



Law Society
of Scotland



Consultation Response

Corporate transparency and register reform

August 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Given the breadth of the consultation subject matter, this consultation has been considered and commented on by a number of our committees, including the Banking, Company and Insolvency sub-committee, Anti Money Laundering sub-committee, Professional Practice committee, Criminal Law Committee and the Privacy Law Sub-committee.

General comments

We support the initiative and welcome the introduction of verification measures. These should have the dual benefits of improving the accuracy of the register and reducing the likelihood of UK vehicles being used for money laundering purposes. This latter purpose is of particular importance to the Law Society of Scotland in our capacity as AML Supervisor for the Scottish solicitors' profession. We also believe the measures should help combat abuse of personal information on the register.

The verification process must be robust but also quick and accessible if the UK is to maintain its business-friendly reputation. We are keen that the possibility of same-day incorporation should be maintained.

Response to questions

The case for verifying identities

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

We agree with the general premise. The register must be reliable to be useful: checking the identity of individuals gives greater certainty as to the accuracy of the information provided and should also assist in the fight against money laundering.

One exception to this would be in the case of listed PLCs as the identities of individuals would already be subject to checks because of the listing rules and likewise for those entities regulated by the PRA and FCA. We do not therefore consider that additional checks are necessary in this context.

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

The identity verification process will need to be effective: it would be worse to have an inaccurate register which purported to display verified and therefore accurate information than the current register which is known to rely on self-reporting. This could lend perceived legitimacy to businesses and/or individuals engaged in money laundering or other harmful practices.

Security of personal data is also of paramount importance, both from a general privacy perspective and to guard against identity theft. Personal data should only be publicly available/searchable where strictly necessary. In addition, personal information which is not publicly available should be subject to stringent security safeguards to guard against cyberattacks.

We anticipate that introducing identity verification may carry significant cost and resourcing implications for Companies House. We do not consider that this is an argument against introduction of identity verification, but it should be borne in mind and additional funding will need to be given to Companies House to meet the costs of establishing the infrastructure and recruiting and training staff as necessary. A cost benefit analysis might be helpful if other viable options have been suggested or are put forward in the course of this consultation.

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

See response to question 2. We have no further comments on this question.

How identity verification might work in practice

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

We refer to our comments on resourcing above: this will be key to ensuring practical implementation of verification.

Digital verification is likely to offer practical advantages to most users: however, it will only provide a satisfactory solution if the technology is sufficiently refined to ensure a level of accuracy as least as high as that which would be achieved manually. If the verification is tied to passports, we also note that there are instances where individuals may not have such a document.

We also note that not all those who might need to have their data verified will necessarily have the correct technology or the technological knowledge to use a digital system. Some might also not be comfortable with having such important personal data processed when they are aware of risks around cybersecurity. Again, we emphasise the critical importance of ensuring the verification process is completely secure.

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

We do not have any comments on this question.

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

We agree that this seems sensible in situations where third party agents are AML supervised and will be undertaking customer due diligence checks in accordance with the AML regulations. We also note that this would make the process less burdensome for the individuals concerned as they would not need to go through the same process twice.

However, where third party agents are not AML supervised, reliance on customer checks may not be a sufficiently robust approach.

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

Where third party agents are AML supervised, they will be required to undertake those checks in line with their AML obligations. The new Companies House verification system should not impose an additional burden or liability on agents, nor should they be subject to obligations more onerous than those of Companies House itself.

We do not consider that it would be proportionate to require third party agents to provide evidence to Companies House as such, however a practical solution would be to introduce a check box asking them to confirm that the requisite AML checks have been performed. If Companies House had particular concerns with a filing, third party agents should be able to provide evidence at that point.

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

At present it is stamped on the application form who has created the company. It might be helpful for the registration to note whether the third-party agent is registered or not registered with an AML supervisor and to identify the relevant regulator (see further at Q.9 below).

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

We consider that the responsible individual and/or entity should be named on the form, together with a contact address and/or email. We also consider that it would be helpful to indicate whether the individual or entity is regulated and by whom. So for example, in the context of our own members establishing a company on behalf of a client, the form would state the name of the relevant solicitor and the fact that they are regulated by the Law Society of Scotland as well as the name of the firm they work for and contact details.

Who identity verification would apply to and when

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

We agree that government should mandate ID verification for directors. Speed of appointment of directors can be important in variety of situations so it would be practical if the verification process itself could be conducted in advance, e.g. of an annual meeting where new directors are to be appointed.

Consideration also needs to be given to the impact in governance terms if verification had not been complied with. As a rule, there is a good faith protection when dealing with directors which could affect third parties. There may also be issues around board decisions or resolutions.

Members identified a number of practical issues which fall to be considered in this context. Questions were raised around who signs off on the verification and how this could be demonstrated if the register is not updated immediately. Another question is what would happen in a situation where directors are abroad and there are no physical board meetings. A further concern was put forward around the difficulty of conducting closed door completions with a passport and eg up-to-date utility bills etc. What would happen if one director/company in a transaction was only able to provide a utility bill which was four months old so the verification could not proceed? In these types of situation are of the view that the obligation should be enforced but not in such a way that it could affect the validity of an appointment, particularly where this impacts on the good faith defence. One option would be to allow a window for compliance and take action if verification is not conducted within that window.

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

We envisage there may be greater practical difficulties in terms of obtaining verification from some People with Significant Control. We note that there may be, for example shareholders, who hold shares such that they qualify as PSCs but in real terms have a very passive involvement. Shares can also change hands on a regular basis so there could be practical resourcing implications in this context. We do not consider that it would be helpful to hold up transactions where verification has been carried out as this could have a negative impact on innocent parties. As set out above in relation to directors, it would be preferable to allow a reasonable window for compliance after the change in circumstances leading to a person becoming PSC registrable and for enforcement action to be taken if verification is not conducted within that timeframe.

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

We anticipate that the vast majority of presenters will either be directors (or equivalent) who will already have undergone identity verification in that capacity or third party agents (for example solicitors). In the latter context we would favour identity verification when registering with/creating an account with Companies House as it would not be practical or proportionate to require agents to undergo identity verification for each individual transaction where their credentials can be embedded in the system.

Because of this, we note that the question is likely to arise only in a small number of cases. We consider that it is more important for the directors and people with significant control to be checked: as long as those entries are correct, we think it is less relevant to establish the identity of the presenter.

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

We consider that extending the regime is logical and we would support this in principle. However, we note the practical implications of achieving verification for all existing entries. We therefore consider that an appropriate transition period should be provided for to allow registration. In particular, there should not be criminal penalties for non-compliance where people are simply unaware that they now need to verify their identities when this was not a requirement at the time they set up an entity or were appointed to a particular role.

Requiring better information about shareholders

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

We note that the PSC regime is designed to target those with control over a company or partnership. We do not therefore consider that there is a significant danger of money laundering in this context and are not persuaded that the case for collection of additional shareholder information has been made.

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

We do not have any comments in response to this question.

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

We consider that pursuing this optional approach would be helpful and proportionate.

Linking identities on the register

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

Verification is probably preferable, but this will depend on implementation.

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

We recognise that this may be necessary but would welcome further information as to how Companies House will ensure that this transfer of data complies with its obligations under the General Data Protection Regulation as implemented by the Data Protection Act 2018.

Reform of the powers over information filed on the register

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

We agree with this proposal in principle but in practice I would be helpful to have further guidance on the situations in which this power might be used.

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

We consider that some form of evidence should be put forward where possible, both by a third party seeking to remove information from the register and by companies seeking to object to such removal.

Reform of company accounts

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

We understand that there is already an API which allows people to access the content of accounts filed with Companies House. We consider this should continue to be available.

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

There are legitimate reasons why a company might wish to shorten its accounting period. However, it is difficult to see why a company would need to do so on a repeated basis. If Companies House has identified a specific abuse or potential abuse, we consider that limiting the number of times that a company can shorten its accounting reference period should not prove problematic for legitimate and well-run businesses.

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

We do not have any comments in response to this question.

Clarifying People with Significant Control exemptions

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

We do not consider that companies exempt from the PSC requirements should be required to provide additional information (as the PSC regime should be sufficiently comprehensive to address potential concerns), however we would support the introduction of a requirement that the reason/explanation for the exemption could be identified.

Dissolved company records

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

Company records are a live resource that can be used for a number of purposes. We therefore consider that the current arrangements should be continued. We note the potential of data analytics to deepen our knowledge and consider that the type of information currently held could be useful evidence in fighting anti-money laundering in the longer term. We also note that company information can play a key role in investigative journalism. We therefore consider it is in the public interest to retain this information.

Public and non-public information

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

We do not have any comments in response to this question.

Information on directors

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

It is common for directors to list their occupation as "director" and this information is not, therefore, particularly useful. We do not consider that removing this information would be detrimental.

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

We do not have any comments in response to this question.

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

We support the need for an audit trail in terms of identification of individuals and note the current administrative process for change of name in situations where, eg a director changes their name on marriage. We are aware that users of the register themselves can help to identify inconsistencies or anomalies in the register and highlight them to Companies House: a full record can therefore assist in application and enforcement of rules pertaining to companies and to guard against money laundering. In this sense replacing a person's name and hiding their previous name following a change in gender would go against the overarching objective which the reforms are seeking to achieve in this sense.

However, this needs to be balanced against protecting individuals and ensuring that trans individuals are treated sensitively and nobody is discriminated against. We note that Companies House would retain private records of the individual's previous name and gender and that law enforcement authorities would continue to have access to this private information.

The situation where a person's existing record is most likely to be of relevance is in relation to previous disqualifications. Disqualifications should remain on the individual's record as they should not be able to expunge previous improper conduct and it will be important to ensure that a search for their new name records these to allow the register to fulfil its purpose. However, it may be helpful to consider whether this information could be displayed on the public register in such a way as to ensure that the register does not unnecessarily reveal that a person has changed gender, for example by omitting reference to directorship with a particular company.

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

We consider that this information could be useful in certain circumstances but it would depend on the context. Security and privacy concerns should also be taken into account.

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

We consider that signatures should be suppressed as a matter of course and application should not be necessary. We are concerned that publication of signatures facilitates fraud, in addition to general concerns around privacy and data security.

Compliance, intelligence and data sharing

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

We do not have any comments in response to this question.

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

We believe that existing AML reporting requirements would already cover this.

In addition, we consider it could be helpful to introduce a correction suggestion function for non-suspicious entries, for example typographical errors in the spelling of a name, to improve the accuracy of the register where an innocent mistake has been made.

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

Companies House is constantly working to improve the integrity of the information that is filed on the register. Information can be rejected but in order to improve the process, there needs to be effective means to ensure compliance by application of criminal sanctions where appropriate. The consultation highlights the success of such criminal prosecutions recognising that these can be straightforward for instance for non-filing or more complex where filing has been undertaken fraudulently. What would have been helpful is

for the consultation to indicate specifically or provide an evidence base of any areas where prosecution has not been previously possible. That would have identified areas where enforcement for compliance was problematic.

It is important to stress that any cases being considered for criminal prosecution are of course reported for consideration for prosecution by the relevant authority and Companies House as identified in paragraph 206 of the consultation. In Scotland, this is the Crown Office and Procurator Fiscal Service (COPFS) who are the sole prosecuting authority in Scotland under the authority of the Lord Advocate in whose name such prosecutions will run. They require to assess if any cases reported to them complies with the requirements under the Scots Law of evidence as to sufficiency and admissibility and being in the public interest¹ to prosecute. The consultation recognises the importance of company related information in a range of serious criminal activity which we note did not specify bribery, corruption and terrorism which we would also stress its potential relevance.

It is not clear what is envisaged at Paragraph 207 of the consultation when seeking to build on current level of collaboration. Law enforcement agencies would have access or be able to access such information in any case. The role of Companies House is to collect information and maintain the register. While we would expect that Companies House might take proactive steps to raise specific concerns, it is difficult to see how sharing of data would otherwise be helpful without greater specification and details of what is involved. When seeking greater compliance enhanced or proactive publicity regarding successful enforcement action could be a route to consider. Criminal enforcement should always be the last resort as convictions carry stigma and also have implications for those convicted in future employment.

There needs to be much greater detail as to what the conditions outlined in the question would be.

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

We have significant reservations about requirements to file bank account details, particularly if information were to be made publicly available as this could facilitate fraud.

¹ Prosecution Code <https://www.copfs.gov.uk/publications/prosecution-policy-and-guidance?showall=1&start=0>

Paragraph 221 sets out that such details would be available to law enforcement on request. We would consider that under the powers of law enforcement that such information would be readily available where required without any additional details made available as envisaged in the consultation.

Other measures to deter abuse of corporate entities

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

We do not have any comments in response to this question.

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

We do not think it is appropriate to introduce public interest as a ground to order a limited partnership to cease carrying on its business activities. The introduction of a test of public interest, certainly in so far as Scotland is concerned is confusing. COPFS in Scotland is responsible for prosecuting in the public interest; they are the sole determinant of what the public interest is when justifying a decision to prosecute.

Care must be taken to distinguish between the application of civil and criminal law sanctions. Civil remedies are already available if it is carrying out regulated activities and is not complying. Similarly, criminal law already exists to bar criminal activity

It is also unclear why any proposed measure would apply to limited partnerships only. If specific activities are identified as problematic, then we consider that these should be addressed in a direct and targeted manner rather than in a general way with a public interest test.

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

We do not support this proposal – see further above There is a question as to who would bring this action if this was to be introduced.

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

This proposal seems practical and sensible. Practical problems arise in the context of squatters or where companies are evicted from their registered offices.

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

We consider it is enough to identify and report the number. We do not consider that a cap should be introduced. In the context of group companies or in the case of a multijurisdictional restructuring it may be helpful for the same individuals to hold multiple appointments, but they are not constrained in their ability to meeting their obligations in governance terms. Similarly, company formation agents may hold directorships of a multitude of companies as a direct result of their business model. It should therefore be sufficient to publicise the number of appointments and anyone who has governance concerns if the same individual is being appointed to a new role will therefore be able to address them in that context.

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

See above.

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

We understand that Companies House already has the power to reject applications. Nevertheless, we agree that there should be a discretion where an applicant intentionally seeks to register an company name which may be considered offensive or distasteful.

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

Certificates of good standing to not have any legal status. To the extent that they are recognised overseas it may be helpful to retain them in practical terms. However, we are concerned that there is potential for abuse which could be resolved by tightening the wording and/or altering their title to better reflect what the document is and remove the implications regarding the standard/quality of the business.

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

We do not have an evidence but as noted above, we recognise the potential for abuse.



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