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Business Frameworks Directorate,
Transparency and Trust Team.
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Dear sirs

Consultation - Corporate Transparency and Registration Reform

The Society of Chief Officers of Trading Standards in Scotland is a Scottish Charitable Incorporated Organisation (SC047951), and is the professional body representing the heads of service for trading standards services in Scottish local authorities.

I very much welcome the opportunity to respond to this call for evidence, and I am pleased to outline our responses to the consultation questions below:

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.

Yes. As the consultation explains "there are concerning cases of UK corporate entities being deployed by international criminal elements, of false claims that individuals are company directors, and provision of false information". Better information on who is setting up companies, who is running them and who is filing information will benefit all legitimate users of the register.

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

The document seems to cover all relevant matters, although it is important to ensure that the verification system is both robust in its accuracy and flexible enough to adjust to changes.

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

The document seems to cover and explain all options.

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

Yes. This is not a matter on which SCOTSS can offer an expert or experienced view however the practicality, effectiveness and cost implications as explained in the document would support this choice. We would add that any system must be robust enough to ensure accuracy, including measures to identify possible forged documents.

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?

This is not a matter on which SCOTSS can offer an expert or experienced view.

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.

The key to this is "if we can be confident" and on that basis we agree, subject to the the government proposal in paragraph 71 to require evidence that checks have been carried out by third party agents being in place.

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.

Yes. While the number of instances of third-party agents being complicit in criminal intent may be low, the fact that UK law enforcement report that the companies it investigates for possible money laundering almost always use third parties as a barrier between themselves and the State in itself justifies this measure. We would, in addition, suggest a system of random audit checks could be introduced to verify submitted evidence.

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

Under what is proposed, incorporations and filings from third party agents will enjoy the benefit of being exempt from verification. As such, as well as the evidence requirements

referred to above, it is essential that they are transparent and that will include the provision of contact details, AML registration etc.

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

As a law enforcement body, our main consideration is that these details are retained by Companies House and may be requested in appropriate investigations rather than whether they are in the register available for general view.

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

Yes to both. The consultation clearly explains the concerns which exist around UK corporate entities being deployed by international criminal elements, of false claims that individuals are company directors, and provision of false information. ID verification, as explained, should act as a significant deterrent. To enable the appointment of someone as a director before the verification is completed would seem to defeat the object. Indeed, verification should not be burdensome or cause undue delay in an appointment as long as the applicant is cooperative and transparent.

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

We believe that criminal sanctions are an essential last resort and that simply flagging (alone) unverified PSCs on the face of the companies register is not an adequate deterrent or sanction. Paragraph 88 sets out why the government rules out making directors criminally responsible for failure on the part of People with Significant Control. We appreciate the enforcement difficulties where an uncooperative PSC resides overseas and therefore would support the combined approach of flagging in all cases with the option of enforcement where possible.

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.

Yes. Knowing who is filing information and having more and better information about presenters is consistent with the aims of the other changes proposed.

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

Yes. The reforms being proposed in relation to identity verification came about follow concerns about the misuse of UK registered entities by international criminals and corrupt elites. Not extending identity checks to existing directors and PSCs would be to fail to adequately address this.

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

As an enforcement agency which investigates breaches of trading and consumer protection laws we strongly support the proposal to require companies to file more details than at present. In particular, requiring information which enables third parties such as trading standards services to establish who owns a company (in full or in part) and which other companies they own or are involved provides us with a greater opportunity to deal effectively and more quickly with "rogue traders" and persistent offenders.

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

Yes, and we agree that the additional personal information submitted to Companies House about individual shareholders such as email addresses and bank account details should be protected and not appear on the public register, as set out in Chapter 10 of the consultation.

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 understand the argument that requiring further identity checks could inhibit investment platforms such as crowdfunding. However, in certain circumstances the omission of this information in relation to shareholders who are not directors and People with Significant Control could undermine the very aims of the other proposed reforms such as to prevent cases of UK corporate entities being deployed by international criminal elements. We therefore support the "alternative" mentioned in paragraph 114 to mandate checks for shareholders above a certain ownership threshold.

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

If identity verification works as proposed, the need for unique identifiers will be redundant.

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

As a representative of a law enforcement agency with powers to require these details in appropriate circumstances, SCOTSS has no strong view, however this would appear to be a reasonable proposal.

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?

Yes. The accuracy and reliability of information on the register is pivotal to achieving the aims of the reforms. Most firms will file accurate information however Companies House requires to have the power to ask for further evidence where appropriate such as to require proof where a company claims an exemption from filing full accounts.

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

This seems a fair and reasonable proposal.

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

This is not a matter on which SCOTSS can offer an expert or experienced view, however it seems a reasonable, fair and practical proposal..

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?

Given the fact there have been complaints and that evidence of abuse exists we would agree that there should be a limit. However, given our lack of experience in these matters, SCOTSS would decline from suggesting what the limit should be.

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

This is not a matter on which SCOTSS can offer an expert or experienced view.

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?

Yes, for the reasons given in paragraphs 151 and 155.

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?

Yes, 20 years seems right. There is no argument for extending beyond 20 years and to shorten it could, for instance, make it more difficult to identify individuals who had been associated with multiple failed companies.

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?

Yes, we agree with what is proposed.

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

Given the limited use of this information at present and the fact that 40% list their business occupation as "director", we see no particular value in continuing to require this information.

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?

In the interests of preventing identity theft and fraud, yes.

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?

Yes. This will safeguard the individual from anyone with malicious intent however the original information would still be held by Companies House and be available to law enforcement should this be necessary.

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?

Given that this extends only to historic registered office addresses (and not to current offices of live companies or registered offices at the time a company was dissolved and struck off the register) we agree with this proposal. (We assume that this proposal would apply only to the public register and full details would be available to law enforcement agencies in appropriate circumstances).

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?

Yes.

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?

The number of notifications received since the introduction of "Report it Now" gives an indication of the potential problems which may exist with respect to inaccurate or fraudulent information on the register. The proposed increase in information collected by Companies House and improvements in its quality provides an opportunity to compare this information against other data sets which we agree should be taken. HMRC, OPBAS and the register of births and deaths, as suggested in the consultation, are among those which would be appropriate to compare against to identify anomalies and

suspicious activity or trends or patterns that cause concern. Others might include the passport office and DVLA.

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 agree with this proposal. The aim of many of the proposals throughout this consultation is to ensure that the register is accurate and reliable and organisations such as banks, accountancy and legal firms, and company formation agents possess information which can confirm the details of individuals and companies. Some anomalies may be reported voluntarily under the "Report it Now" mechanism, however imposing a legal requirement on all AML regulated entities will help ensure that all inaccuracies and discrepancies, including those which may have to be referred by Companies House to law enforcement agencies and other regulators, will be reported.

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

We strongly agree with this proposal which would help enable law enforcement agencies, including trading standards, in relation to the prevention, identification and prosecution of crimes, including those offences concerning illicit tobacco and rogue traders who target vulnerable people as referred to in paragraph 206.

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?

Bank details can be key in the successful investigation of many matters including illicit trading, rogue traders and other trading standards matters. These proposals would help enable trading standards to, in appropriate cases, quickly access details of all bank accounts held by a company and then require whatever further details concerning those accounts themselves from the banks were necessary to progress an investigation.

We see the advantages of including the jurisdiction under which foreign based bank accounts operated by a company, being made public in terms of for instance helping third parties to decide whether to invest in or do business with a company.

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

Under existing arrangements it would appear to be possible for a company to remain registered and functioning with no directors or secretary in place. This can occur when the director(s) resign from their position and no new director(s) are appointed. This would effectively leave no one responsible for the actions of the company. It might be that this anomaly is picked up when confirmation statements are filed annually but this

can be after a company has effectively traded for months with no director. SCOTSS would suggest the introduction of a 'flag' whenever an existing company is left with no current officers.

A further issue is the use of virtual offices/mail forwarding services or mail boxes etc. In these circumstances it may be appropriate to require the registrants to identify that the proposed registered office is a virtual office/mail box/mail forwarding address and provide evidence of the contract confirming that the mail forwarding service is in place and the onward address to which the mail is being forwarded.

SCOTSS also echoes and endorses Highland Council Trading Standards' response to the BEIS call for evidence under their Review of Limited Partnership Law (March 2017) in relation to questions 2, 4 and 16 which are added as an appendix to this response.

This appendix must be treated as confidential as it contains personal details of a sensitive nature and may be subject to proceedings, also Part 9 of the Enterprise Act 2002 restricts disclosure in certain circumstances

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?

Yes, it seems anomalous that such a measure does not currently exist and we would welcome the proposals to address this.

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

From a trading standards perspective there may be occasions when such a measure may be appropriate for a persistent offender, particularly in the areas of scams, rogue trading or matters of consumer safety. Also where an interdict in terms of the Enterprise Act has been breached. We do not feel able to offer an informed opinion as to who should be able to apply to court.

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

Yes, this would be a sensible measure. In addition, an auditing system could be introduced, perhaps on a random sample basis. This might involve sending a letter to the applicant at the address provided. If no reply is received this would suggest that the address is not valid and further checks would be required.

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?

The report states that the government believes it unlikely that a person could reasonably be considered to be performing their duties as a company director where they are holding large numbers of directorships and that other countries already have

measures in place to place a limit on the number of directorships held by any one individual. This would support the introduction of a cap, however we do not feel able to offer an informed opinion as to what that should be.

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

The example provided in paragraph 235 (where third party agents set up companies in their own name, in order to create companies swiftly for clients) is one such scenario which justifies an exemption clause.

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 would particularly support such a measure as a means to help prevent attempts to register names which deliberately mislead with a view to gaining unfair trading advantage on the back of an established "name".

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

This proposal would not change the fact of what the certificate is but would clarify its effect and prevent its misuse in relation to claims of financial soundness and so would be a welcome measure.

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

This is not something we are aware of.

Appendix – not for publication

Redacted

I hope this response is helpful, and if you wish to discuss any points or any other matters in further detail, please do not hesitate to contact me. Please feel free to publish our response if appropriate, with the exception of the information contained in the Appendix in relation to Q36.

Yours faithfully

Sandra Harkness
Chair SCOTSS

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