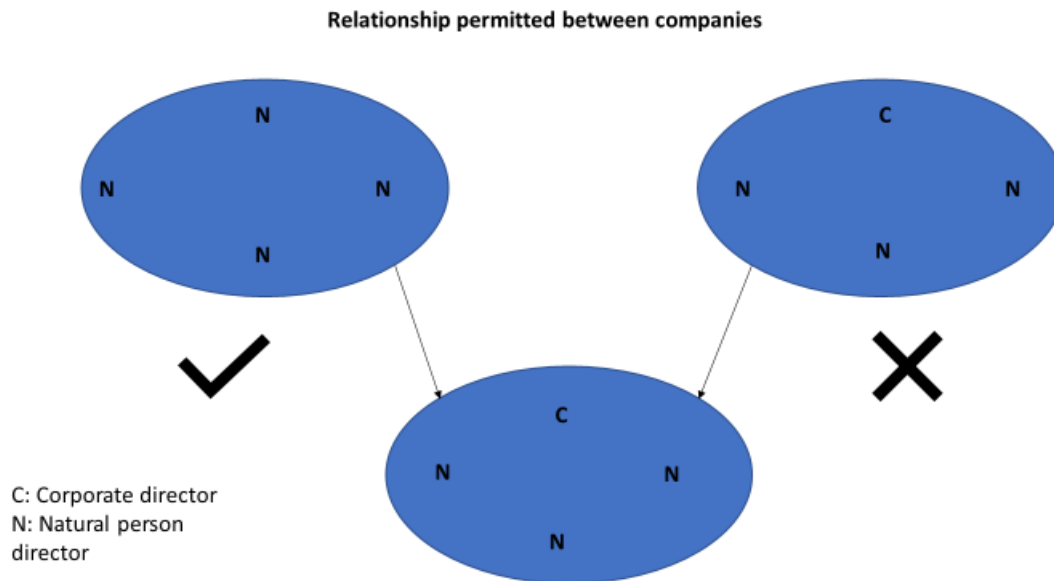
- a. **Option 0** – Do nothing. Do not introduce secondary legislation which is required to enact the ban contained in primary legislation. This means that there is no prohibition on the use of corporate directors.
- b. **Option 1** – Specify no exceptions for companies in the exception regime. Allow the complete prohibition of corporate directors as outlined in Small Business Enterprise and Employment (SBEE) Act 2015 to take effect. This option is not considered desirable as it would criminalise legitimate business activities and impose unnecessary costs on business. It would mean that corporate directors could not be used where they serve a legitimate business function and have not given rise to any negative consequences.
- c. **Option 2** – To specify in secondary legislation a list of specific exceptions to the prohibition of corporate directors in the primary legislation. The possible exceptions are based on those proposed in the Impact Assessment underpinning the primary legislation.
- d. **Option 3** – Specify in secondary legislation the following ‘principle based’ exception to the prohibition in the primary legislation (preferred option):

“A company can only appoint (or retain) a corporate director where the latter a) has directors who are all-natural persons, and b) where all-natural person directors have verified their identity with Companies House.”

Figure six sets out the permitted relationship between companies under the principle-based exception.



Figure six: Permitted relationships between companies under the principle-based exception



29. **All options would prohibit the use of corporate directors by foreign entities.** This is particularly important as Companies House does not have information on foreign registered entities and they are therefore particularly opaque. Following Green Book principles, we do not include costs to foreign entities who act as corporate directors in our estimates of compliance costs. However, some costs relating to the ban on foreign corporate directors are included where those costs fall on UK companies e.g. where a UK company has to replace a directorship previously held by a foreign corporate director.

## 6. Monetised and non-monetised costs and benefits of each option (including administrative burden)

30. In estimating the costs and benefits of different measures we use more up to date estimates of populations affected than contained in the original IA. Further, we use the unit cost data gathered for the IA supporting the primary legislation but adjust it for changes in base year. The points to note are:

- a. As per the IA supporting the primary legislation, we assume 100% compliance.
- b. Also, whilst we present figures on the equivalent annual direct impact on business it should be noted that the measures set out in the original IA were proportionate and necessary to meet the UK's international commitments and therefore out of scope of the business impact target that existed at the time.
- c. Unlike the IA underpinning the primary legislation we envisage that corporate memberships of LLP's would continue to be permitted, although the Government will consider whether any further restrictions on the use of corporate members of

LLPs will help mitigate the risk of misuse without affecting the legitimate use of these structures, particularly in the investment sector. The exclusion of LLPs has a significant impact on costs as they accounted for 56% of all corporate appointments on 31<sup>st</sup> March 2020. Also, the number of corporate directorships of companies has fallen significantly (Table four). This means that the costs of options are substantially lower than a comparable option in the IA supporting the primary legislation.

*Table four: Change in number of corporate directors*

	Primary legislation (data as at 30 <sup>th</sup> June 2013)	Data as at 31 <sup>st</sup> March 2018	Data as at 31 <sup>st</sup> March 2020
Corporate appointments to companies	47,200	39,500	36,700
Corporate appointments to LLPs	56,300	49,800	46,200
<b>Total</b>	<b>103,600</b>	<b>89,300</b>	<b>82,900</b>

Note: a) The difference in totals for June 2013 between this table and table one is due to delays in registering appointments. Appointments can be post-dated, and notification is often delayed. As the breakdown in this table was commissioned for the purposes of this IA it includes company directors who were in post on 30<sup>th</sup> June 2013 but had not then been notified to Companies House; b) corporate directors that were currently appointed as at the points in time for both live companies and live LLPs. Source: Companies House management information.

- d. The IA supporting the primary legislation included quantified benefits to the criminal justice system from bringing into scope of legal accountability those who control a director. As this measure is not included in the secondary legislation these benefits have been excluded from this IA.

31. In the December 2020 consultation we asked a general question about whether respondents felt the IA provided a reasonable estimate of costs and benefits and whether they had any evidence on the costs of the prohibition. Respondents did not pass substantive comment on the extent to which the draft Impact Assessment published in parallel with the consultation provided a reasonable assessment of the costs and benefits of the prohibition and possible exceptions. Nor were they able to provide substantive evidence to help inform the assessment of the costs to companies from the proposed restrictions on corporate directors.

32. The IA underpinning the primary legislation assumed that there would not be any recurrent costs from the ban on corporate directors. Following informal feedback from the Regulatory Policy Committee (RPC), we have included recurrent costs for each option, including the costs of replacing a natural person director at the end of their tenure for companies which are no longer able to use a corporate director. Also, companies that can use corporate directors incur additional annual costs to take advantage of the exception.

## Costs by option

### Option 0 – Do nothing – not passing the secondary legislation

33. Not passing the secondary legislation would mean that the primary legislation does not come into force. It is therefore equivalent in impact to repealing the primary legislation. The IA accompanying the primary legislation considered possible non-regulatory options to regulation to address opaque arrangements involving company directors and their potential problems. These included:

- a. The voluntary provision of information by companies was considered not to meet the policy objectives. Those benefitting from illicit activity through corporate directors would likely choose to not provide further information voluntarily.
- b. Another alternative to regulation is a campaign to promote the use of natural person directors. This is likely to be ineffective, and potentially perceived as ambiguous, since corporate directors are permitted in statute and so much of the landscape in which companies operate is set out in primary legislation.

34. The IA underpinning the primary legislation concluded that a prohibition on corporate directors was necessary to achieve the Government's policy objectives.

35. This option delivers no additional costs or benefits.

### Option 1 – Specify no exception regime in secondary legislation, i.e. a complete prohibition of corporate directors for companies

36. This option assumes that the secondary legislation sets out no exceptions to the prohibition on corporate directors. It uses the same method to assess the costs and benefits as used in the Impact Assessment underpinning the primary legislation. Estimates of unit costs have been updated to 2019 prices, from 2013 prices, and costs are based on updated data on company numbers affected by the proposal.

37. The drivers of cost are the number of companies affected and the unit costs of making a change.

#### Number of companies affected

38. This option would mean that around 31,200 companies would no longer be able to have corporate directors on their boards. This would affect around 36,700 corporate appointments. Around 13,200 corporate entities would be restricted from acting as a corporate director.

39. However, not all these are UK entities. So:

- a. 36,700 corporate appointments to UK companies would need to be replaced. Of these, 27,100 directors report to a UK entity. Note that this includes over 2,500

corporate appointments where the nationality of the appointment<sup>11</sup> is unknown. We assume that these belong to UK entities<sup>12</sup> (see below c).

- b. 31,200 UK companies would bear some costs removing an existing Director, whether that Director represented a UK or foreign entity.
- c. Of the 13,200 entities that act as a corporate director, only 7,200 are UK based entities. Therefore only 7,200 UK entities who act as a corporate director would bear the cost of changing a corporate director. Note we include in the 7,200 nearly 800 entities with a nationality that is unknown. However, many of these use a UK corporate form and we therefore treat them as UK entities.

### Unit costs

40. The cost estimates are drawn from a survey of companies carried out by IFF Research in 2013. These were used to estimate costs in the primary legislation impact assessment. Full details of how the survey was carried out are set out in Annex A of that impact assessment<sup>13</sup>.

41. The non-recurrent costs related to the policy change include:

- a. *Public sector costs* which arise from ensuring that companies are fully aware of the regulatory change. These are based on using existing stakeholder channels supplemented with website notices and guidance. Additional costs would be incurred to change Company House data systems. These are not expected to be significant.
- b. *Private sector costs*<sup>14</sup> which are more substantial. They are one off and cover:
  - i. Staff time involved in removing and/or replacing a corporate director who sits on a company board. These costs are a mix of wage costs and legal costs and scale with the number of corporate directorships.<sup>15</sup>
  - ii. Staff time involved for companies who act as corporate directors on other company boards and who will either need to replace or remove these after the prohibition comes into force.

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<sup>11</sup> Note throughout where we refer to nationality, we mean the nationality of the register on which the entity is registered.

<sup>12</sup> For example, in our dataset 2,522 corporate appointments belong to 784 entities of unknown nationality that act as a corporate director. Of the 784, 606 use a UK corporate form.

<sup>13</sup> <https://www.gov.uk/government/publications/company-ownership-transparency-and-trust-impact-assessments>, see pages 212-224.

<sup>14</sup> Annex D of the original impact assessment sets out the methodology for estimating costs. See 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](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)

<sup>15</sup> Companies were asked an open question about the processes they would have to go through in removing a corporate director. They were encouraged to identify tasks and estimate the time taken for each task and identify any additional (e.g. legal) costs.

- iii. Costs of any resulting reputational damage and loss of benefits after corporate directors are prohibited<sup>16</sup>. For the best and low scenarios, the original IA estimated that 73% of all companies with a corporate director on their board would suffer some form of disadvantage, reputational damage or disruption from the loss of the director. It also estimated that 2% of all companies that act as a corporate director would suffer some form of loss. For the high-cost scenario all affected companies suffered some form of disruption.
- iv. The final set of costs relate to familiarisation costs. We assume that all UK companies that have corporate directors on their board (31,200) and all UK entities that act as corporate directors (7,200) must familiarise themselves with the legislation, whether they are excepted or not. The familiarisation costs of foreign entities are excluded.

42. Based on the above, the non-recurrent costs of this option are given in Table five.

43. Unlike the primary legislation IA, we estimate that there will be recurrent costs from the change. These arise because the replacement of a corporate director would mean that the corporate director would need to be replaced by a natural person director:

- a. The initial change to a natural person director is included in the non-recurrent costs. However, at some point the natural person director will be replaced as their tenure comes to an end.
- b. At this point a new natural person director will be appointed. The average tenure of non-executive Directors is around 4 years<sup>17</sup>, so we assume there are two reappointments of a natural person director over the 10-year appraisal horizon.
- c. The process of replacing a natural person director involves the completion of two digital filings. We assume therefore it takes approximately 45 minutes to complete these digital forms.<sup>18</sup>
- d. This leads to additional costs of around £883,000 in years 4 and 8 (Table six).

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<sup>16</sup> The estimates in this paragraph are drawn from an IFF survey carried out in 2014. It asked companies that used and acted as Corporate Directors to estimate the negative impacts on their businesses from either loss of reputation or business disruption. It did not assess the loss of fee income from companies that provide Corporate Director services, but in the same way it did not count the reduction in expenditure by companies that purchase Corporate Director services. The costs in this paragraph are best thought of as the cost of any inefficiencies that arise from changing from corporate to natural person directors.

<sup>17</sup> <https://www.enei.org.uk/resources/news/average-female-director-s-tenure-is-half-that-of-a-male-director/>

<sup>18</sup> We use the mean hourly rate for corporate directors and managers (SOC 11) uplifted by 20% for non-wage labour costs. The paper forms are TM01 (Termination of existing director) and AP01 (Appointment of new director). The TM01 form is two pages long; the AP01 form is approximately three pages long.

Table five: non-recurrent cost estimates of option 1

Option description	Complete prohibition of corporate directors, pass secondary legislation with no exceptions																	
Coverage	Applies to companies only																	
Input table	Entity subject to cost			% UK	Number of UK entities			Unit costs			Multiplier			Output table	Non-recurrent costs £m			
	Corporate appointments	Entity acting as a CD	Entity with a CD on board		High	Best	Low	High	Best	Low	High	Best	Low		High	Best	Low	
Replacement costs for UK entities with a corporate director	36,700			100%	36,700	36,700	36,700	389	180	149	100%	100%	100%	Replacement costs for UK entities with a corporate director	£14.3	£6.6	£5.5	
Replacement costs for entities acting as a corporate director	36,700			74%	27,100	27,100	27,100	201	96	78	100%	100%	100%	Replacement costs for entities acting as a corporate director	£5.5	£2.6	£2.1	
Reputational damage for UK entities with corporate directors			31,200	100%	31,200	31,200	31,200	322	214	105	100%	73%	73%	Reputational damage for UK entities with corporate directors	£10.0	£4.9	£2.4	
Reputational damage for entities acting as corporate directors		13,200		54%	7,200	7,200	7,200	287	149	11	100%	2%	2%	Reputational damage for entities acting as corporate directors	£2.1	£0.0	£0.0	
Familiarisation costs for UK entities					38,400	38,400	38,400	76	32	22	100%	100%	100%	Familiarisation costs for UK entities	£2.9	£1.2	£0.8	
The UK% is derived from Companies House data on the nationality of corporate directors. Following Green Book principles we exclude costs that fall on non UK based residents. The multiplier is derived from the Transparency and Trust survey captures the proportion of entities that might bear a particular cost														<b>BIT input</b>		Non-recurrent costs £m		
														High	Best	Low		
														Total	£34.8	£15.3	£10.8	

Source: Companies House, BEIS calculations. Cost calculated as number affected multiplied by unit cost. Note: replacement costs scale with the number of corporate directorships; but reputational damage is assumed to scale with the number of corporate entities

*Table six: recurrent cost estimates of option 1*

	Assumption	1	2	3	4	5	6	7	8	9	10
Option 1 recurrent costs	All UK entities convert immediately to natural person director who is replaced at years 4 and 8										
Companies	Number of corporate appointments				36,700				36,700		
	Time taken to complete TM01 and AP01 forms to terminate existing director and appoint new director				0.75				0.75		
	Hourly wage				27				27		
	Uplift				20%				20%		
	Cost				£882,696				£882,696		

### Comparison with consultation IA

44. The previous draft secondary legislation IA (BEIS032(C)-20-BF) estimated the best case non-recurrent costs of option 1 to be £17m in 2017 prices. The IA did not estimate recurrent costs. By comparison the non-recurrent costs in this IA for option 1 are £15.3m in 2019 prices, or £14.7m million in 2017 prices. The 14% reduction in costs is due to:

- a. A reduction in the number of corporate directors since the previous IA. For example, between 31<sup>st</sup> March 2018 and 31<sup>st</sup> March 2020 the number of corporate appointments fell from 39,500 to 36,700, a fall of 7%, and
- b. Excluding the costs to foreign entities.

### **Option 2 – Prohibiting the use of corporate directors with exemptions for certain categories of company**

45. The IA underpinning the primary legislation suggested a range of possible exceptions that the Secretary of State might make, subject to the approval of Parliament. The IA considered a scenario which included exemptions from the prohibition from corporate directors in the following cases:

- a. Where the parent company is listed on an EU regulated market,
- b. Where the parent company is a sufficiently large private company in a group structure,
- c. Charitable company,
- d. Pension companies.

46. Companies which would be potentially in scope would be smaller companies outside the charity and pension sectors which constitute most companies registered at Companies House.<sup>19</sup>

47. We use these cases to estimate the impact of a possible exception. The Government's consultation in 2014 received additional recommendations for exceptions from

<sup>19</sup> According to business population statistics the vast majority (over 99%) of companies are small, i.e. with less than 250 employees. <https://www.gov.uk/government/statistics/business-population-estimates-2017>

respondents, including for sectors such as: Corporate Service providers, Property Management companies, Life Assurance companies and minority investments in start-up companies. The wide range of additional requests for exemptions illustrates a potential difficulty with using sector for the basis of the exceptions regime. A sector is not a good indicator of the potential use of opaque arrangements for illegitimate purposes by companies. In addition, it is likely that an exceptions regime which sought to cover a broad range of sectors would make the exceptions regime unwieldy, complicated for business to navigate and be unfit for purpose.

### Number of companies affected

48. Unlike previous attempts to quantify the impact of these exemptions we have data on the number of charitable entities, which we take to be Charitable Incorporated Organisations and Registered Societies, which use corporate directors. Table three, above, suggests that charities have 74 corporate director appointments on company boards. Figure three, above, shows that there were 50 charities that act as UK corporate directors. To estimate the number of companies which have corporate directors from charities sitting on their boards we divide the number of corporate appointments by charities with the average number of corporate appointments per company – as set out in Figure one. This suggests that there are around 60 companies which have corporate directors from charities sitting on their board (74/1.2).

49. For the other entity types we use the following method:

- a. We estimate the number of companies under each of the proposed exceptions using estimates from the FAME database.
- b. As per the IA underpinning the primary legislation, we assume that the incidence of corporate directors is spread uniformly across the business population and use the average share of companies with corporate directors on their board (0.7%) and the average share of entities which act as corporate directors (0.3%), to estimate the number of companies that would be eligible for exception.

*Table seven: estimates of the numbers of companies in scope of exception under option 2, excluding charities*

	Total number of companies
Pension funding, non-group	1100 <sup>20</sup>
Public quoted or public unquoted or private and group structure	18,900 <sup>21</sup> , plus 90,100 subsidiaries
Total	20,000 plus 90,100 subsidiaries

Note: figures exclude LLPs, total figures rounded to nearest 100. Fame data accessed 15<sup>th</sup> March 2021 and 15<sup>th</sup> November 2021, BEIS calculations.

<sup>20</sup> Companies classified under SIC (2007) 65.300.

<sup>21</sup> Includes companies that are classified as private and files group accounts.



50. The exemption for pension funds and listed and private group structures implies 110,000 entities would be in scope of an exception. Multiplying this number by the shares above gives:

- a. Around 790 exemptions for companies with a corporate director.
- b. Around 330 exemptions for corporate entities acting as a corporate director.

51. If we add the exemptions for charities, then we have:

- a. Around 850 exemptions for companies with a corporate director.
- b. Around 380 exemptions for corporate entities acting as a corporate director.

*Total number of companies in scope*

52. Table eight summarises the number of companies that use corporate directors, the numbers of corporate entities that act as corporate directors and the impact of exemptions:

*Table eight: comparison of the numbers of companies and corporate directors in scope of options 1 and 2*

	Number of companies with corporate directors on their board	Number of corporate entities acting as corporate directors	Number of corporate directorships
Numbers in scope under option 1	31,200	13,200	36,700
Exemption	850	380	1,000 <sup>22</sup>
Numbers in scope under option 2	30,300	12,800	35,700

Source: Companies House, BEIS calculations.

Unit costs

53. For non-recurrent costs we use the same unit costs as option 1 as the only difference between this option and option 2 is the number of companies in scope. We also assume that the share of non-UK entities is unaffected by the exemption (Table nine).

54. This option (best: £14.9m) produces a saving of £0.4m in non-recurrent costs compared to option 1 (best: £15.3m).

55. We estimate two types of recurrent cost under option two:

<sup>22</sup> There are around 36,700 corporate directorships on 31,200 boards giving, on average, 1.2 corporate directorships per board. We use this ratio to estimate the number of corporate directorships that are exempted.

- a. As under option one, all non-excepted corporate appointments (i.e. 35,600) would be replaced by natural persons and these natural persons would themselves need replacing at least twice over the 10 year period. This amounts to an additional cost of £859,000 in year 4 and year 8.
- b. In addition, we assume that all excepted UK companies with corporate directors on their board (around 900 in total) would need to reconfirm their eligibility for the exception through the annual confirmation statement process. This would likely be a simple process, perhaps a check box, but we assume it takes 15 minutes to complete. This leads to annual recurrent costs of £7,200.

### Comparison with consultation IA

56. The previous draft secondary legislation IA (BEIS032(C)-20-BF) estimated the best case non-recurrent costs of option 2 to be £16m in 2017 prices. The IA did not estimate recurrent costs. By comparison the non-recurrent costs for option 2 in this IA are £14.9m in 2019 prices, or £14.3m million in 2017 prices. The 11% reduction in costs is due to:

- a. A reduction in the number of corporate directors since the previous IA. For example, between 31<sup>st</sup> March 2018 and 31<sup>st</sup> March 2020 the number of corporate appointments fell from 39,500 to 36,700, a fall of 7%, and
- b. A reduction in the number of entities that are eligible for an exception under this option<sup>23</sup>,
- c. Excluding the costs to foreign entities.

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<sup>23</sup> For example, in this IA we have actual data on the number of charitable organisations that use corporate directors. The previous draft had a higher estimate of charity exceptions. It identified the number of companies that were charities, as defined by SIC codes, and then assumed that the use of corporate directors was spread equally across this population.

Table nine: non-recurrent cost estimates under option two

Option description	Specify in legislation a list of specific exceptions to the prohibition of corporate directors																
Coverage	Applies to companies only																
Input table	Entity subject to cost			% UK	Number of UK entities			Unit costs			Multiplier			Output table	Non-recurrent costs £m		
	Corporate appointments	Entity acting as a CD	Entity with a CD on board		High	Best	Low	High	Best	Low	High	Best	Low		High	Best	Low
Replacement costs for UK entities with a corporate director	35,700			100%	35,700	35,700	35,700	389	180	149	100%	100%	100%	Replacement costs for UK entities with a corporate director	£13.9	£6.4	£5.3
Replacement costs for entities acting as a corporate director	35,700			74%	26,400	26,400	26,400	201	96	78	100%	100%	100%	Replacement costs for entities acting as a corporate director	£5.3	£2.5	£2.1
Reputational damage for UK entities with corporate directors			30,300	100%	30,300	30,300	30,300	322	214	105	100%	73%	73%	Reputational damage for UK entities with corporate directors	£9.7	£4.7	£2.3
Reputational damage for entities acting as corporate directors		12,800		54%	7,000	7,000	7,000	287	149	11	100%	2%	2%	Reputational damage for entities acting as corporate directors	£2.0	£0.0	£0.0
Familiarisation costs for UK entities					38,400	38,400	38,400	76	32	22	100%	100%	100%	Familiarisation costs for UK entities	£2.9	£1.2	£0.8
The UK% is derived from Companies House data on the nationality of corporate directors. Following Green Book principles we exclude costs that fall on non UK based residents. The multiplier is derived from the Transparency and Trust survey captures the proportion of entities that might bear a particular cost. Assume for familiarisation costs that all UK entities, whether exempt or not would have to familiarise themselves with the regulation.														BIT input	Non-recurrent costs £m		
															High	Best	Low
														Total	£33.9	£14.9	£10.6

Source: Companies House, BEIS calculations. Cost calculated as number affected multiplied by unit cost. Note: replacement costs scale with the number of corporate directorships; but reputational damage is assumed to scale with the number of corporate entities.

*Table ten: recurrent cost estimates under option two*

	<b>Assumption</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
Option 2	All UK entities convert immediately to natural person director who is replaced at years 4 and 8										
Companies	Number of corporate appointments				35,700				35,700		
	Time taken to complete TM01 and AP01 forms to terminate existing director and appoint new director				0.75				0.75		
	Hourly wage				27				27		
	Uplift				0.20				0		
	Cost				£858,644				£858,644		
Option 2	<b>Assumption</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
	Excepted UK entities need to confirm every year that corporate director is still eligible										
Companies	Number of excepted companies with corporate directors		900	900	900	900	900	900	900	900	900
	Time taken to complete confirmation statement		0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
	Hourly wage		27	27	27	27	27	27	27	27	27
	Uplift		0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
	Cost		£7,215	£7,215	£7,215	£7,215	£7,215	£7,215	£7,215	£7,215	£7,215

Source: Companies House, BEIS calculations.

### **Option 3 – Prohibiting corporate directors with a principles-based exception and ID verification for Directors**

57. Option 2 provides exceptions based on types of company, but it penalises legitimate companies' use of corporate directors if they fall outside the excepted company definitions. Feedback from the 2014 consultation process illustrated that the benefits of corporate directors extended beyond the narrow list of exceptions set out in option 2, to include for example special purpose vehicles, corporate service members, property management companies and life assurance companies. Based on this feedback we considered that the approach of specific exemptions would make the exceptions regime too unwieldy and costly for businesses to understand. We therefore developed a different option – a principles-based approach - to achieve the aims of the policy: increased transparency.

58. The principles-based approach under this option would allow a company to only appoint (or retain) a corporate director if the board of the corporate director is entirely comprised of 'natural' persons and those directors have been ID verified. The company that has a director which is not a natural person would be responsible for ensuring that every person on that director's board is a natural person. Should, after the transition period, a company with a corporate director determine that the board of the corporate director includes non-natural persons then the corporate director would need to cease their directorship with immediate effect.

59. The Government's goal is to ensure that all directors have their identified verified before they can be registered at Companies House. The Government's intention to introduce these reforms, which require primary legislation, were announced on 18<sup>th</sup> September 2020. This followed a consultation which demonstrated widespread support for verification from 91% of consultees. And 81% of respondents agreed with the proposal for mandatory identity verification of directors, recognising it to be essential for effective

implementation of the verification policy<sup>24</sup>.

60. The introduction of ID verification for directors means that the goal of greater transparency for corporate directors can be achieved by:
- a. A company would only be able to appoint or retain a corporate director if the board of the corporate director is entirely comprised of natural persons; and
  - b. That the natural persons sitting on the board of the corporate director have submitted to ID verification by Companies House.
61. There remains a question whether LLPs would be permitted to be a corporate director on a company board. The 2015 consultation considered extending the exception to cover other types of legal entity, so that, for example, LLPs might be permitted to act as corporate directors of companies. The then Government concluded that such an extension would undermine the prohibition of corporate directors unless there were a requirement that all partners of LLPs be natural persons. The 2020 consultation left it open that LLP's might be permitted to be a corporate director provided certain conditions are met. ID verification makes it possible for LLPs to be corporate directors on company boards without undermining the objectives of the policy **provided** that the ID verification requirements are met. So, we therefore assume that LLPs **would be permitted** to be a corporate director on a company board.

#### Number of companies affected

62. Using Companies House data, it is possible to identify how the principles-based exception would work for most but not all corporate appointments. However, it is impossible to tell for just over 30% of corporate appointments whether the corporate appointment would have met the principles-based test (Table eleven). This uncertainty arises from:
- a. In a few cases the corporate appointment reports to a UK entity which is not a company or an LLP. In these cases, Companies House does not collect officer details, so it is impossible to tell whether officer is a natural person or not and therefore whether the entity meets the principles-based test.
  - b. The largest group is where the corporate appointment reports to an unknown entity. In most of these cases the entity is based and is registered overseas and is therefore not a UK entity and therefore does not have an entity record at Companies House.
63. The other thing to note is that the number of UK companies with a corporate director on their board is higher than reported previously (over 32,200 as opposed to 31,200). There is double counting in this column, which arises because UK companies can have more

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<sup>24</sup> BEIS (2020), Corporate Transparency and Register Reform: Government response to the consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities, September 2020.

than one corporate appointment to their board. So, for example, one corporate appointment may meet the principles-based test, whilst another may not.

*Table eleven: impact of the principles-based test on corporate appointments and UK companies with at least one corporate director on their board*

	UK Companies with at least one corporate director on their board	%	Corporate appointments	%
Entities where all of the officers of the corporate officer entity are natural persons	19,963	62%	23,227	63%
Entities using corporate officers with at least 1 corporate officer on their Board	2,017	6%	2,236	6%
Corporate Officers with Company records not found on CH Register	10,252	32%	11,220	31%
	32,232		36,683	

Source: Companies House, BEIS calculations.

64. Table twelve provides a similar breakdown but this time from the perspective of entities that act as a corporate director of UK companies.

*Table twelve: entities that act as a corporate director of a UK company*

	Companies and LLPs	Other UK entities	Unknown	Total
Total number of entities	6,946	72	6,216	13,234
of which:				
Number of corporate officers whose boards, or members, are made up entirely of natural persons	6,349		0	6,349
Number of corporate officers whose boards, or membership, includes at least one corporate officer	597		0	597
Number of corporate officer surnames not found on CH Register	0	72	6,216	6,288

Source: Companies House, BEIS calculations.

65. By comparing Tables eleven and twelve we can come to more precise estimates of the number of entities in scope:

- a. We know that 6,288 other UK or unknown entities must account for 11,220 unknown corporate appointments. However, Table three provides a precise count of the number of corporate appointments by other UK entities: they account for 92 corporate appointments. Therefore, the unknown entities account for the

remaining 11,128<sup>25</sup> corporate appointments.

- b. We also know that the 6,288 other UK or unknown entities sit on the boards of 10,252 UK companies. There are around 1.1 corporate appointments per UK company with an unknown corporate director on their board (11,220/10,252). This means that there are (Table thirteen):
- i. 72 other UK entities account for 92<sup>26</sup> corporate appointments on 81<sup>27</sup> UK company boards
  - ii. 6,216 unknown entities account for 11,128<sup>28</sup> corporate appointments on 9,837<sup>29</sup> UK company boards.

*Table thirteen: compliance with principles-based criteria by entity type*

	Companies and LLPs act as corporate director			Other UK entities act as corporate director			Unknown entities act as corporate director		
	Entities acting as Corporate Director	Corporate appointments	Companies with a corporate director on board	Entities acting as Corporate Director	Corporate appointments	Companies with a corporate director on board	Entities acting as Corporate Director	Corporate appointments	Companies with a corporate director on board
Number of corporate officers whose boards, or members, are made up entirely of natural persons	6,349	23,227	19,313						
Number of corporate officers whose boards, or membership, includes at least one corporate officer	597	2,236	1,951	72	92	81			
Prohibition because foreign entity	0	0	0	0	0	0	6,216	11,128	9,837
	6,946	25,463	21,265	72	92	81	6,216	11,128	9,837

Source: Companies House, BEIS calculations.

66. The analysis assumes that where other UK entities act as corporate directors that they are non-compliant with the principles-based exception. We do this because we lack data on the board composition of other UK entities, so this is the worst case. Where unknown entities act as corporate directors, we assume that they are foreign and therefore would be prohibited from using corporate directors in the UK. It should be noted that most UK companies and LLPs who act as corporate directors are compliant with the principles-based approach. Indeed, most of the prohibitions that arise under this option are because the corporate appointments represent foreign entities.

67. Overall, our analysis suggests that just under half of all entities acting as a corporate director would qualify for the exception as would around 63% of all corporate

<sup>25</sup> This does not precisely align with the figure for the 11,051 corporate appointments by unknown entities in Table 3. The note to Table 3 explains that challenges in the matching process meant we could not reconcile perfectly with the totals. However, the small difference, less than 100 cases, is sufficiently accurate for this purpose.

<sup>26</sup> See Table 3, number of corporate appointments by LPs, (S)LPs, CIOs, Registered Societies and Overseas Companies.

<sup>27</sup> The calculation is given by 92/1.1. However, this needs to be further scaled to eliminate the double counting of companies that have a corporate director on their board, so we apply (31,183/32,232).

<sup>28</sup> See Table 3 and note to table which explains why total differs slightly from that given here.

<sup>29</sup> The calculation is given by 11128/1.1. However, this needs to be further scaled to eliminate the double counting of companies that have a corporate director on their board, so we apply (31,183/32,232).

appointments and around 62% of all UK companies with a corporate director on their board.

*Table fourteen: number of excepted and non-excepted corporate appointments*

	Entities acting as Corporate Director	Corporate appointments	Companies with a corporate director on board
Excepted	6,349	23,227	19,313
Not excepted	6,885	13,456	11,870
Total	13,234	36,683	31,183

Source: Companies House, BEIS calculations.

### Unit costs

68. For non-recurrent costs, we use the same unit costs as in options 1 and 2. Our assumption is that all appointments that do not qualify for an exception would need to be changed imposing costs on the entity that acts as the corporate director and on the UK company that has a corporate director on its board.

69. The non-recurrent costs (Table fifteen) are substantially less under this option for two reasons:

- a. Firstly, because more corporate appointments are permitted compared to the other options; and
- b. Secondly, foreign entities bear a much higher share of the costs of the prohibition and these costs are excluded from our cost estimates.



Table fifteen: non-recurrent cost estimates under option three

Option description	Specify in legislation a list of specific exceptions to the prohibition of corporate directors																
Coverage	Applies to companies only																
Input table	Entity subject to cost			% UK	Number of UK entities			Unit costs			Multiplier			Output table	Non-recurrent costs £m		
	Corporate appointments	Entity acting as a CD	Entity with a CD on board		High	Best	Low	High	Best	Low	High	Best	Low		High	Best	Low
Replacement costs for UK entities with a corporate director	13,500			100%	13,500	13,500	13,500	389	180	149	100%	100%	100%	Replacement costs for UK entities with a corporate director	£5.3	£2.4	£2.0
Replacement costs for entities acting as a corporate director	13,500			17%	2,300	2,300	2,300	201	96	78	100%	100%	100%	Replacement costs for entities acting as a corporate director	£0.5	£0.2	£0.2
Reputational damage for UK entities with corporate directors			11,900	100%	11,900	11,900	11,900	322	214	105	100%	73%	73%	Reputational damage for UK entities with corporate directors	£3.8	£1.9	£0.9
Reputational damage for entities acting as corporate directors		6,900		10%	700	700	700	287	149	11	100%	2%	2%	Reputational damage for entities acting as corporate directors	£0.2	£0.0	£0.0
Familiarisation costs for UK entities					38,400	38,400	38,400	76	32	22	100%	100%	100%	Familiarisation costs for UK entities	£2.9	£1.2	£0.8
The UK% is derived from Companies House data on the nationality of corporate directors. Following Green Book principles we exclude costs that fall on non UK based residents. The multiplier is derived from the Transparency and Trust survey captures the proportion of entities that might bear a particular cost. Assume for familiarisation costs that all UK entities, whether exempt or not would have to familiarise themselves with the regulation.														BIT input	Non-recurrent costs £m		
															High	Best	Low
														Total	£12.7	£5.7	£4.0

Source: Companies House, BEIS calculations. Cost calculated as number affected multiplied by unit cost. Note: replacement costs scale with the number of corporate directorships; but reputational damage is assumed to scale with the number of corporate entities.

70. Under this option we assume the following recurrent costs:

- a. As under option one, all non-excepted corporate appointments (i.e. 13,500) would be replaced by natural persons and these natural persons would themselves need replacing at least twice over the 10 year period. This amounts to an additional cost of £325,000 in year 4 and year 8.
- b. In addition, we assume that all excepted UK companies with corporate directors on their board (around 19,300 in total) would need to reconfirm their eligibility for the exception through the annual confirmation statement process. This would likely be a simple process, perhaps a check box, but we assume it takes 15 minutes to complete. This leads to recurrent costs of £155,000.

*Table sixteen: recurrent cost estimates under option three*

Option 3	Assumption	1	2	3	4	5	6	7	8	9	10
	All UK entities convert prohibited corporate director immediately to natural person director who is replaced at years 4 and 8										
Companies	Number of corporate appointments				13,500				13,500		
	Time taken to complete TM01 and AP01 forms to terminate existing director and appoint new director				0.75				0.75		
	Hourly wage				27				27		
	Uplift				0.2				0		
	Cost				324,697				324,697		

Option 3	Excepted UK entities need to confirm every year that corporate director is still eligible	1	2	3	4	5	6	7	8	9	10
Companies	Cost		£154,732	£154,732	£154,732	£154,732	£154,732	£154,732	£154,732	£154,732	£154,732
	Number of excepted UK companies with corporate directors on their board	19,300	19,300	19,300	19,300	19,300	19,300	19,300	19,300	19,300	19,300
	Time taken to complete confirmation statement	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
	Hourly wage	27	27	27	27	27	27	27	27	27	27
	Uplift	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20

*Recurrent costs that are out of scope of option 3*

71. Those entities that act as corporate directors and meet the principles-based exception are also required to ensure that their natural person directors are ID verified. The costs of ID verification of natural person directors are covered in BEIS045(C)-21-BF. To avoid duplication of these costs we exclude them from the EANDCB and NPSV in this IA, but, for reference, set them out below.

72. There would be over 6,300 excepted corporate appointments where the UK entity acting as a corporate director would be required to ID verify all their directors. We estimate in BEIS045(C)-21-BF that ID verification would cost, in terms of time spent in compliance, £11 per director. This is a blended rate for the costs of digital and assisted digital verification. There are on average 2.7 natural person directors or partners on eligible UK entities that act as corporate directors.

*Table 17: average number of natural person directors and partners for UK entities eligible to be a corporate director*

Average number of natural person directors and partners for UK entities eligible to be a corporate director			
As of 31/03/2021	Entities	Directors	Directors/entity
Companies	6426	16010	2.5
LLPs	87	1523	17.5
Total	6513	17533	2.7

Source: Companies House management Information. Note: This data refers to a snapshot of the CH register taken on 31/03/2021 and is therefore different from other data in this IA which is drawn from a snapshot of the register taken on 31/03/2020.

73. We assume that when the policy is introduced all natural person directors are ID verified and that, as before, ID verification is repeated for new natural person directors when they replace the existing board.

*Table 18: costs of ID verification for natural person directors and partners for UK entities eligible to be a corporate director*

Option 3	Natural person directors of excepted UK entities acting as corporate directors need to ID verify	1	2	3	4	5	6	7	8	9	10
	Cost	£187,110			£187,110				£187,110		
Companies	Number of excepted UK companies acting as corporate directors	6,300			6,300				6,300		
	Time cost of ID verification	11			11				11		
	Number of directors	2.7			2.7				2.7		

## Comparison with consultation IA

74. The previous IA (BEIS032(C)-20-BF) estimated the best case non-recurrent costs of the equivalent (option 4) to be £3m in 2017 prices. The IA did not estimate recurrent costs for option 4. By comparison the non-recurrent costs for the option in this IA are £5.7m in 2019 prices, or £5.5m million in 2017 prices. The 84% increase in costs is due to:

- A reduction in the number of entities that are eligible for an exception under this option, largely a result of improved Companies House data and a better understanding of it<sup>30</sup>. This has more than offset the following factors.
- A reduction in the number of corporate directors since the previous IA. For example, between 31<sup>st</sup> March 2018 and 31<sup>st</sup> March 2020 the number of corporate appointments fell from 39,500 to 36,700, a fall of 7%, and
- Excluding the costs to foreign entities.

<sup>30</sup> For example, in the best case the previous IA estimated that 3,600 corporate directorships would not be eligible for the exception. In this IA, 13,500 corporate directorships would not be eligible for the exception. Whilst most of the non-eligible directorships represent foreign entities, UK companies still incur a cost from replacing these and incur the possibility of reputational costs.

## EANDCB summary and sensitivity analysis

75. As noted earlier, it is likely that the decline in the number of corporate directors is in part a response to a preannounced prohibition. We explore two scenarios to give a sense of what the costs would have been if companies had not already adjusted to the prohibition. The scenarios are:

- a. That the number of corporate appointments remained broadly flat from 2013 levels. This implies that corporate appointments by UK companies would have been 47,200 in 2020.
- b. That the share of corporate appointments in the 2013 population of directorships remained constant. Given that directorships have increased since 2013, this implies that the number of corporate appointments would have risen since 2013. This implies that corporate appointments by UK companies would have been just under 62,600 in 2020.

76. We do not attempt to replicate the above analysis for these two scenarios. This is impossible because we cannot tell what the composition of corporate directors would be in counterfactual scenarios. Therefore, for each scenario we calculate an uplift factor, based on the number of corporate appointments in the scenario compared to the actual number of corporate appointments. This uplift factor is used as a cost multiplier which is applied to the costs in the modelled options.

77. The differences in EANDCB between options 1 and 2 in our main estimates is relatively modest given the narrow scope of the exception regime in option 2 (Table 19). Option 3 has the lowest EANDCB and is significantly lower than both other options. However, it should be noted that the EANDCB for all options is below the de-minimis threshold (£5m p.a).

Table 19: EANDCB and NPSV under different options: best estimates given

<b>Main estimates - data as of 31st March 2020</b>			
	Option 1	Option 2	Option 3
EANDCB	2.0	1.9	0.9
NPSV	-16.8	-16.4	-7.5
<b>Sensitivity analysis - corporate directors remain at 2013 levels</b>			
	Option 1	Option 2	Option 3
EANDCB	2.5	2.5	1.1
NPSV	-21.6	-21.1	-9.6
<b>Sensitivity analysis - corporate directors maintained their share of directorships</b>			
	Option 1	Option 2	Option 3
EANDCB	3.3	3.3	1.5
NPSV	-28.7	-28.0	-12.7

## Benefits

78. We consider the benefits of the prohibition against a do-nothing baseline, i.e. that no prohibition is in place. This section sets out in broad terms the benefits of prohibiting corporate directors, particularly related to the economic and social costs of crime and the costs incurred by law enforcement in dealing with it. It does not look at the costs of all crime – as many crimes will not rely on, or benefit from, opaque corporate structures. For this reason, we focus on serious organised crime e.g. drugs, people trafficking, fraud.
79. This section does not identify the benefits for each option in the Impact Assessment. This is because all options seek to eliminate the illicit use of corporate directors, but each option presented tries to do so in more or less targeted ways. For this reason, we expect each option to generate similar levels of benefit but different levels of cost. The analysis below provides indicative estimates of benefit, but we do not seek to quantify these for the Social Net Present Value measure or the EANDCB. This is because it is impossible to quantify these with any certainty. We do however provide a range of published estimates on the economic and social costs of crime and provide some break-even analysis at the end to give an indication of the resource savings that would need to be achieved by law enforcement and financial services companies to justify the corporate director prohibition.

### How do corporate directors facilitate crime?

80. Corporate directors can be used to help criminals that are looking to misuse companies. Where a corporate director of a UK company is a company incorporated offshore it can become difficult to identify who are the directors and shareholders of that offshore corporate director. Making the company's ownership structure as opaque and complex as possible can serve to hide the true beneficial owners from law enforcement agencies. This:
- a. **Facilitates money laundering.** When money is passed through chains of companies with corporate directors on their board it is difficult to identify the individuals that ultimately benefit.
  - b. **Helps hide the perpetrators of crime.** Companies and other corporate entities have separate legal personality, meaning they can enter contracts and business relationships in their own name. Where there are corporate directors, law enforcement agencies cannot readily identify individuals behind/controlling a company and in some cases criminal activity can be facilitated.
  - c. **Hinders investigations.** The anonymity afforded by the corporate structure also results in less efficient and effective investigations, and potentially sub-optimal outcomes.
81. UK enforcement agencies have provided examples of the types of activity that can be facilitated using opaque corporate structures. These include tax crimes such as MTIC fraud; hiding stolen assets and the proceeds of crime; fraud; and drug and people

trafficking. The Government's recent Economic Crime Plan recognised that as one of the world's leading international financial centres with a strong and open economy, the UK was particularly vulnerable to economic crime<sup>31</sup>.

### The costs of organised crime

82. The Home Office have published estimates of the social and economic costs of organised crime<sup>32</sup>. Social and economic costs were estimated to be £37 billion in 2015/16 (Figure seven). These are likely to be an under-estimate as they do not cover all forms of organised crime and do not capture all costs.

83. The costs include defensive investments to reduce the threat of crime (e.g. burglar alarms); the cost of property stolen or damaged or other consequences of crime (e.g. lives lost from illicit drugs) and law enforcement costs. But the estimates do not consider the benefits to the criminals. For example, formally the cost of property stolen is an unwanted transfer of wealth or income between the victim and the criminal.

*Figure seven: the costs of types of crime*



84. Other studies provide an indication of the scale of organised crime and fraud (included in the economic crime estimates in Figure seven). For example, PWC's crime survey<sup>33</sup> indicates that 47% of businesses surveyed experienced fraud in the previous 24 months, an average of 6 per company. The total business losses from fraud were estimated at \$42 billion. Not all fraud will be related to organised crime (e.g. customer fraud is a big issue in retail) and nearly half of all fraud is carried out by business insiders (alone or in concert with others), but it is clearly a significant issue.

<sup>31</sup> <https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022/economic-crime-plan-2019-to-2022-accessible-version#fn:2>

<sup>32</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/782656/understanding-organised-crime-mar16-horr103-2nd.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782656/understanding-organised-crime-mar16-horr103-2nd.pdf)

<sup>33</sup> <https://www.pwc.com/gx/en/forensics/gecs-2020/pdf/global-economic-crime-and-fraud-survey-2020.pdf>

85. According to UK Finance<sup>34</sup>,

- a. Unauthorised financial fraud losses across payment cards, remote banking and cheques totalled £844.8 million in 2018, an increase of 16 per cent compared to 2017. Banks and card companies prevented £1.66 billion in unauthorised fraud in 2018. This represents incidents that were detected and prevented by firms and is equivalent to £2 in every £3 of attempted fraud being stopped.
- b. In addition to this, in 2018 UK Finance members reported 84,624 incidents of authorised push payment scams with gross losses of £354.3 million.

86. According to the National Crime Agency<sup>35</sup>:

- a. The 2017 Annual Fraud Indicator estimates fraud losses to the UK at around £190 billion every year, with the private sector hit hardest losing around £140 billion. The public sector may be losing more than £40 billion and individuals around £7 billion.
- b. Much of the proceeds will be laundered within the UK or moved overseas. To launder the proceeds of fraud, organised crime groups often use 'mule networks', with bank accounts owned by witting and unwitting members of the public being used to obscure the source and nature of the funds.

87. There is a body of evidence highlighting how crime acts as a drag on investment, job creation and ultimately economic growth. For instance, Goulas and Zervoyianni (2013)<sup>36</sup> find that in times of macroeconomic uncertainty, a 10% increase in the crime rate is associated with a reduction in annual GDP per capita growth of 0.49%-0.62%. Although these studies do not directly identify the mechanism, they highlight that reducing crime is thought to support growth.

88. Overall then the costs of organised crime are likely to be substantial and it would only require a modest reduction in crime – facilitated by the introduction of the prohibition on corporate directors – to justify the relatively small regulatory cost.

### Money laundering and benefits to financial services

89. Money laundering is a means of obscuring the source of money where it has been gained through criminal means. Money laundering is highly complex and is designed to be hard to trace as it aims to make money earned through crime look legitimate. There are broadly two types of money laundering:

- a. Cash based, which can involve the movement of illicitly earned cash across national borders as well as the use of companies that generate large volumes of

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<sup>34</sup> <https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202019%20-%20FINAL%20ONLINE.pdf>

<sup>35</sup> <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/fraud-and-economic-crime>

<sup>36</sup>



licit cash which the illicit cash is laundered through.

- b. High end, which is specialist and usually involves large value transactions and involves the abuse of the financial sector and so-called “professional enablers”. The size, and international nature, of the UK’s financial sector makes the UK uniquely exposed to this type of money laundering.

90. Money laundering is often measured on a global rather than national scale. In 2011, the UN estimated money laundering to be close to 2.7% of global GDP or \$1.6 trillion<sup>37</sup>. Reducing opportunities for crime could also help support conditions for growth. Each US\$1 billion laundered reduced overall economic growth by 0.04-0.06 percentage points in 17 OECD countries, prompting the UN to comment on the findings that “financial centres have developed a self-interest of not being associated with ‘tainted money’ and have signed relevant international instruments to avoid the inflow of such criminal finance<sup>38</sup>.”

91. Data for the UK is not available but National Crime Agency assess that “many hundreds of billions of pounds of international crime money is laundered through UK banks, including their subsidiaries, each year”<sup>39</sup>. A case study involving Deutsche Bank is given in the box below.

#### Case study: Deutsche Bank

In 2017, the Financial Conduct Authority fined Deutsche Bank £163 million after uncovering an estimated \$10 billion was transferred between 1 January 2012 and 31 December 2015 through the bank from Russia through the UK to offshore accounts (Financial Conduct Authority, 2017). This was done through mirror trades – at one end of a bank stocks or securities are sold which are then mirrored at another end of the bank by a purchase of the same volume and value of securities. The customers on each side are connected and use this as a way of transferring or exchanging the money, often losing a small amount due to commission and fees. In this case, this was done through sales in Moscow which were mirrored in London, enabling the conversion of Roubles into US Dollars and covert transfer of the funds out of Russia into offshore accounts (Financial Conduct Authority, 2017). The scale of these trades could only be identified after they were discovered and the trades tracked backwards. Indeed, the laundering method itself was not widely documented before. How evidence or investigations like this could be used to extrapolate upwards to a scale of money laundering is unclear.

92. Recognising the challenges posed by money laundering, Governments have regulated the financial sector. For example, the EU Commission introduced the 4th and 5th Anti-Money Laundering Directives (4AMLD and 5AMLD). As a result, Banks strengthened Know Your Customer (“KYC”), screening and Anti-Money Laundering (“AML”) monitoring & investigations. Despite the evolution of these processes in the past decade, their effectiveness and efficiency often remain an issue<sup>40</sup>.

<sup>37</sup> UNODC (October 2011) *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes: Research report*.

<sup>38</sup> UNODC (2011), *op cit*

<sup>39</sup> NCA (2017)

<sup>40</sup> [https://www.ey.com/en\\_be/financial-services/why-combatting-financial-crime-remains-a-key-challenge-for-the-financial-services-industry](https://www.ey.com/en_be/financial-services/why-combatting-financial-crime-remains-a-key-challenge-for-the-financial-services-industry)

93. As a result of these regulations there are significant compliance costs for Banks when they try to determine who owns assets and the likely source of those assets. For example, in 2015 the BBA – now UK Finance – estimated that its members spent around £5 billion a year to ensure compliance with financial crime regulations. Another study suggested that UK compliance costs was of the order of \$50 billion<sup>41</sup>.

### Benefits to law enforcement

94. Opaque corporate structures not only facilitate crime but also hamper the law enforcement response. Firstly, during the investigation phase where time and resource can be used to establish basic facts, such as which individuals own assets or who controls a company, and secondly, during prosecution or after a conviction, by preventing confiscation of the proceeds of crime by the authorities and return of assets or compensation to the victims.

95. Reducing the use of corporate directors in the UK would remove a layer of complexity currently facing law enforcement agencies during their investigations in seeking to identify the natural person controlling a company. As a result, investigations could be expedited and more efficient for law enforcement agencies. Sometimes the problems for law enforcement agencies result not only from simple opacity and the lack of a paper trail relating to a person, but also the additional legal resource and weight that companies who are a corporate director can add in terms of blocking proceedings of an investigation.

96. Work with law enforcement agencies and wider consultation on the proposals confirms that reducing the use of corporate directors for UK incorporated companies would benefit the process of investigating cases. Consultation with law enforcement agencies revealed strong support for action across the 2013 *Transparency and Trust* package including with respect to opaque arrangements involving company directors, due to the expected impact on criminal activity.

97. In earlier consultations the SFO reported that corporate directors probably feature in around a quarter of their cases.

98. The NCA “support[ed] the proposals in the *Transparency and Trust* [discussion] paper<sup>42</sup>, and suggested that “ideally corporate directorships should cease.” Other law enforcement agencies and HMRC have also contributed to the discussions and were similar supportive of the *Transparency and Trust* package as likely to deliver benefits in terms of combating criminal activity.

99. The costs involved in combatting serious and organised crime can be substantial. For example, the Home Office study cited earlier estimated law enforcement costs of around £1 billion a year from crimes related to drugs, illegal immigration and tobacco smuggling.

### Break-even analysis

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<sup>41</sup> <https://www.complianceweek.com/aml/study-europe-blows-us-away-in-financial-crime-spending/28718.article>

<sup>42</sup>

100. We do not attempt to fully monetise the benefits to society from a reduction in crime, or the benefits to law enforcement agencies in terms of reduced costs, because of the uncertainties in the logic chain from investigation to crime deterrence, and in the costs of crime. However, what we do is illustrate the scale of resource savings that would be required for law enforcement and financial sector compliance officers to offset the additional compliance burden on businesses from the prohibition on corporate directors. Assuming law enforcement and financial regulatory costs of around £6 billion a year then under the preferred option law enforcement and financial services would need a cost saving of 0.02% from their investigations to offset the EANDCB (£0.9m).

## **7. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

101. The analytical approach taken in this IA is proportionate for the following reasons:

- a. It uses data gathered through research and consultations carried out for, and set out in, the IA underpinning the primary legislation. It also uses the same basic methodology.
- b. The data on unit costs used in the previous IA remains the best available as the primary legislation is not yet in force (because the exemption has not been set out in secondary legislation).
- c. Data on populations affected has been updated to reflect changes in the incidence of corporate directors.
- d. The methodology was approved by the Regulatory Policy Committee who rated the IA supporting the primary legislation as fit for purpose, i.e. Green<sup>43</sup>.
- e. Some of the assumptions underpinning the original IA have changed to reflect developments in policy since the primary legislation was passed.

## **8. Risks and assumptions**

102. Following standard IA methodology, we have assumed 100% compliance. There is however a risk of non-compliance resulting in an impact on the justice system. This is considered more fully in the wider impacts section.

103. The question arises whether companies could avoid the prohibition on corporate directors by establishing a foreign entity that then acts as a corporate director to a UK corporate entity. The proposals we have set out should prevent this as only UK corporate entities will be permitted to be corporate directors and foreign entities will be prevented

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<sup>43</sup> <https://www.gov.uk/government/publications/impact-assessment-opinion-transparency-trust-company-directors-and-opacity-of-corporate-control>

from being a UK corporate director.

104. There is a risk that the benefits from a reduction in criminal activity will not be as large as we anticipated in the IA underpinning the primary legislation or that companies may find ways to hide their involvement in a company. Given the uncertainties these benefits have not been included in the cost benefit analysis justifying the proposal. The Government believes that the measure, once the exemption is included, gives a proportionate approach to tackling illicit activity through use of corporate directors.
105. Other inherently uncertain benefits – cited in the original IA – have not been included in our cost benefit analysis. These include the relationship between trust and economic growth and the impact on crimes such as money laundering. The IA underpinning the primary legislation did however quantify the benefits from a possible reduction in fraud which were potentially significant.
106. The IA underpinning the primary legislation set out a potential risk that the prohibition on corporate directors could have an impact on foreign investment. The IA stated that the effect was probably small when set within the context of the wider factors that influence foreign investment decisions. Moreover, the Government would promote this measure as part of a wider package of measures that contributes to a positive UK business environment whilst continuing to encourage action from other jurisdictions. Finally, the Government believes that its principles-based exemption would continue to permit legitimate business activities meaning that there is unlikely to be any impact on inward investors.

## **9. Wider impacts**

### **Statutory Equality Duties**

107. This policy will primarily impact companies. On analysing the potential impacts, we have no reason to anticipate a disproportionate impact based on the key measures highlighted in the Equalities Act 2010. For instance, we have no reason to believe that companies that use corporate directors currently disproportionately involve women, older people or any other group.
108. Overall, we have no reason to suspect that the following groups will be adversely or positively impacted by this policy in different ways:
- Race Equality;
  - Gender;
  - Disability;
  - Age;
  - Marriage and civil partnership;
  - Religion and Belief;
  - Sexual Orientation;
  - Gender Reassignment; and
  - Pregnancy and Maternity.

109. We therefore do not anticipate any equalities impact (see Annex B).

### **Economic Impacts**

#### *Competition and innovation Impact Test:*

110. We do not expect this policy to give rise to any competition or innovation impacts.

#### *Small and Micro Business Assessment (SaMBA)*

111. For the purposes of this assessment, the parameter used to define small businesses is up to 49 full-time employees, and for micro businesses up to 10 employees. FAME analysis suggests that small companies account for 97% of all companies<sup>44</sup>.

112. As set out above, the two main objectives of the primary legislation were to reduce crime and improve the business environment to facilitate economic growth. We assess that excluding small and micro businesses from the policy package could risk a significant impact on the ability of the package to reduce crime; and exclude small and micro businesses from the benefits that can be derived from increased transparency.

113. This policy will apply to all UK incorporated companies. It will require change from those who currently have or act as corporate directors. There is a default assumption across government that small and micro businesses<sup>45</sup> should be exempted from new regulatory measures. However, our assessment reveals that such an exemption is not viable in this policy context, and not compatible with achieving a large part of the intended benefits of this measure. For example, FAME analysis suggests that of the 2.008 million public or private companies that have size information, just under 2400 have directors that are not individual persons i.e. they are corporate directors<sup>46</sup>. Therefore, we infer that:

- a. Exclusion of small companies would have a significant impact on the achievement of the policy goals; but
- b. That the impact on small companies is likely to be relatively modest. As a group they account for the bulk of all companies, but only a small proportion of all corporate directors – perhaps 10% or less.

114. It has been widely identified that ‘shell’ companies are often the vehicle of choice for money-laundering and other crimes<sup>47</sup>. A 2012 study defines a shell company thus: “In

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<sup>44</sup> Unfortunately, Companies House do not collect size data for companies. FAME estimates company size using other sources, but these do not provide data for all companies. We identified that there are 2.064 million companies with size information; of which 2.008 million have 49 employees or less.

<sup>45</sup> For the purposes of this assessment, the parameter used to define small businesses is up to 49 full-time employees, and for micro businesses up to 10 employees.

<sup>46</sup> In calculating the number, we excluded company secretaries as they will still be permitted and company secretary services are often provided by companies or partnerships.

<sup>47</sup> ‘Global Shell Games: Testing Money Launderers’ and Terrorist Financiers’ Access to Shell Companies’, Findley, Nielson and Sharman, 2012: <http://www.griffith.edu.au/business-government/centre-governance-public-policy/research-publications/?a=454625>

contrast to operating or trading companies that have employees who make a product or provide a service [...] shell companies are little more than this legal identity, and hence the “shell” moniker”<sup>48</sup>. As non-trading bodies, shell companies would not require staff and would fall in the micro firm size bracket. Law enforcement have strongly confirmed to us that this is the case, and that excluding small and micro businesses from scope would be a significant risk and ultimately counterproductive. Internationally, the USA G8 Action Plan considers targeting small and micro business for selective **inclusion** in scope of company beneficial ownership transparency, and considering larger businesses for exemption where they meet “certain employee or revenue requirements.”

115. Allowing any exceptions targeted at small and micro business could therefore have a negative impact on the primary derived benefit from this policy, in terms of a failure to tackle or deter any illicit activity undertaken through existing UK incorporated companies currently on the register. Excepting small and micro businesses from the requirement would create a significant loophole for those seeking to exploit the company structure for illicit activity in future. In turn, this could damage the reputation of UK business, particularly small and micro businesses relative to their larger and / or international competitors.

116. Moreover, any exception for small companies would limit the positive impact on the wider building of trust in the business environment - and therefore economic growth. Were they to be exempted from these transparency requirements, information asymmetries could persist and law-abiding businesses might find themselves, for instance, less able to attract private investment or debt finance.

117. With these points in mind, our assessment against the advised considerations is as follows:

Table twelve: SAMBA

Factor	Consideration
<i>Full exemption</i>	We do not believe a full exemption is compatible with achieving crime reduction benefits; and would reduce benefits derived from a more open and trusted business environment.
<i>Partial exemption</i>	We have not identified any specific requirements within the proposals from which we would be able to exempt small and micro businesses. We do not believe any exemption is compatible with achieving a large part of the intended benefits.
<i>Extended transition period</i>	We do not believe a separate transition period for small and micro companies is compatible with achieving a large part of the intended benefits. The primary legislation sets out a transition period for all companies that should be sufficient for a well-supported process of familiarisation and transition.
<i>Temporary exemption</i>	We do not believe a temporary exemption for small and micro companies is compatible with achieving crime reduction benefits, not least because anonymous shell companies are a specific focus of our proposals. Exempting them could therefore provide a means for illicit activity to continue unnecessarily.

48 'Global Shell Games: Testing Money Launderers' and Terrorist Financiers' Access to Shell Companies', Findley, Nielson and Sharman, 2012: <http://www.griffith.edu.au/business-government/centre-governance-public-policy/research-publications/?a=454625>

<i>Varying requirements by type and/or size of business</i>	As small, anonymous shell companies are a focus of our proposals it would not be appropriate to vary the requirements for small and micro companies. It would also not be appropriate to delineate by sector or any other type of business, since this would produce the same issues in terms of incomplete coverage and loopholes. This would not be compatible with achieving a large part of our intended benefits. Where possible, we have sought to use existing precedents which apply to all UK companies.
<i>Direct financial aid for smaller businesses</i>	We do not believe that the costs of complying with this policy change per warrant direct financial aid.
<i>Opt-in and voluntary solutions</i>	We have considered and discounted non-regulatory approaches in our Impact Assessment, given the nature of the criminal activity we seek to address. We do not believe that small and micro companies engaging voluntarily would be a viable solution or compatible with achieving a large part of our intended benefits.
<i>Specific information campaigns/ user guides, training &amp; dedicated support for small businesses</i>	There might well be a case for tailored information campaigns and user guides, though training is not likely to be required. We will work on meeting the needs of the small and micro business user as we develop overall guidance to support the introduction of the package, and as part of the Government's wider communications campaign.

118. In taking forward these policy objectives, we will:

- a. Tailor guidance for the reforms to most of companies, which are small, simple in structure and law-abiding. This will enable small companies to quickly grasp whether the prohibition of corporate directors is relevant to them, and it will help them to easily assimilate the compliance requirements where they do apply.
- b. Implement the policy change to be as simple as possible for all users but particularly those in small and micro businesses, in terms of interfaces and forms etc.
- c. We will ensure there is sufficient time for companies to familiarise themselves with these changes. The primary legislation sets out that companies have 12 months after the regulation comes into force to comply with its provisions.

### **International Trade test**

119. The regulations are not expected to have an impact on international trade.

### **Environmental Impacts**

120. The regulations are not expected to have an impact on the environment.

#### *Rural areas and sustainable development*

121. The regulations are not expected to have a disproportionate impact on rural areas or sustainable development.

### **Social Impacts**

#### *Health and Well-Being:*

122. The regulations are not expected to have an impact on health or well-being, although as the IA underpinning the primary legislation noted there are likely to be benefits related to a reduction in crime and the associated benefits of an increase in well-being. There are unlikely to be significant impacts on safety at work, skills and education or community facilities.

#### *Human Rights:*

123. The regulations are not expected to have any human rights impact.

#### *Justice System:*

124. Following standard IA methodology this IA assumes 100% compliance with the policy. The primary legislation extended the application of existing company law offences or use existing company law offences as a precedent for the creation of similar offences to deal with instances where companies or individuals fail to provide beneficial ownership information; or deliberately provide false information. The exemptions set out in secondary legislation target cases considered most at risk from illegality.

125. We anticipate however that most instances of non-compliance, particularly with relation to the reforms to the use of corporate directors, would be dealt with by Companies House through their usual compliance procedures. For example, Companies House estimate that in 85-90% of cases they write to the company in the first instance, before referring the matter to enforcement agencies or acting themselves.

#### *Family Test*

126. The DWP Family Test<sup>49</sup> sets out the following questions from officials to consider during policy-development.

- What kinds of impact might the policy have on family formation?
- What kind of impact will the policy have on families going through key transitions such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring responsibilities or the onset of a long-term health condition?

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<sup>49</sup> DWP (2014), The Family Test: Guidance for Government Departments, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368894/family-test-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368894/family-test-guidance.pdf)



- What impacts will the policy have on all family members' ability to play a full role in family life, including with respect to parenting and other caring responsibilities?
- How does the policy impact families before, during and after couple separation?
- How does the policy impact those families most at risk of deterioration of relationship quality and breakdown?

127. The regulations outlined in this impact assessment do not give rise to any direct or indirect impacts for families relating to any of the above questions.

### **Devolved Administration Assessment**

128. England has a disproportionate share of corporate directors compared to other parts of the UK. It therefore bears a disproportionate amount of the costs of a prohibition and should disproportionately benefit from a principles-based exception.

*Table 20: corporate directorships by country as at 31<sup>st</sup> March 2020*

	Corporate directorships	Total directorships	%
England	34,357	6,352,104	0.54
Wales	818	273,379	0.30
Scotland	1,176	381,554	0.31
Northern Ireland	332	128,654	0.26
UK	36,683	7,135,691	0.51

Source: Companies House, BEIS calculations. Excludes corporate memberships of LLPs.

## **10. Summary and preferred option with description of implementation plan**

129. The preferred option is therefore to pursue the prohibition of corporate directors but permit a principle-based exception. Based on this analysis, this option performs better than the other options in terms of having lower quantified transition costs. The below table compares the costs and benefits of the policy options.

*Table 21: summary of costs and benefits*

<b>Cost/ Benefit</b>	<b>Option 1 (blanket prohibition)</b>	<b>Option 2 (prohibition with exceptions based on company types)</b>	<b>Option 3 (principle based/ID verification)</b>	<b>Which option performs better?</b>
<b>Benefit</b>				
B1. Benefits to government, individuals and business of a reduction in illicit activities	Non-monetised	Non-monetised	Non-monetised	N/A

B2. Benefits to affected companies, individuals and other companies associated with increased economic activity arising from increased transparency	Non-monetised	Non-monetised	Non-monetised	N/A
<b>Costs</b>				
Present value of costs (best case)	-£16.8m	-£16.4m	-£7.5m	Option 3

130. This policy change requires secondary legislation. It is therefore our intention to take forward this policy as soon as Parliamentary time allows.

## 11. Monitoring and Evaluation plan

131. As this measure is de minimis we shall take a low evidence approach to a post-implementation review. Under RPC guidance<sup>50</sup> a low evidence approach requires:

<p><b><u>Low impact (£5mn-£10mn EANDCB) – PIR</u></b></p> <p>21. In this scenario, the RPC would normally expect to see a light-touch, low-resource PIR including:</p> <ul style="list-style-type: none"> <li>• A clear statement as to whether the measure has met its objectives.</li> <li>• A light-touch approach to consultation and research. This would normally include an attempted informal consultation with the main affected agents e.g. trade associations, business representative organisations and large firms, and analysis of published data sources.</li> <li>• Evidence supporting estimates of actual impacts, including business and non-business. The PIR should address issues that may have affected the accuracy of assumptions used in the original IA – if quantitative data are not readily available, a qualitative discussion will be sufficient.</li> <li>• Conclusions with reference to evidence from key stakeholders and discussion of whether these respondents' views were representative of industry.</li> <li>• A consideration and discussion of unintended consequences and the wider effects of the policy.</li> <li>• A discussion of the scale of any identified problems.</li> </ul>
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132. To address this, we will:

- Analyse CH data to estimate future numbers of corporate directors and whether these meet the principles-based exception. This will help us make a judgement about compliance and the number of entities affected.
- Seek feedback from law enforcement on the impact from the regulatory change in terms of more efficient investigations.

<sup>50</sup> <https://www.gov.uk/government/publications/proportionality-in-regulatory-submissions-guidance>

- c. Carry out an in-house survey of stakeholders exploring whether there have been any unintended consequences from the measure.

## Annex A: Impact assessment accompanying the SBEE Act

1. The IA for the primary legislation containing provisions on corporate directors set out three options:
  - a. **Option 0 or do nothing.** This was rejected because it would not meet the Government's objectives. The Government also considered voluntary provision of information in relation to individuals within corporate directors as an alternative to regulation. This was also rejected since voluntary action would not restrict the activities of those using corporate opacity to facilitate illicit activity.
  - b. **Option 1:** A complete prohibition of corporate directors.
  - c. **Option 2 (preferred):** A prohibition of corporate directors in primary legislation with exceptions from the prohibition set out in regulations. These exceptions could apply to those companies which are subject to wider transparency requirements or regulation, and those which commonly benefit from the appropriate use of corporate directors.
  
2. The IA set out the costs and benefits of options 1 and 2 evaluated against the do-nothing baseline. The table below sets out the costs and benefits of each option. The estimates are as they appear in the original IA underpinning the primary legislation and have not been adjusted for size of population affected or change in base year for prices.

Costs and benefits as set out in primary legislation Impact Assessment		
Base year for prices Best scenario	2013 Option 1  No exemption	Option 2  Exemption based on type of company
<b>Related to corporate director ban</b>		
Public sector costs	0.1	0.1
Replacement costs for companies with a corporate director	16.0	16.0
Replacement costs for companies acting as a corporate director	9.0	8.0
Reputational damage for companies with corporate directors	9.0	9.0
Reputational damage for companies acting as corporate directors	0.2	0.2
Familiarisation costs for corporate directors	4.0	4.0
<b>Related to holding those accountable who control directors</b>		
Costs for companies with directors controlled by another person	2.0	2.0
Familiarisation costs for those who control company directors	11.0	11.0
Total	51	50

Note: Includes LLPs.

3. However, the IA underpinning the primary legislation contained two provisions: a prohibition on corporate directors and measures to make those who control corporate directors more accountable. The latter, which account for around a quarter of the costs in the original IA, have already been implemented, are not covered by the secondary legislation and are therefore excluded from the cost estimates in the main body of the IA.

### EQUALITY ANALYSIS

**Prepared by** Neil Golborne ([Neil.Golborne@beis.gov.uk](mailto:Neil.Golborne@beis.gov.uk)) and David Leitch ([David.Leitch@beis.gov.uk](mailto:David.Leitch@beis.gov.uk))

**Date:** 22 October 2020

#### Scope

This document records the analysis undertaken by the Department for Business, Energy and Industrial Strategy (BEIS) to fulfil the requirements of the Public Sector Equality Duty (“the equality duty”) as set out in section 149 of the Equality Act 2010. This requires the department to pay due regard to the need to:

- i. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- ii. advance equality of opportunity between people who share a protected characteristic and those who do not.
- iii. foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics which should be considered are:

- age
- disability
- gender reassignment
- marriage or civil partnership<sup>51</sup>
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

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<sup>51</sup> In relation to the protected characteristic of marriage and civil partnerships the Department is required to have due regard only to point (i).

## Proposal Outline

The proposal assessed in this Equalities Impact Assessment aims to address the scope for abuse in the current legal framework which allows opaque arrangements involving corporate directors, whilst permitting legitimate business activities to continue. In doing so we anticipate that the chosen option will contribute to reducing crime and improving the business environment and ultimately should help facilitate economic growth in the UK.

A “corporate director” or “corporate directorship” is a situation where a company or a “legal person”, rather than an individual or “natural person”, is appointed as and acts as, the director of a company. Under the Companies Act 2006, UK companies can have corporate directors so long as they appoint at least one director who is a natural person. For Limited Liability Partnerships (LLPs), corporate members can be appointed and there is no corresponding requirement to appoint at least one natural person. While corporate directors can perform legitimate business functions, they also make corporate structures opaquer possibly facilitating illicit activity or jeopardising effective corporate oversight.

We expect the outcomes of this proposal to affect companies that act as and use corporate directors, rather than natural persons. We do not expect the outcomes of this proposal to have any relevance to PSED. Therefore, we do not consider it necessary or proportionate to gather equality data for this assessment.

## PSED Considerations

We considered potential and likely impacts of the proposal on the three aims of the PSED. Our findings are provided below.

### ***Aim 1 – Eliminate unlawful discrimination, harassment, victimisation, and any other conduct prohibited by the 2010 Act.***

*Does your policy or service disadvantage some people or groups more than others?*

The proposal assessed applies to companies not natural persons. It is not expected to treat any individuals or groups more favourably (or unfavourably) than others, nor is it expected to result in any differential impact on groups or individuals with protected characteristics. We also do not expect it to have an impact on people with protected characteristics because of them possessing those characteristics, or any unintended impact on any of those groups.

Whilst some affected entities (i.e. companies or LLPs) will employ individuals who have protected characteristics, the impact of this proposal will be on the entire business and not on any specific individual or groups therein. We therefore expect the actual impact on employees to be the same regardless of their individual characteristics.

Where specific actions, arising because of the proposal assessed here, may affect individuals, it will be based on their conduct and not their individual characteristics.

Aim 1 Assessment

Protected Characteristic	Expected Impact
Disability	None
Race	None
Age	None
Gender reassignment	None
Religion or belief	None
Pregnancy & Maternity	None
Sexual orientation	None
Sex	None
*Marriage & Civil Partnership	None

***Aim 2 – Advance equality of opportunity between people who share a particular protected characteristic and people who do not share it.***

*Will our actions deliver a less good outcome for any groups compared to others?*

Given that measures introduced under this proposal mainly affect companies, we do not expect any disproportionate adverse impact on an individuals or groups who hold one or more protected characteristics.

*Is there evidence that particular groups are less involved in this policy area and is this linked to a protected characteristic?*

We have not undertaken any formal consultation specifically to investigate whether particular groups are less involved in this policy area, since there are no practical limitations, based on protected characteristics, to involvement in any of the activities therein. Whilst there may be some existing inequalities in this area, the measures introduced under this proposal are not expected to change any aspect of how individuals or groups with protected characteristics engage, and the individuals and groups that are already active in this policy area are not expected to change as a result of how the measures introduced under this proposal may interact with their protected characteristics. Measures to effect the changes that would address existing inequalities in this policy area are beyond the scope of the proposal assessed here.



Aim 2 Assessment

Protected Characteristic	Expected Impact
Disability	None
Race	None
Age	None
Gender reassignment	None
Religion or belief	None
Pregnancy & Maternity	None
Sexual orientation	None
Sex	None

**Aim 3 – Foster good relations between people who share a particular protected characteristic and people who do not share it.**

*How is the policy going to be received by people who do not benefit from it?*

We expect the entire UK population to benefit in some way or another from measures introduced under this proposal. The measure would reduce the use of opaque arrangements involving corporate directors and will help prevent crime through deterrence, enhancing corporate transparency and in some instances directly remove a mechanism used to facilitate crime. It should make apprehending criminals both cheaper and easier for law enforcement agencies. Opaque arrangements involving company directors reduce transparency. Economic theory suggests that that reduced transparency is likely to increase information asymmetries, imposing higher information collection costs, and reduce trust. Increasing transparency could facilitate greater trust in the business environment and greater economic growth.

*Will our actions help to tackle prejudice and promote understanding between different groups – can we take positive action in respect of the three aims of PSED?*

The broad set of measures taken under this proposal are not intended to directly encourage actions to tackle prejudice or promote understanding between different groups.

Additionally, we do not expect any of the measures taken under this proposal to hinder any action to tackle prejudice or promote understanding between different groups or give rise to, or create an increased risk of, discrimination, harassment, victimisation or any other conduct prohibited by or under the Equality Act 2010.

### Aim 3 Assessment

Protected Characteristic	Expected Impact
Disability	None
Race	None
Age	None
Gender reassignment	None
Religion or belief	None
Pregnancy & Maternity	None
Sexual orientation	None
Sex	None

### **Conclusion**

**We conclude that the measure should have no adverse or disproportionate negative impact on persons or groups with a protected characteristic and no steps need to be taken to advance equality of opportunity and foster good relations because of or in relation to them.**

The measures under this proposal are not expected to give rise to discrimination, harassment, victimisation, or any other conduct prohibited by or under the Equality Act 2010. Further, they do not make specific or direct provision in respect of any of the protected characteristics, and they are not expected to result in outcomes where people who share particular protected characteristics are treated differently from people who do not. They are not expected to give rise to a direct or indirect impact on individuals because of any protected characteristic they may have.

On this basis, we do not consider it is necessary or proportionate to seek further evidence to support this assessment, or to recommend any changes to our existing plans.

### **Approach to monitoring**

The Department does not intend to monitor in relation to PSED specifically, but the Department is required to carry out a post-implementation review of the measure five years after it comes into force.

### **Sign-off**

**Name:**

**Job Title:**

**Date:**